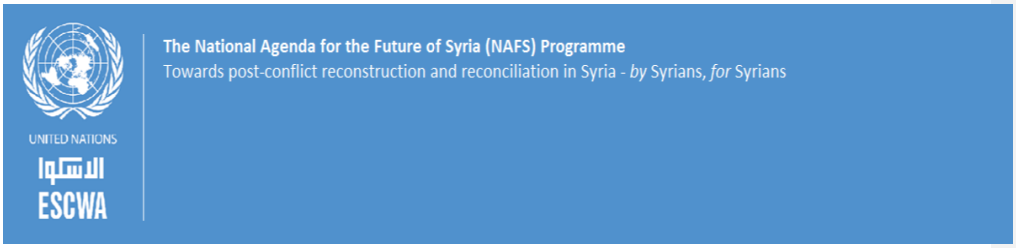

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Constitutional Alternatives for Syria

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Preface

The “constitutional issue” in the Syrian conflict is not only one of the most prominent axes of the negotiation process but also one of the most problematic issues among the conflicting parties due to the repercussions of the constitutional issues on the present conflict and the future of the peace settlement process.

Constitutional issues were referred to early on in the peace settlement process, in accordance with the final communiqué of the Action Group for Syria meeting, convened by the Joint Special Envoy of the United Nations and the League of Arab States for Syria in Geneva on 30 June 2012. It subsequently came to be known as the Geneva Communiqué. This statement stated that "the constitutional order and the legal system could be reviewed and the result of constitutional drafting would be subject to popular approval”. [1]

Since then, the issue of the Constitution has repeatedly been referred to in several documents, issued on the Syrian conflict, until consolidated in the international UN Security Council Resolution No. 2254 of 2015, which is currently the agreed terms of reference and the framework governing the current negotiating process. The resolution in connection with the Constitution states that the Security Council "expresses its support, in this regard, for a Syrian-led political process that is facilitated by the United Nations and sets a timeframe and a process for drafting a new constitution. "[2]

We ought to observe the evolution of the “constitutional issue” in the negotiation process from the “possibility of reviewing the constitutional order” according to the Geneva Communiqué of 2012 to identify a timetable and a process to draft a new constitution" under resolution 2254 of 2015.

Initially, the reference to the constitution was based on the fact that its review was “feasible” as being one of the numerous options for the peace process. But it is not inevitable or certain. The term "reconsideration" indicates a possibility of maintaining the Constitution itself or partially amending it and not necessarily writing a new one.

The reference to the Constitution in resolution 2254 of 2015 was more decisive and clearer in emphasising that the Syrian peace process ought to "necessarily" include a "new" Constitution for the country. The process is no longer discretionary, neither in terms of practicality nor content given the posed under the Security Council resolution is a new constitution.

Subsequently, the constitution became one of the "four baskets" negotiated in Geneva between the government and the opposition delegations.

This constitutional study aims at providing support and advice to the Syrian constitutional negotiation process, in which we present constitutional options and alternatives adopted by countries that have witnessed similar conflicts and challenges currently facing Syria. They resorted to the use of the

1 Paragraph 9/C of the Geneva Act. see United Nations document: A/66/865 – S/2012/522 – 6 July 2012
2 The fourth paragraph of the resolution. see United Nations document: S/RES/2254 (2015)-18 December 2015

constitution either as a means to counter the repercussions and consequences of these wars or as an end to which it would have ensured the desired peace.

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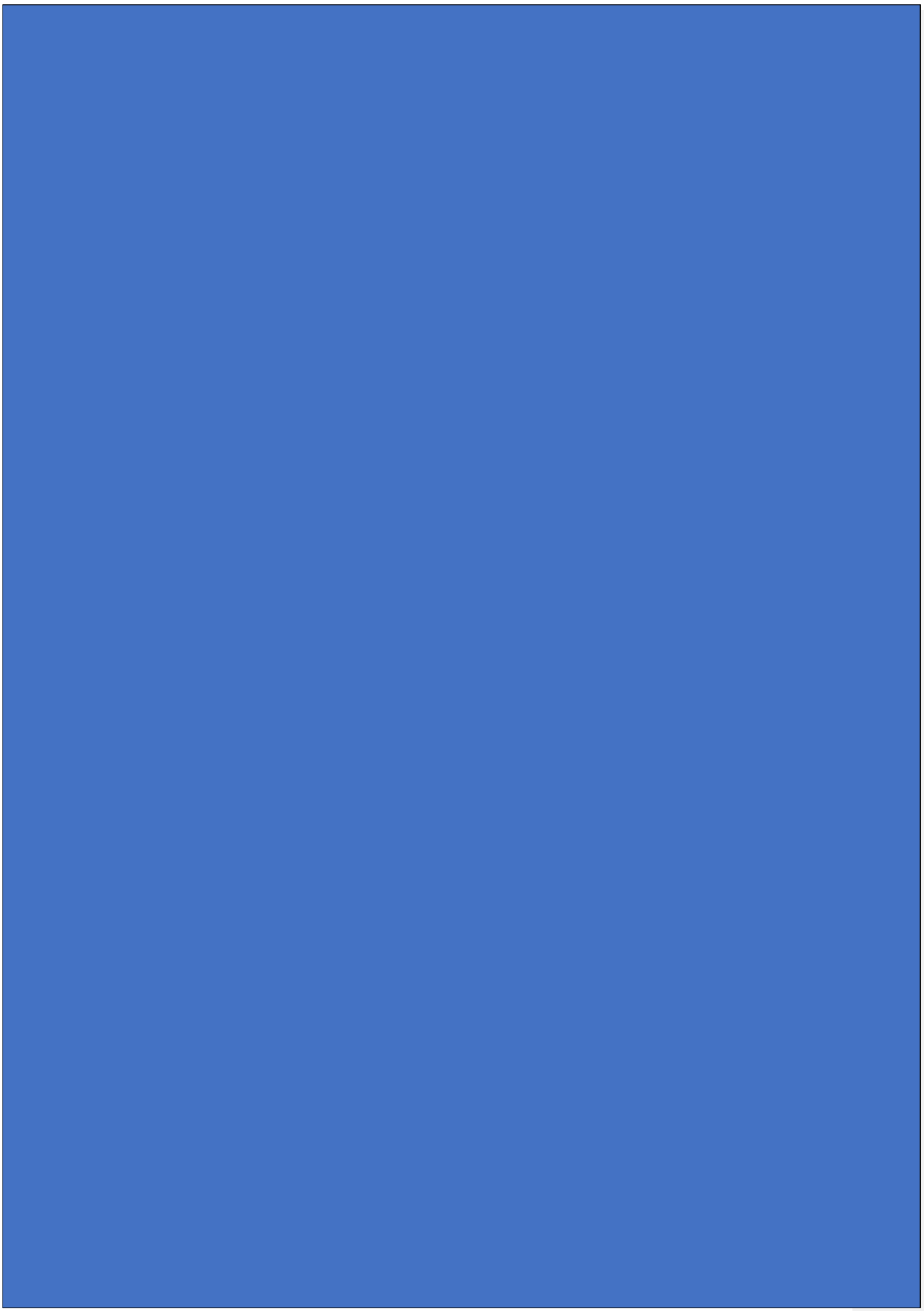

Executive summary

This constitutional study aims to provide support and advice to the Syrian constitutional negotiation process, in which we present constitutional options and alternatives adopted by countries that have witnessed similar conflicts and challenges currently facing Syria. They resorted to the use of the constitution either as a means to counter the repercussions and consequences of these wars or as an end to which it would have ensured the desired peace. Chapter I addresses the "Provisional Constitutional Documents", while Chapter II discusses "The Procedural Path to the Post-Conflict Constitution" and chapter III puts forth "What could Post-Conflict Constitutions contain".

Interim Constitutional Documents

The constitutional track is one of the most complex negotiating ones in the existing Syrian peace process. Given the different positions of the parties to the conflict around it, besides being the overarching framework that should embody all the other consensuses that would prepare and pave for the transition of Syria from a state of violence and conflict into recovery and peace.

This chapter discusses the appropriate constitutional option for Syria in the next phase. It shows that there is an urgent need to adopt an "interim constitutional document" as a first stage preceding the drafting of the permanent Constitution of the country. While it reviews the justifications for resorting to the option of interim constitutional documents as well as the risks of such an opportunity and discusses critical issues addressed or circumvented by those constitutional documents, it shows how these experiences and practices could be utilised in the Syrian context.

Interim constitutional documents are issued to regularise the state affairs during exceptional, and unconventional stages of the country, and throughout its constitutional history, Syria has known several interim constitutions promulgated during the period of military coups d'état and political divisions during the past decades.

International practices reveal that many States have resorted to the interim constitutional documents for various considerations, inter alia, the need for post-conflict phases to address urgent and substantive issues, but do not fall under the provisions of the permanent constitution of the country namely to facilitate the adoption of the Permanent Constitution, provide a stable environment, provide requirements of the transitional management, create a legal framework for governance, as well as avoid the "permanent" subordination to the authority of the warlords.

Nonetheless, precedents and practices have also revealed that there are too many concerns and challenges surrounding these interim constitutional processes, such as "the abduction of the reform process" or the subsequent reversion of past constitutions as well as the risk that the opposing forces of the peace or reform process will exploit that interim constitutional period to reunite, get their powers back and overthrow the existing settlement path.

This chapter discusses all these rationales and challenges and provides appropriate ideas and proposals to the Syrian reality to reduce those risks and dispel their shortcomings.

This chapter shows that one-third of the total constitutional design processes undertaken during the years between 1975 and 2003 included interim constitutional documents. Moreover, since the year 1990 nearly 30 interim constitutional documents have been adopted, 20 of which were issued in countries suffering from war and conflict. This study, therefore, refers to some of the documentation that is relevant, in terms of their texts and not in their circumstances, to the Syrian reality. It shows the most prominent topics such documents could contain and which could be used in the Syrian context, such as issues associated with managing the transitional stages, both in terms of its duration, objectives, bodies, the enforced laws and the human rights status during that stage, in terms of the supra-constitutional principles and guidelines that can be adopted for the permanent constitution of the country. Without losing sight that, many of those interim constitutional documents have addressed the repercussions of wars, the humanitarian impacts, and legal disputes, as well as issues of amnesty and reconciliation, in addition to the challenges and mechanisms of subjecting the army and security institutions to civil controls.

This chapter ends with providing a vision on the importance of adopting an interim constitutional document option in Syria, and what it could contain therein. It highlights the importance of not limiting the completion process of the interim constitutional document to closed rooms but also working to ensure community participation to the maximum available and workable to enhance the legitimacy of that document and ensure its credibility; besides taking into account the consistency in wording the text and managing the phase associated with it. Also, to ensure that any interim constitutional document doesn't affect the unity and the territorial integrity of the country or infringe human rights and citizenship through calls for quota and distribution of posts on the basis of national and religious affiliations, thereby strengthening the spirit of division and disunion rather than unifying national identity. Since each of these substantive issues should be subject to a societal dialogue involving “all Syrians” and no one can confiscate, allegedly represent, or speak on behalf of the people under the current conditions of strife.

The procedural course of the post-conflict constitution

In chapter II, this study discusses the procedural path of the post-conflict constitution. It deals with three critical issues, the first of which is the procedural course of successive Syrian Constitutions, the second is the options and alternatives for adopting the permanent constitutional document, and the third is the issue of community participation in the constitutional process.

This study shows that Syria knew the constitutional experience in its contemporary history and presents the extent of the Syrian Constitutions responsiveness, since their inception, to the procedural considerations specific to the constitutional document pathway, both in terms of the formation of the relevant bodies concerned with writing the document and in terms of the approval of the constitutional text and its entry into force and enforcement. Upon reviewing the constitutions of the mandate, independence, military coup, unity, secession, and the constitutions of the ruling Ba'ath party until the current constitution of 2012. It concludes, overall, that the people of Syria never had the chance to contribute to a genuine constitutional process in line with the democratic standards of due process particularly in terms of respecting the rules of partnership, transparency and the required community involvement, either in writing of the Constitution, the process of its discussion, or the referendum thereon. This reinforces the importance of creating the conditions for a

genuine constitutional process in which all Syrians, women and men, on an equal footing, without exclusion, exception, or discrimination, contribute to the constitutional process that will set a new national contract, which will end the country's current crisis and ensure the necessary recovery.

This study explores options and alternatives to the adoption of the permanent constitutional document and warns of resorting to non-democratic methods, in which the people are not consulted to draft or adopt the Constitution. The constitution will lose a fundamental cornerstone of its legitimacy given the absence of participation in its preparation and adoption. Moreover, these constitutions will not achieve their function as a social contract and will then neither express the demands of the people nor respond to their wishes and aspirations. The study then exposes the experiences of many States that have resorted to the option of establishing a Constituent Assembly entrusted with the task of adopting the draft constitutional text, with respect to constitutions that have resulted from the process of political transition (Portugal 1976, Spain 1978, Brazil 1988, Tunisia 2014), or constitutions that resulted from the process of armed conflict (East Timor 2002, Afghanistan, 2004).

In connection with the Syrian situation, this study indicates that the logical view of this reality clearly reveals that it will not be easy to hold fair elections for members of the Constituent Assembly under complex and challenging security and social conditions, especially with the absence of stability, the deterioration of the security situation, as well as the presence of large numbers of refugees and (internally) displaced persons. Therefore, the study has adopted one of the two options:

First, the elections for the Constitutional Constituent Assembly shall not be organised until at least two years from the start of the peace and recovery phase, and the process of drafting the country's final Constitution shall begin in the third year after its merits have been partially achieved. Second, attempt to mitigate the “disadvantages” of accelerating the course of the country's final constitution by setting up a special commission for the constitutional process comprising a group of experts to prepare a draft constitutional text, conduct public discussions and activate the rules of societal participation with the people.

With respect to public participation in the constitutional process, this study affirms that the involvement of various societal forces in the constitution-making has become a fait accompli necessitated by the expansion of the concept and content of the democratic rights of the people, an internationally recognized right by the international law and a moral right to both citizens and State officials. Therefore, the study explores the concept of participatory and highlights its importance in the constitutional process, including its role in achieving reconciliation and strengthening national unity, the legitimacy of the Constitution and its acceptance, as well as its effect on the expansion of the constitutional and social reform programme. It also notes the experience of other States that have resorted to participatory community process before the initiation of the constitutional process itself. A method may apply to states in the conflict phase that need to resolve plenty of decisions, including whether or not the constitutional process is necessary and desirable, how to implement it and how to use it to encourage key stakeholders or political actors to commit themselves to that process. knowing that some states have also resorted to community consultations exemplar to resolve some contentious issues. This study also presents numerous international experiences and practices in an effort to enforce it on the Syrian reality.

Note that this study warns, regarding public participation, that despite its importance and gravity it does not appear to be on the negotiating track and the existing Syrian political and constitutional debate. Given that

one reason for the initiation of the Syrian conflict is the conviction of many that they are marginalized, and that not all the legislation promulgated up to the constitution express them, protect their interests and actualise their aspirations. Therefore, this study asserts that public participation shall not be evaded under the pretext of circumstances or divisions especially since comparative constitutional experiments have shown that states that had similar or sometimes worse conditions and divisions than Syria have adopted these principles and succeeded.

This study underscores that the representation of women along with the representation of refugees and displaced persons shall always be well-thought-out at every stage of the Syrian constitutional process. As well proposes the establishment of a particular Ministry of Constitutional Affairs in the first agreed upon government after the attainment of the much-sought-after peace, also continues to pursue the pre-qualification of the Syrian civil society to work on these issues.

What might be included in post-conflict constitutions

The study discusses "what might be included in post-conflict constitutions" in the third chapter. However, there are neither models of exemplary constitutions to recommend, nor ready-made constitutional recipes valid for every nation across any time and every place; nonetheless, there are good experiences and constitutional processes for thorny matters and sensitive issues that could be exploited and considered. For this, a multitude of constitutional texts and experiences have been referred to in different continents of the world, emphasising the four fundamental issues considered the most controversial and severe in the constitutional texts and which are the State system of governance, the rules to maintain the constitutional order, the guarantees of rights and the judiciary and the gender of the constitution.

We have deliberately cited in the study several constitutional texts aimed at providing the concerned with the future Constitution of Syria with different and numerous options both in terms of formulation and substance.

This study starts with the question of dealing with "divisive" issues, a matter of utmost urgency. These issues are often the ones for which conflicts arise (such as governance and power-sharing, political system change, or the restructuring of the army and security forces) or those that instigate chronic social divisions such as religion and secularism, and even women's rights issues to a segment of the community. Some solutions and strategies that could be followed to overcome these obstacles were reviewed.

The study then examined the issue of the state and governance system, which encompasses all the details related to the identity of the state and its underlying principles, the legal system that governs it, the nature of the relationship between the authorities and the guarantees to preserve its system, the rights of its citizens and the implementation of the adopted constitution.

The study also discussed the necessary rules to maintain the constitutional order, which aim at guaranteeing regularity in the application of the provisions of the constitution, limiting absolute power, whether granted to politicians, military or security forces, and ensuring the preservation of the public rights and freedoms to maintain the existing constitutional order in the country. The study also touched upon these rules associated with the head of state, the electoral system, the adoption of political pluralism, and the rights of the opposition, as well as other regulations related to the reduction of absolute power in case of emergency, or the substantial powers granted to the army and security forces to ensure circulation of power.

With regard to the guarantees of rights and judiciary, this study has shown that the rights and freedoms are among the most prominent topics that occupy a central place in the core of the constitutional document. It also noted that modern constitutions, particular constitutions of states undergoing the process of the democratic transformation, tend to make the Bill of rights and freedoms present at the core of their new Constitution more extensive and detailed than what was the case in their old constitutions. A desire, on their part, to rid themselves of the heritage and practices of the past, requiring the constitutional document to clearly stipulate and in detailed and precise phrases, all the other civil, political, economic, social and cultural rights up to what has become known as the third generation of rights. As well as providing assurances to the full enjoyment of these rights either by imposing restrictions on the state when there are justifications for restricting some of these rights, or by empowering those impacted to access ordinary or exclusive means of litigation until the establishment of relevant agencies concerned with the follow up on the constitutional rights to ensure their implementation. In addition to the independence of the judiciary which is the most prominent guarantee not only to protect the rights and freedoms but also to ensure respect for the constitution as a whole and regulate the function of its other authorities and institutions.

Regarding the gender of the constitution, this study depicts how Syrian women have suffered, constitutionally, from chronic exclusion and marginalisation over subsequent decades and successive constitutions that reiterated the same expressions and phrases, with slight variances in form but not in content. The study then showed how to engender the language of the Constitution given that the choice of words is not neutral and could reflect stereotypical gender attitudes which are later enshrined in the text of the constitution requiring to formulate laws in "gender-neutral" or "gender-inclusive" or "non- single gender" language. This study provides “Gender Language options” adopted by many constitutions to overcome this problem. Note that this study accentuates that the process of engendering the constitution is an integral one and cannot be limited to the language without content or vice versa. This entails accentuating that there are certain fundamental rights and substantive issues ought to be included in a gender sensitive constitution to attain its purpose and goal and transform the constitution from a mere “political and media marketing” document to a legal one that does justice to women and guarantees their enjoyment of all their rights without exclusion or exception.

First Chapter - The interim constitutional documents

Preface

This chapter discusses interim constitutional documents. The reason for choosing this title in Syrian reality is due to two main reasons:

Firstly – It is one of the seriously set forth options in the context of the Syrian conflict. As many of the put forward initiatives and views currently circulating separate between two constitutional tracks, the first of which is provisional to govern a transitional phase during which consensus is reached, the Constitution of the country is drafted and adopted, and the second is permanent and referred to in the fourth paragraph of the UN Security Council resolution 2254.

Secondly - This is the path already resorted to by many states that have undergone exceptional circumstances such as those Syria is currently experiencing, regardless of the difference or discrepancy in the cause or justification of those unusual situations and their ensuing effects or consequences thereof.

So as when the drafting of the country's constitution is part of a broader process to end an armed conflict and restore peace and stability, giving priority to the achievement of peace at all costs will still pose some risks to the constitution-building process. While prioritising the control of violence and insecurity at the expense of achieving unanimity on the constitution may fail the entire process. A fate that threatened, for example, the Bosnia and Herzegovina Constitution, as parties of the Dayton Peace Agreement of 1995 agreed on the Constitution of Bosnia and Herzegovina as an annexe to the Peace Agreement, which resulted in insufficient political consultation among the male and female citizens and the drafters of the Constitution. This is a significant reason for a bottle-neck in applying the Constitution later.

To bypass this problem, states practices that have sought to establish new post-conflict arrangements and constitutions reveal that they have defined two stages in designing the process of building their constitution: in the first phase, a provisional or transitional constitutional plan was used which focused, in particular, on issues of stability and the completion of the peace process. While in the second phase, work has been done on the permanent constitution for the country, during which there were debate and a more considerable effort on a long-term vision of the institutional design.[3]

In the subsequent pages, we show what these interim constitutional documents are and the possible they provisions may contain. It must always be recalled that there is no "ready-made constitutional recipe" that fits every state and conforms to any dispute, given the multiplicity and differences of the circumstances of the States as well as the varied causes and sources of these conflicts.[4] Nonetheless, it is well established that some successful constitutional experiences and practices have enabled States to bypass crises and other failed ones that have deepened the plights of other States and exacerbated their problems.

3 Practical guide for building Constitutions - International Foundation for Democracy and Elections p. 7-8 - 2001

4 International Forum Pathways to Democratic Transitions Summary Report on Country Experiences, Lessons Learned and the Road Ahead - June 5-6 2011- United Nations Development Programme- p.21.

First Research – Concept of the interim constitutional document

International precedents and practices reveal that one-third of the total constitutional design processes, which took place during the years 1975 to 2003 included temporary constitutional documents, and several terms were used to refer to them. They primarily comprise states that seek to get out of major wars or crises and divisions that threaten their survival and unity or those that are recovering from the repercussions of those wars and disasters and their consequences. The Interim Constitutional document option is usually resorted to as a transitional constitutional arrangement to ensure regularity in that period and pave the way for the drafting of the country's permanent constitution at a later stage.

First - The general framework of the interim constitutional documents:

The interim constitutional document refers to the document issued to regularise the status of the State at exceptional and unconventional phases of the country (a transitional period following a revolution, a coup d'état, political transition, war, Union, secession, separation, etc.). That document would last until the ratification of the permanent constitution.[5] The interim constitutional document may further contain a specific time limit within which its provisions will be applied or may refrain from that by only referring to the provisions as temporary or only work in its provisions during the transitional period of the State. Note that some of the interim constitutional documents remained in force for a more extended period than some other permanent constitutions: The Interim Constitution of the United Arab Emirates of 1971 remained in effect for 35 years until it was decided, in 1996, to cancel the word "Interim" and keep the whole content. The Constitution of the Fourth French Republic of 1946 did not last for more than 12 years.

What is remarkable here is that the interim constitutional documents take multiple designations, such as "an Interim Constitution, Transitional Constitution, Constitutional Declaration, and Basic Law, which is what we observe in states practices that used multiple names to denote these documents. As they were termed in Lithuania in 1990, the "The Provisional Basic Law of the Republic of Lithuania "; in Ethiopia in 1991, "The Transitional Period Charter of Ethiopia "; in Chad in 1991, "The Transitional National Charter"; in Albania in 1991, " Law on Major Constitutional Provisions"; in South Africa in 1994, " The Interim Constitution of the Republic of South Africa "; the Democratic Republic of the Congo in 1994, "The Transitional Constitution of the Democratic Republic of the Congo"; in Ukraine in 1995 "The Constitutional Agreement". At a time when Iraq used the title of the "Iraqi State Administration of Transition Act," to denote its Provisional Constitutional document in 2004, while Libya and Egypt resorted to the "Constitutional Declaration" on their documents

5 A distinction should be made between Constitution, which is a technical and legal act and constitution making, which is the product of national dialogues and compromises. Note that a constitution making is a complex and multidimensional venture. It involves various processes and stages, with multiple actors consulting with one another to reach a consensus on the nature of the constitution. The makers of the constitution need to decide on the procedures to be followed during the making of the constitution, and they also need to deliberate on relevant matters like the nature of the political institutions that will be set up. The whole process may be guided by a roadmap and series of events to be accomplished within a given period, and this time frame may be strict or flexible. See:
International Forum Pathways to Democratic Transitions Summary Report on Country Experiences, Lessons Learned and the Road Ahead, op.cit. p. 21.

issued after the year 2011.[6][7][8][9][10][11][12][13][14] [15]Beyond a difference in name and content, of course, the merit of these constitutional documents is that they constitute the supreme law of the State since their issuance. They replace, freeze or modify the existing constitution, organise authorities and institutions of State during a given phase; as already mentioned, often includes a reference to being temporary, either through an explicit text that identifies a precise time limit or by linking its fate and completion to the country's permanent constitution. These interim constitutional documents often contain precise texts on how to procedurally adopt the constitution and, at times, what can be objectively included in it. As we will show in the subsequent pages.

Transitional Constitution for separation and unity

The German Basic Law was adopted in 1949 and was supposed to be a transitional Constitution pending the reunification of Germany. On the third of October 1990, the two parts of Germany were united and the Federal Republic was established The Transitional Constitution was transformed into a comprehensive Constitution throughout Germany, upon which the democratic order that is the guarantor of freedom was built in the country.

Studies confirm the increasing recourse to interim constitutional documents since the end of the cold war. Since 1990, nearly 30 interim constitutional documents have been adopted. It is worth noting that 20 of them had been issued in states that have primarily suffered from wars and local conflicts, which can be explained by the fundamental change in the nature of disputes from inter-State wars to internal wars.[16] Note that we cannot ignore here that many internal disputes conceal sharp regional and international conflicts that motivate and fuel the internal struggle as is the case of the current Syrian Crisis.[17]

It shall be pointed out that these documents do not always succeed in ending violence and existing conflicts. since the attainment of stability and achieving the sought-after peace is strongly tied to the nature of the existing conflict and the socio-political context associated with it and the credibility of the parties involved in the political process, the existence of State

6 The Provisional Basic Law of the Republic of Lithuania of 1990.
7 The Transitional Period Charter of Ethiopia 1991
8 The Transitional National Charter 1991.
9 Law on Major Constitutional Provisions. 1991
10 The Interim Constitution of the Republic of South Africa 1994.
11 The Transitional Constitution of the Democratic Republic of the Congo- Acte the Transitional Constitution of 09 April 1994.
12 Constitutional Agreement of 1995.
13 The Law of Administration for the State of Iraq for the Transitional Period or Transitional Administrative Law 2004.
14 Interim Constitutional Declaration
15 It should be noted that there is no such thing that could be called the permanent or final Constitution of the country. All constitutions accept amendment and change in whole or in part. Whether by democratic methods or other ways. Thus, the permanent Constitution is the Constitution, which doesn't expire if amended, or its obligation becomes non-binding when a given event occurs.
16 Kimana Zulueta-Fülscher; Interim Constitutions Peacekeeping and Democracy-Building Tools. International Institute for Democracy and Electoral Assistance. Policy Paper October 2015 – P 3
17 See the presentation of these interventions: Curtis R. Ryan Inter-Arab Relations and the Regional System - In the Arab Uprisings Explained: New Contentious Politics in the Middle East (Edited by Marc Lynch) - Publications of the Distribution and Publishing Company - Beirut - Lebanon - First Edition 2016 - p. 187.

institutions and its capacity and the extent of the presence of a regional or an international guarantor for the political and constitutional process. Whereas the constant is that these constitutional documents will help reduce conflict, organise and legalise the transitional period, stimulate some political actors to engage in the ongoing political process, and give the parties sufficient time to find solutions to existing problems.[18]

Note that the adoption of these constitutional documents is not necessarily linked to wars and conflicts. They may be associated with the desire to complete State institutions as in the case of East Timor after its independence from Indonesia in 2011, or in the case of the peaceful transfer of power, as was the case earlier in Poland in 1992 and South Africa 1996.

In East Timor, on 30 August 2011, two years after the independence, more than 91 percent of eligible voters went to the polls to elect an 88 -member Constituent Assembly mandated to draft and adopt a new Constitution. By 9 February 2002, the Constituent Assembly approved the first draft of the Interim Constitution of the country. The option of the Interim Constitutional choice was unpopular among nationals, due to the existence of a strong desire to consolidate the independence from Indonesia, and there were fears that the "interim Constitution" might involve an "interim country" without the presence of the United Nations. Nonetheless, an interim constitution might have been necessary to provide time to build the capacity of national institutions.[19]

In Poland, round-table talks began on 6 February 1989 in the city of Warsaw between the Government, backed by the Soviet Union at the time, and the opposition, the Solidarity Opposition Movement, mediated by the Catholic Church which led to a power-sharing agreement in Poland. This agreement entailed the adoption of strong presidential powers, with a more limited role for the Parliament. The subsequent collapse of the Soviet Union paved the way for a smooth transition in 1991. In October 1992, a consensus was reached on what came to be known the Small Constitution, a temporary constitution for the country, replaced the 1952 Constitution, which removed the rest of the power-sharing legacy and remained in force until 1997 where a new Constitution of the country was adopted.[20]

It is recalled that the context of the circumstances of the issuance of each interim constitutional document varies from one state to another (independence, secession, revolution, coup d'état, peaceful transfer of power, occupation, etc.). That is reflected, in turn, on the issuance mechanism, the content and the success of the interim constitutional documents according to the extent of compatibility or division, the size of the consensus and the local, regional and international levels of support to that process. In the previous example on East Timor, the process enjoyed popular consensus because it came in the context of the independence. Which is not true in the case of the Syrian conflict, which acutely divided internally, regionally, and internationally. This need to be taken into consideration when reviewing each interim constitutional document to assess the extent and feasibility of its experience in the Syrian conflict which we will clarify and highlight in the context of this paper.

18 Kimana Zulueta-Fülscher; Interim Constitutions Peacekeeping and Democracy-Building Tools – op. cit. p.4
19 Aderito de Jesús Soares; Interim Constitutions in Post-Conflict Settings. International Institute for Democracy and Electoral Assistance DISCUSSION REPORT 4 – 5 December 2014. images/stories/pdf/rg-fr.pdf.13
20 Lech Garlicki; Interim Constitutions in Post-Conflict Settings. op. cit. p. 17

Constitutional Alternatives for Syria

The following table denotes the States that have resorted to the option of the interim Constitutional documents since 1990 and the period these documents has continued to be in force.[21]

Name of the country	Document Name	Source of conflict[22]	Period of validity
Lithuania	Provisional Basic Law	Separation from the former Soviet Union and the establishment of new State	1990 – 1992
Ethiopia	Ethiopia's Charter for the Interim Period	Internal armed conflict[23]	1991 – 1995
Chad	Transitional Constitutional Charter	Internal armed conflict[24]	1991 – 1998
Albania	Code of the Republic of Albania on key constitutional provisions	political crisis	1991 – 1998
Togo	Interim Constitution	political crisis	1992 -
Poland	Small Constitution	Transitional phase and devolution of power	1992 – 1997
Eritrea	Eritrea Declaration 22/1992, 23/1992	Independence from Ethiopia	to date
Rwanda	Arusha Accords	transitional phase and devolution of power	1993 – 2003
South Africa	Interim Constitution	Transitional phase and devolution of power	1994 - 1997

21 Kimana Zulueta-Fülscher; Interim Constitutions Peacekeeping and Democracy-Building Tools – op. cit. P 4

22 Reference must be made to the difficulty in determining the exact source of conflict as many of these conflicts are of mixed and multiple causes, where internal protests and military coups overlap. While it is very difficult to talk about abstract internal armed conflicts, many of those noted conflicts have had regional and internal dimensions and amounted to direct military intervention in some cases.

23 The non-international (or internal) armed conflict refers to cases of violence involving protracted armed confrontations between Government forces and one or more organized armed groups, or between those groups, and takes place on the territories of the State. At least one of the contending sides in the international armed conflict is a non-State armed group, in contrast to the international armed conflict, which involves State Armed Forces.

24 Some use the term "civil war" to denote these conflicts. The International Committee of the Red Cross (ICRC) notes that the term "civil war" has no legal meaning per se. Some use it to refer to non-international armed conflict. Common Article III of the conventions does not use the term "civil war", but rather suggests to an "armed conflict, not of an international character". The International Committee generally avoids the use of the term "civil war" when liaising with parties to an armed conflict or in public, and instead uses “international" or "internal" armed conflicts, reflecting these terms used in common article III

See: Internal conflicts or other situations of violence at the International Committee of the Red Cross site online:
https://www.icrc.org/ara/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm

The Democratic Republic of the Congo	Transitional Constitution of the Republic of the Congo	Internal armed conflict	1994 - 1997
Ukraine	Constitutional reform	State political transformation of the former Communist regime	1995 – 1996
Burundi	The Interim National Constitution and the constitutional transition	Internal armed conflict	1998 - 2001
Burundi	Transitional Constitution of the Republic of Burundi/based on Arusha Convention on peace and reconciliation in Burundi	Internal armed conflict	2001 – 2004
Afghanistan	Agreement on Interim Arrangements in Afghanistan pending the re-establishment of the Permanent Government and Institutions (Bonn Agreement)	Internal armed conflict	2001
Kosovo	Constitutional Framework for Provisional Self-Government	internal armed conflict witnessed NATO intervention	2001 – 2008
Iraq	Administration Law of the State of Iraq for the transitional period	Foreign occupation	2004 - 2005
Somalia	Transitional Federal Charter of the Somali Republic	Internal armed conflict	2004 - 2012
Sudan	Interim National Constitution of the Republic of Sudan	Internal armed conflict	2005 – to date
Thailand	Constitution of the Kingdom of Thailand	coup d'état	2006 - 2007
Nepal	Interim Constitution of Nepal	Internal armed conflict	2007 - 2015
Madagascar	Transitional Constitutional Charter	political unrest and violent devolution of authority	2009 - 2010
Egypt	Constitution Declaration of 2011 or interim Constitution	Popular protests led to the overthrow of the President and the transfer of authority	2011 – 2012
Libya	Interim Constitutional Declaration	Popular protests evolved into an armed conflict	2011 – present
South Sudan	The transitional constitution of the Republic of South Sudan	independence and the establishment of a new State	2011 – present
Yemen	Agreement on the implementation mechanism for the transitional process in Yemen by the initiative of the Gulf Cooperation Council	Popular protests evolved into an internal armed conflict with regional proportions	2011 – present

Somalia	Provisional Constitution of the Federal Republic of Somalia	Internal armed conflict	2012 – present
Central African Republic	Central African Republic Constitution	Internal armed conflict	2013 – present
Burkina Faso	Transitional Charter Burkina Faso	popular protests led to the overthrow of the President for a military take over	2014
Thailand	Constitution of the Kingdom of Thailand	coup d'état	2014 – 2017

The table above reveals a growing recourse to the interim constitutional documents with an apparent disparity in their chances of success on the one hand, and the period this constitutional option continues to be in force on the other.

While the 1994 Transitional Constitution of South Africa succeeded in regulating the country during transition, ending the apartheid regime and leading the nation to a democratic, pluralistic system that resulted in the Permanent Constitution within the time frames, other States struggled by constitutions and transitional constitutional documents such as Nepal and Burundi that did not fully succeed in achieving their goals. This also applies to Libya, which has been unable since 2011, owing to the security conditions, political divide and the ongoing war, to complete its Permanent Constitution, despite the lapse of the time limits set by the Transitional Constitutional Document that remains in force until now.

Reference must be made in this regard to Syria which had known, throughout its constitutional history, several interim Constitutions associated with a period of coups d'état and political divisions which the country has witnessed during the past decades. Following the second military coup d'état on 14 August 1949, a Constituent Assembly was elected on 15 October/November 1949, issued Interim Constitutional provisions pending the drafting of the new Constitution. In 1958, the country underwent the Interim Constitution of the State of Unity (ISU) with Egypt from 1963 to 1973 the country had seen several interim constitutions promulgated during the years 1964 and 1969, and 1971.

verify :Commented [A1]

According to logic and the course of the Syrian negotiation process, the next phase also requires recourse to the interim constitutional document option. Irrespective of what it is called, as the constitutional document currently in force does not seem appropriate to govern the next phase in light of the substantive and formalistic criticisms towards it, as well as the existing division around it, besides being tailored to a different reality and political system.[25] As well the fact that the coming period in Syria will require interim and transitional provisions provided for by the Constitutional text to address the repercussions of the Syrian war, inter alia: the return of refugees and the guarantee they are not discriminated against, or their political, social and economic rights are violated solely by the fact that they reside outside the country because of the war. The return of internally displaced persons to their places of origin – the problem of nationality and personal documents – recovery of property and compensation – issues of citizenship and the rights of all components of the Syrian people – national reconciliation – transitional Justice – disbandment or integration of illegal armed groups into the national army – issues related to security sector reform – confidence-building measures

25 see: Constitutional working paper - The National Agenda for the Future of Syria programme at the centre of governance and institution-building and democratization ESCWA pp. 49 -69. 2016

– provisions to guarantee the provisional status of the Interim Constitution – Provisions relating to the participation or sharing of power until the adoption of the Permanent Constitution, which ensures the rotation of power. All of these do not exist in the current Constitution, and it will be futile to shove them therein. They are also not present, naturally, in any previous Constitutional document, such as the 1950 Constitution, whereby occasionally referred to as one of the Interim Constitutional options proposed for the next governance phase in Syria. It is also an unrealistic proposal as what applies to the 2012 Constitution also refers to it, of the one part that both Constitutions are not suitable, neither in form nor in substance to govern any future transitional phase in Syria.

Second - Justifications for resorting to the option of the interim constitutional documents:

As already indicated, the time when wars and crises are halted is not, often, the most appropriate moment to draft constitutions. The highlighted role of the interim constitutional documents aims at "enabling constitution builders to work on new legal and political frameworks to replace old ones to permit change with the least amount of disturbances and give way to build the constitution in stable conditions that would improve the opportunities for successfully completing the new Constitution-building process."[26]

Based on the preceding, the importance of interim constitutional documents are identified in the following considerations:

1. The need for post-conflict phases to address pressing and substantive issues but do not fall within the framework of the country's permanent constitution:

Conflicts and wars invariably have some grave results and repercussions that must be addressed to overcome experience and to embark on and consolidate the peace phase. Many of these outcomes and effects do not tolerate procrastination and waiting pending agreement on the contents of the country's Permanent Constitution, add to that they may not usually be included in the final constitutions because they address temporary real-time effects that have resulted from the conflict. For instance, confidence-building measures, understandings on truth and reconciliation processes, negotiations on issues of accountability and impunity, and the participation of some parties to the conflict in daily governance issues as well as issues of the return of refugees and displaced persons, access to personal documentation, recovery of property and compensation.

2- Facilitating the adoption process of the country's Permanent Constitution:

International experiences and practices establish that resolving many contentious issues in post-conflict interim constitutions has greatly facilitated the process of adopting the country's permanent constitution and has made it possible to move to a new political system. For example, the settlement of several problematic issues in the Interim Transitional Constitution promulgated by South Africa in 1993 had greatly facilitated the process for the drafting of the subsequent permanent constitution. Unlike the Nepali constitutional experience of 2006, given not dealing with these problematic issues first and satisfactorily, the parties have stalled in the constitution-making process. These problematic issues have facilitated the experience of South Africa and obstructed the constitutional experience of Nepal incorporated the issues of ceasefires, arms control, and other confidence-building measures, initial understandings on truth and reconciliation processes, negotiations on impunity, and some temporary arrangements (letting the rebels or the excluded groups to have a role in daily governance issues).[27]

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26 See: A Practical Guide to Constitution-building op.cit. p. 8
Constitution making and Reform Options for the Process (authors: Michele Brandt, Jill Cottrell, Yash Ghai, Anthony Regan) Publisher Interpeace 2012 .22-Switzerland. July pp. 21
27 Constitution making and Reform Options for the Process - op.cit. - p. 21.

3- Providing the requirements for managing transitions:

Undoubtedly managing the statehood in the post-conflict and war phase can no longer be done in the same manner prior to that, and certainly many forms, bodies and institutions of the country's administration must be altered, which would demand "constitutionalising" this new legal and political reality. In addition, international precedents clearly reveal that in many conflict and post-conflict situations agreement on some form of power-sharing has been reached between the Government and its opponents as in Kenya in 2007, Cambodia, South Africa, Sudan, and Zimbabwe which called for the development of a suitable constitutional framework particular to the arrangements of that partnership.

It also required managing the transition in some States, such as in Cambodia, Iraq and Nepal, and holding elections before the adoption of the final Constitution, a process that should also be regulated under the Interim Constitution to identify who is entitled to vote and who is to be excluded. This includes addressing exclusion barriers of certain groups of society, namely, the inclusion of communities hitherto excluded from citizenship and the franchise, as in Nepal.[28]

In the context of the Syrian situation, the Security Council stated that elections would take place in Syria after the adoption of the new Permanent Constitution, not before, as outlined in resolution 2254. The resolution expressed its "support for free and fair elections, pursuant to the new Constitution, within 18 months and administered under the supervision of the United Nations governance, consistent with the requirements of the highest international standards in terms of transparency and accountability, with all Syrians entitled participation, including those living in the diaspora".[29]

This resolution, although referring to elections that conform to "the highest standards of transparency and accountability" and includes "all Syrians" along with those outside the country; nonetheless, it was not sufficiently clear about what was intended by these elections. Does it only mean Presidential elections or also includes Legislative and Local/Municipal elections? Thereby, making it possible to organise any of these elections before the adoption of the country's Permanent Constitution. Though many Syrian experts acknowledge the significance and value of any electoral process as one of the democratic, participatory tools, yet they caution the haste of holding such election at an early timing before fulfilling its appropriate and substantive conditions so as it would not have adverse spillover on the overall political process.

4- Providing an environment for the adoption of the Permanent Constitution:

Interim constitutional arrangements contribute to instilling confidence among former protagonists and overcome obstacles to the adoption of the permanent constitution of the country, given the fact that these interim constitutional arrangements lead to the resolution of many problems caused by the conflict and its effects that can undermine the entire constitutional and political process unless addressed earlier. A task that is supposed to be performed by the interim constitutional documents, on the one hand, and on the other, these temporary constitutional arrangements shall lead the country, albeit relatively, into a state of tranquillity and stable security compared to the previous stage of the conflict. This stage is necessary to create an environment conducive to the requirements of completing the Country's Permanent Constitution. In

28 Constitution making and Reform op.cit, p.67-68.
29 The fourth paragraph of the Resolution. see United Nations document: S/RES/2254 (2015) - 18 December 2015

particular, facilitating the process of public participation in discussing and formulating the wordings of the Permanent Constitution, which can only be accomplished after a ceasefire at a reasonable timing as maximum participatory will be possible with the security and political stability and as the process moves steps forward. And the fact that the constitution-making path may contribute, as a peaceful and participatory process to mitigate community tensions and show peaceful solutions and options for resolving community disputes.

5- Establishing a legal framework to govern the country:

Attention is also drawn to the Interim constitutional arrangements as they provide the legal framework for state administration. In some States, old institutions collapsed, disappeared, or weakened old parties. In Afghanistan, for example, these arrangements were called "Emergency Interim Arrangements" and were justified because of the "precarious situation" given the required time for the reconstruction of the Afghan State. It might also be further required to rehabilitate urgently critical institutions in the State, while negotiations proceed on a long-term settlement (e.g. in Afghanistan, Cambodia, Iraq). In other cases, the old Constitution was considered inadmissible for historical or ideological reasons, for one or more of the previously excluded groups, as in Nepal with the Maoists, in other States, one or more key institutions, engaged in the amendment procedures may have collapsed, which makes it impossible to amend the Constitution. While in other states, the option of the interim constitutional arrangements was pursued given the impossibility of amending the existing Constitution because a key institution refused to give its consent to the amendment. This was the case in Nepal, where the King's consent, who had been marginalised by the political parties, was required.

6- Avoiding the "permanent" submission to the warlords' authority

International precedents clearly show that in the immediate aftermath of the ceasefire, warring parties dominate the political arena, including many personalities and leaders accused of international crimes and unlawful practices, who will then be the ones to enjoy a de facto legitimacy. Thus, it is highly probable that the haste to conclude the country's permanent constitution will allow those accused leaders to monopolise the constitutional and political process and take away for themselves lasting legitimacy that extends for the future (for example, in Sri Lanka). It may, therefore, be better than the deals to be concluded are temporary, through limited constitutional arrangements until the process of the permanent constitution-making begins when the circumstances are ripe for more general participation and a greater ability to enforce the rules of due process.

Third - The risks of the interim constitutional documents:

Conversely, the foregoing does not mean that the interim constitutional documents, under whatever name, are a silver bullet to overcome primary political and constitutional obstacles and secure safe access to the country's permanent Constitution.

There are many concerns and challenges surrounding these interim constitutional processes. For example, the "abduction of the reform process" that is, exploiting the interim constitutions to pass the time and exhaust the capacities and capabilities of those requesting reform and manipulating them with interim provisions that may be prolonged indefinitely without reaching the desired constitution or subsequently reverting towards poor past constitutions. As in Nepal, for example, in 1951, the Royal governing authority was under significant pressures to transform its political system into a democratic one through constitutional reform. The king issued an Interim Constitution as a prelude to reforms by a Constituent Assembly but, instead, the interim arrangements lasted for eight years and later changed restoring to the King his old powers. Only in 1990, it was possible to return to reform.30

As well as the existence of risks that the opposing forces of the peace process or reform may exploit the temporary constitutional period for reunification, regrouping, and restore their strengths to turn against the track of the existing settlement. It is alleged that Cory Aquino, the President of the Philippines, urgently wanted a constitution after her election and the overthrow of the former President Marcos because she was afraid of a coup by the military, felt that a new constitution would minimise its power, and deter it.31

The challenge to be encountered vis-à-vis the interim constitutional documents are the fears that what is agreed upon in those interim documents might constitute the essence of the country's permanent constitution. Which means bringing those issues out of the circle of debate, public participation and transparency due to any democratic constitutional process. This is what happened, for example, in Iraq, since what was only agreed upon among the parties in the Transitional Administrative Act were substantive issues such as federalism, language and the future of Kurdish forces and other core issues were retained to in the country's Permanent Constitution promulgated in 2005.

All the aforementioned requires dealing cautiously, but positively and objectively, with these interim-constitutional documents. One must consider them as a means and not an end — a tool to calm the intensity of the conflict and create an atmosphere conducive to objectively discuss the contentious issues as a prelude to reach an agreement about them and approve them in the new Constitution of the country's permanent.

Therefore, there should not be an artificial restriction in requiring this document to settle all significant contentious issues because this is neither the purpose nor the function of these kinds of documents. If there was a capacity in advance to achieve "consensus" or "resolve" all major contentious issues, then there would be no need for such interim documents and could then proceed directly towards the country's permanent constitution.

The most significant challenge concerning these documents is the fear that they reflect a consensus on the interests of the political and military forces, the internal and perhaps the regional and the international too,

30 Constitution-making and Reform op.cit. - p.70-69
31 Constitution-Making and Reform op. cit.- p. 21-22

amid an absence of the vision and the will of the "people", the source of legitimacy and a genuine stakeholder in this process and the most affected by it. In most international precedents, there was no public participation in the formulation and adoption of these documents. It is also the parties who confirm its formulation are themselves who approve it and take it forward which threatens to sabotage the constitution as an inclusive social contract among all citizens of the State who are partners in its drafting and are subject to its provisions.

In Syria, one ought to think deeply to benefit from the overall interim constitutional experiences, good and bad equally, to both take advantage of what is sound and viable in Syria, and avoid what is evil, not to repeat the mistakes of others. That said, several proposals could be envisaged here to avoid "potential" drawbacks of those interim constitutional documents, including:

1- Agree on a "reasonable" period to put into force the interim constitutional document to achieve the country's permanent Constitution. This period is suitable to complete the permanent constitution calmly, allowing public participation as will be discussed later and bearing in mind that this reasonable period should not be less than 18 months and shall not exceed 36 months. Note that some good constitutional experiences completed their permanent constitution approximately in two years as the 1996 Constitution of South Africa and the 2014 Constitution of Tunisia.

2- The need for prior agreement on key issues to be addressed in the interim constitutional document, which should be limited to core issues necessary to manage that phase until the completion of the country's permanent Constitution. Without the interim constitutional document plunging into the resolution of essential contentious issues "affecting the unity and sovereignty of the state and the essence of its political system" can and must be deferred to the permanent constitution of the country, which will then receive discussion and broader community participation

3- Not to confine the completion of the interim constitutional document to closed rooms and not make that process exclusive to politicians and negotiators alone. Nevertheless, ensuring community participation with the maximum available and possible, strengthening the legitimacy of the temporary constitutional document and ensuring its credibility. Which can be worked on in Syria (whether through direct community participation arrangements or by thinking of holding a Syrian national Conference that gains credibility and acceptability) to determine what the Syrians prioritise and what the interim constitutional document must include which will be carried over in the country's permanent Constitution. As well as their vision of the constitutional document path in terms of both form and content including a timeline for the process.

Second Research - Content of the interim constitutional document

As already indicated, there is no specific or standardised model for the content of the interim constitutional documents for the phase that follows war or conflict. Thus, there is a great variety of these arrangements. Some of them are brief, mainly concerned with the roadmap, and aim to amend State institutions to comply with this objective; others dwell in the details, as much as the final constitution could elaborate.

For example, the 1951 Constitution of Nepal not only provides for a legislative body but also provides for a Consultative Assembly for the King. And the 2007 Interim Constitution of Nepal does not provide for elections. Whereas the Provisional Constitution of South Africa of 1993, which entered into force in 1994, was in extenso and sufficiently detailed.

As international practices differ, experts' opinions also differ on the content of the interim constitutional documents. As some seem to favour the formulation of a succinct and functional document with a bare minimum of content; others embrace the conviction that the interim constitution should contain considerable detail and be as democratic as the permanent constitution should be, to foster democratic practices and habits.[32]

By all accounts, it is up to each State's particular circumstances and the priorities imposed on it. As well as the conditions of the preparation of those constitutional documents and the conclusions of the conflict, that caused the crisis in the country. In some cases, the leaders of the governing regimes were overthrown either by revolution or occupation (as was the case in Tunisia, Egypt, Libya and Iraq) while in other instances the governing regimes have efficiently remained established thus becoming a partner in the existing political and constitutional process as in the experience of South Africa, for example.

In other experiences, the conflict has not resulted in substantial asylum and displacement issues, as is the case in Tunisia and Egypt, whereas the Syrian reality, for example, spawned a major challenge associated with huge numbers of refugees and displaced persons, thereby forcing this subject matter to be a priority in any anticipated constitutional document.

The review of the path of the existing Syrian negotiation process and the revision of the available literature and documentation of the various parties to the conflict clearly reveal that there are fundamental issues are being debated without implying that there is a consensus on their content or inclusion in any future constitutional document. The most notable problems are perhaps the transitional period and its management, the guidelines for the adoption of the permanent constitution of the country, the supra-constitutional principles, the humanitarian and legal implications of the conflict, amnesty issues, and finally the subordination of the military and security institutions to civilian control.

For that, we will present in the subsequent pages templates of those cases, which have already been raised in some interim constitutional documents.

32 Constitution-making and Reform op. cit., - p.71. See also:
Kimana Zulueta-Fülscher; Interim Constitutions Peacekeeping and Democracy-Building Tools – op. cit.

First - Managing the Transitional Period:

Interim constitutional documents commonly include temporary arrangements for the administration of the transitional period, until the formulation of the country's permanent constitution.

Since the wake of the "Arab Spring" in 2011, many Arab countries have witnessed the issuance of several interim constitutional documents to manage the transitional period that occurred after the fall of the ruling regimes, as was the case in Tunisia, Egypt and Libya.[33]

"Non-Paper" on Syria

On 24 March 2017, the Special Envoy for Syria, Mr Staffan de Mistura, distributed a "non-paper" to the negotiating delegations in Geneva entitled "Essential Principles of a Political Solution in Syria" which included 12 principles as the basis for the future of the Syrian State. Stated therein regarding the management of the proposed transitional period:

5. Women shall enjoy equality of rights and representation in all institutions and decision-making structures at a level of at least 30 per cent during the transition and thereafter.

6. As per the Security Council resolution 2254 (2015), the political transition in Syria shall include mechanisms for a credible, inclusive and non-sectarian, governance, a schedule and process for drafting of a new Constitution and free and fair elections, pursuant to the new Constitution, administered under the supervision of the United Nations, to the satisfaction of the governance and the highest international standards of transparency and accountability, with all Syrians, including members of the diaspora, eligible to vote.

7.such governance shall ensure an environment of stability and calm during the transition, offering safety and equal chances to political actors to establish themselves and campaign in the forthcoming elections and participate in public life.

In Tunisia, for example, in the event of the departure of President Zine El Abidine Ben Ali and the inability of enacting the Constitutional provisions issued on 23 March 2011, Decree No. 14 of 2011 which serves as an Interim Constitution specifically to the "Provisional Organization of Public Authorities". It stated "considering that the people have expressed during the revolution of 14 January 2011, his will to exercise his full sovereignty within the framework of a new constitution,... In view of that the current situation of the State does no longer allow the regular operation of the public authorities and that the full implementation of the constitutional provisions has become impossible ... until a national constituent assembly elected with universal, free, direct and secret vote according to an electoral system chosen for this purpose, takes its functions, the public authorities

33 See: Constitutional Rebirth-Tunisia and Egypt: Reconstruct Themselves - A study prepared by Nathan J. Brown for the United Nations Development Program with the assistance of Marian Messing and Scott Weiner - UNDP- 12 August 2011.

in the Republic of Tunisia shall be provisionally organized in accordance with the provisions of the decree...".[34]

In Libya, the National Transitional Council issued an Interim Constitutional Declaration in 2011 and devoted Part 3 for "Form of State Governance during the Transitional Stage".

With regard to the Syrian situation, the "transition process" and "transitional governing body" were repeatedly mentioned in the 2012 Geneva communiqué, and the 2015 Security Council resolution 2254 also referenced "political transition" and "credible governance", requiring the Interim Syrian Constitutional document to address how to manage that phase and specify its temporal scope, objectives, and existing authorities.

Below we give samples of temporary constitutional documents that included a perception of the form of State management and governance during the transitional period. We have selected three different models in the circumstances and context, the first of which is the Interim Constitution of South Africa in 1994, characterised by its transitional period founded based on a partnership between the ruling regime and its opponents. The second is the Transitional Constitution of the Republic of Burundi issued in 2001 following a bloody civil war that had ravaged the country and witnessed numerous crimes, violations, asylum waves and displacement.[35] The third is the Interim Iraqi Constitution of 2005, which came into existence after wars, occupation and the collapse of governing authority at that time. Note that our citation of the constitutional text will be isolated from the specific and different circumstances from one State to another. It might mirror or diverge, in some details, from the Syrian reality.

1 - Duration of the Transitional Period:

The Transitional Constitution of Burundi of 2001 set forth in Article I that it shall rule "the governing of the work and institutions of the Republic of Burundi during the Transitional Period pending the adoption and entry into force of the post-transition Constitution and identifies in Article II that the duration of this phase will be 36 months, i.e. three years. During which and in accordance with article III "the bodies and institutions of the transition start implementing the Arusha Agreement for Peace and Reconciliation in Burundi to end the conflict in Burundi through a legal and just system and democratic nation able to reassure all its components

34 See the entire text published in: The Official Gazette of the Tunisian Republic - Year 154 - No. 20 - Friday 20 Rabi Al-Thani 1432 - 25 March 2011- p. 367.

35 After years of civil war in Burundi, the parties to the conflict began peace negotiations since July 1998 in Arusha in northern Tanzania culminated in the signing of the Arusha Peace Agreement in August 2000, one of the most important agreements, which affected the path of the country's political and economic conditions. The key points of the Agreement included emplacing a three-year transition period up to the democratic elections, establishing a Senate, making constitutional amendments, judicial and military reform, integrating rebel groups and making the armed forces more representative, establishing the Truth and Reconciliation Commission, besides the independence of the investigations into the crimes of genocide. The Agreement also incorporated that the Government dismantle the camps in the rural Bujumbura, allow freedom of press and radio, and establish an interim Government, both sides swapping its chairmanship (Hutu and Tutsi). The Transitional Constitution of the Republic of Burundi was promulgated on 28 October 2001. It included details of the Transition Period, which was based on power sharing between the Government and its opponents amid a deep division between the components of the State.

and strengthen their full creative capacities and potentials in order to consolidate and enhance the economic, social and cultural development of the country".[36]

Article II of the Law of Administration for the State of Iraq for the transitional period for 2004 defines the concept and scope of this period to signify the period beginning on 30 June 2004 and lasting until the formation of an elected Iraqi government. Which is under a Permanent Constitution as outlined in this Law, which in any case shall be no later than 31 December 2005.

When in fact article 73 of the Constitution of South Africa of 1994 set out to complete the new constitutional provision in two years due to expire after the transitional period, governed by that interim Constitution, becomes effective.

2 - Objectives of the Transitional governance period:

The Transitional Constitution of the Republic of Burundi of 2001 identified in Article IV the objectives, which the transitional governance period should be devoted to their achievement and these include:

1. Maintain and manage order and security primarily to seek a ceasefire.
2. Ensure the adoption of a post-transition constitution by referendum and comply with the constitutional principles provided for in the Arusha Agreement for Peace and Reconciliation in Burundi.
3. Reconcile and unite Burundians and lay the foundations for a democratic and united Burundi, inter alia promoting a broad programme of education in peace, and ethnic, regional and religious tolerance.
4. Ensure the repatriation of Burundians living outside the national territory and ensure the resettlement, integration and rehabilitation of the *sinistrés.*
5. Apply the measures and arrangements to the restoration of peace, the cessation of hostilities and the building of a professional army loyal to Burundi.
6. Ensure the adoption of agreed measures to confront the consequences of the past and avoid any recurrence of genocide, exclusion and impunity.
7. Implement the measures and carry out the reforms relating to the Judiciary, the administration and the defence and security forces by the Agreement.
8. Adopt an electoral law, establish an independent electoral commission and ensure the holding of the first elections at the local and national levels.
9. Adopt laws relating to political parties, local administration, the press and other matters required by the Arusha Peace and Reconciliation Agreement for Burundi and respond to the needs of the Transitional Period foundations.

36 Cf. The full text of the Transitional Constitution of the Republic of Burundi 2001 in English:
Law No. 1/017 of 28 October 2001 promulgating the Transitional Constitution of the Republic of Burundi.
Full text in English available at
http://www.peaceagreements.org/wggsite/downloadAgreementMasterDocument/id/1425

The role of traditional Symbols and Leaders.

The Interim Constitution of South Africa of 1994 recognized the status and the role of leadership in society by granting them memberships in local government within the scope of their community. Article 183/1/a of the Constitution called for the establishment of councils of traditional chiefs at the provincial level, and article 184/1 called for the establishment of a National Council of traditional leaders whose competence is to express an opinion or provide advice with regard to the laws and local norms and all subjects related to those leaders.

3 - Bodies of the Transitional Executive Authorities:

The most significant challenge in the transitional period is always in the mechanism for sharing executive power. International precedents and practices reveal that the executive power cannot be monopolised as it was prior to the crisis experienced by those States. A new "out-of-the-box" mechanism that did not exist before is often devised to share and rotate powers until the completion of that exceptional transition period.

We might refer at this point to two precedents that have been used to overcome the unilateral authority and governance obstacle during that period. The first in Burundi in which an unknown mechanism "innovation" was devised to share and rotate power between the President and his Vice-President and the second in Iraq where a Presidential Council, which did not exist previously, had been established.

In Burundi, the Interim Constitution of 2001 defined in article 77 the executive bodies to include the President, Vice-President of the Republic, and a Transitional Government of National Unity.[37] Due to the existing conflict and division in the country, the Constitution has created a power-sharing mechanism between the President and the Vice-President who shall come from different ethnic groups and political parties. Manifestations of power-sharing appear in the following texts:

Article 79 specified the duration of the Presidential term during the transitional period as two equal periods of 18 months each. Article 80 states that the President of the Republic and the Vice-President are appointed according to the agreed in the framework of Arusha negotiations whereby the Transitional National Assembly shall present the name of the President and the Vice-president for endorsement. The term of the President shall terminate upon the President of the Republic for the second term receives his duties, whereby the Vice-President for the first Transitional term becomes President during the second period of transition. In other words, the President is to govern the country for 18 months, which is only half the transition, and then his deputy takes office as President of the Republic for the remaining 18 months.

Article 83 indicates that the President exercises his Executive law and ensures the implementation of the rules. He exercises his powers under decrees signed by the Vice-President and the Minister in charge. Taking cognisance, the Vice-President and the Minister may not intervene in some of the President of the Republic powers specified in the Constitution.[38] However, the President of the Republic is bound to consult with the Vice-President beforehand. Moreover, the President of the Republic may delegate his powers to the Vice-President, except those provided for in the preceding paragraph.

37 Under this Constitution "men and women commissioned to lead the transition must show, at all times, integrity, persistence, nationality and efficiency and remain deeply committed to the interest of all Burundians, without any discrimination".

38 These are the powers under articles 86, 90, 92,156 and 254 of the Transitional Constitution.

Article 84 indicates, "The President and Vice-President of the Republic, after consultation with the leadership of political parties, appoint the members of the Transitional Government of National Unity, and define their functions''. Article 85 notes "the President is the Head of Government and presides over the Cabinet of Ministers". Article 88 imposed on “the President of the Republic to consult with the Transitional National Government to appoint heads of the defence and security forces, the provincial governors, municipal officials and members of the constitutional courts".

Also, what is striking about this Constitution is that article 98 had resolved, "Any person who served as President of the Republic during the transition period is ineligible to stand for the first presidential elections".

As for Iraq, Part 5 of the Law of Administration Act of the State of Iraq for the Transitional Period of 2004 was allocated to the Executive Authority during the transitional period, created under Article 35 of the Presidency Council, the Council of Ministers, and its presiding Prime Minister.

Where the National Assembly, under article 36, elects a head of State and two deputies constituting the Presidential Council with the function of representing Iraq's sovereignty and supervising the highest affairs of State.

Article 38 indicates the Presidency Council shall name a Prime Minister unanimously, as well as the members of the Council of Ministers upon the recommendation of the Prime Minister. The Prime Minister and Council of Ministers shall then seek to obtain a vote of confidence by simple majority from the National Assembly before commencing their work as a government.

The Presidency Council shall carry out the function of commander-in-chief of the Iraqi Armed Forces only for ceremonial and protocol purposes. It shall have no command authority. It shall have the right to be briefed, to inquire, and to advise. Operationally, national command authority on military matters shall flow from the Prime Minister to the Minister of Defense to the military chain of command of the Iraqi Armed Forces.

Also, in Article 40, the Prime Minister and the Ministers shall be responsible before the National Assembly, and this Assembly shall have the right to withdraw its confidence either in the Prime Minister or the ministers collectively or individually. In the event that confidence in the Prime Minister is withdrawn, the entire Council of Ministers shall be dissolved; add-on Article 25 identified the competence of the Iraqi Transitional Government.

4 - Effective laws during Transitional Period:

Regarding the regulations which will govern the transitional period, Article 3 of the Law of Administration of the State of Iraq for the Transitional Period of 2004 indicates that this Law is the Supreme Law of the land and shall be binding in all parts of Iraq without exception. About other laws, Article 26 shows that the laws in force in Iraq on 30 June 2004 shall remain in effect unless and until rescinded or amended by the Iraqi Transitional Government by this Law.

This will be one of the problematic issues the Interim Syrian Constitutional document should resolve regarding the existing laws and the extent of their sustainability, effectiveness and assumptions of their incompatibility with the requirements of the next stage.

Note that we should distinguish, in Syria, during the transition period between a range of laws and statutes as follows:

A-Laws that shall remain in force and binding: The current laws shall remain in force and into effect (mainly include laws of a civil nature, criminal, commercial and other laws governing human life and State institutions) under two primary conditions:

- Do not contravene the requirements of the Transitional Period.
- Do not contravene human rights.

B - Laws that shall be fully repealed: Fully abolish laws that are **totally** incompatible with the requirements of the Transitional Period (such as the electoral laws and the Constitutional Court) or those that affect fundamental human rights (such the Law and Court of terrorism).

C - Laws that shall be partially amended: Correspondingly, some of the laws currently in force shall be amended to comply with the requirements of the Transitional Period. In particular, the issues of human rights, to facilitate the return of refugees and displaced persons to their places of habitual residence, any actual pre-war position (amendment of the Civil Status laws and cadastre records...), and to reinstate or grant the Syrian nationality to those who were unlawfully and unfairly deprived of it in earlier phases. Such laws shall include legislation contrary to women's rights, curtail them or justify abuse and deny them of enjoying their full and equal citizenship rights.

D - New laws that shall be adopted: The Transition Period requires the adoption of a group of necessary statutes either:

- To govern that period (laws governing the work of bodies and institutions of that stage)
- To overcome obstacles impeding the return of refugees, internally displaced persons and the recovery of property.
- To overcome the repercussions of the war (issues of compensation and justice.

5 - Status of human rights in the Interim Constitution:

The consensus on the management of the transitional period

The experience of the administration of the transition in South Africa reveals that the totality of that process was based on full alignment and mutual compromise between political parties and forces on that phase. Where the principle of compromise and harmonization was followed between the demands of the active actors and political groups on the ground in the Republic of South Africa in an effort to maximize national consensus in transition that followed the Constitution.

A constitutional commitment was made in Burundi to submit to the fundamental human rights conventions and integrate them into the interim Transitional Constitution to further its legitimacy and obligation as stipulated in article 15 of the Transitional Constitution in 2001. It stated that "the rights and duties proclaimed and guaranteed by the Pact of National Unity, the Universal Declaration of Human Rights, international treaties on human rights, the African Charter on Human and Peoples' Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of the child are part and parcel of the Transitional Constitution. These fundamental rights are not subject to any exemption or limitation only in some acceptable justifications and conditions under international law pursuant to the current Transitional Constitution".

It is clear from the foregoing that there is no specific model recommended to manage any transition period as per the particular circumstances of each country and the mode of transition are the ones to determine the track and the content of the transformation and transitional process. Note that by applying the above rules on the Syrian reality, it seems to us there are good ideas pertinent to that reality as identifying the objectives of the transitional period according to the Provisional Constitution of Burundi, as well as Mechanisms of the Transitional Executive Power as previously presented. In addition to the fate of the laws in force during the transitional phase, according to the Iraqi option.

Noting that there are two essential remarks that should be emphasized within this context:

First - Consensus should be taken into account in the formulation of the interim constitution and the management of the transitional period. It is the most prominent lesson that can be drawn from the experience of South Africa as it reveals that the experience of managing the transition was primarily based on a full consensus and a mutual concession between the political parties and forces at that stage. Thus, the Interim Constitution enshrined what could be dubbed as a Package Deal where the principle of settlement and harmonisation between the demands of the groups and the active political actors in the Republic of South Africa in an attempt to achieve greater national consensus in the transitional period that follows the constitution. E.g. recognising the right of suffrage was a response to the demands of the national forces and the patriotic struggle movements while the text on proportional representation embodied the claims of the National Party supporters. The text that South Africa is a unitary State in South Africa was in response to the demands of the National Convention and its supporters, while confirming the existence of three levels of government (national, provincial, local) made

The European Court of Human Rights (ECHR) considered in the case Sejdi & Finci v. Bosnia and Herzegovina 2009 that power-sharing model in Bosnia and Herzegovina based on ethnicity is no longer necessary to prevent conflict, and therefore contrary to human rights the Constitution upholds.

it look closer to some form of federalism that represented a prerequisite to the National Party and the Inkatha Freedom Party. Furthermore, recognising the list proportional representation and power-sharing according to the number of seats constituted an additional gain by the parties in the elections such as the National Party and the minorities. The provisions on traditional leadership were also a direct response to the demands of the Inkatha Freedom Party, while the provision on the right of self-determination was, in turn, one of the necessary concessions of the African National Congress for both the white right wing and the Freedom Party (IFP) Inkatha. Given the importance of ensuring the accession of both political forces under the democratisation process thereby reducing the burdens and costs of that transformation that could result from either or both of these forces continuing to reject the transformation formula and pursuing the path of violence to impose its claims forcibly on the system.

Those accommodations and mutual compromises have succeeded in providing a semblance of unanimity among the negotiating parties for accepting this constitutional formula for the interests it achieves on a party-to-party basis which paved the way for the success of that phase until the adoption of the country's permanent Constitution.

Second - Attentiveness and vigilance must be exercised so that the formulas of managing transitions do not infringe human rights and citizenship through calls for quota allocation of posts on the basis of their national and religious affiliation thereby promoting the spirit of separation and division instead of the unification of national identity which occurred in Iraq for example. Also in the Bosnia and Herzegovina Constitution of 1995 and despite the fact that this Constitution is presumed neither interim nor transitional and not issued by international administration and the blessings of the United Nations, it established peace settlement, which identified the structure of the State, based on power Sharing.[39] It created central State of Bosnia and Herzegovina, with significant authorities for autonomous governance transferred to the entities of the Federation of Bosnia and Herzegovina and Serbia. The authorities were also divided on an ethnic basis. The Presidency of Bosnia and Herzegovina consists of three members: one from Bosnia and the Croatians, both elected from the territory of the Union and the third from the Serbs and elected directly from the territory of the Serb Republic, which also includes the judges of the Supreme Constitutional Court consisting of nine members. Four from the Federation of Bosnia and Herzegovina are chosen by the Federation House of Representatives, two members selected by the Council of the Republic of Serbia. In addition, to the remaining three members are selected by the President of the European Court of Human Rights.

Although the Dayton Agreement succeeded in ending the armed conflict, however, neither of the Parties to the conflict appeared to be satisfied with the regional and existing political arrangements.

Consequently, in the Syrian context, considerable caution should be exercised to reach a consensus on sharing the management of the transitional period, effective and lasting power-sharing based on sectarian or national bases or any other consideration contrary to the concept and essence of citizenship. The temporary constitutional consensuses will lead to catastrophic results in wars themselves failed to reach.

39 David Feldman; Interim Constitutions in Post-Conflict Settings - International Institute for Democracy and Electoral Assistance DISCUSSION REPORT 4 – 5 December 2014. pp 12 – 13.

Second - Policy guidelines for the adoption of the Permanent Constitution of the country:

It is imperative for the interim arrangements to include a roadmap for the new Constitution to avoid risking the change losing its momentum. Thus, when setting the special rules on the drafting of the permanent constitution of the country, it would be useful for the major groups concerned to reach an agreement on a set of principles, intended to guide the process. For example, to explicitly state that it must be consultative and must reflect aspects of broader international norms.

The agreement on these binding guidelines is of great importance in situations of conflict or transition. Such principles shall ensure the transparency of the process and its legitimacy in the eyes of the people, add-on all the groups of interest in the process will often be better prepared and cognizant of their participation in the process and monitor its progress.40

The Interim Constitution of South Africa of 1994 allocated chapter 5 to develop a mechanism for the adoption of the new Constitution reflecting all the detailed rules and procedures, including the identification of a Constitutional Drafting Assembly, the role of the President and Vice-President, the appointment of committees and bodies, rules and orders to be acted upon, including constitutional principles and ratification up to the adoption of a new constitutional provision.

Disciplines for the adoption of the final Constitution

Article 73 of the interim Constitution of South Africa of 1994 identified two years for the completion of the new constitutional text clearly articulating the mechanism of endorsement and adoption preliminary to submitting it to voters for referendum, and other Constitutional options and alternatives, if not bound by this date or not approved as revamped in this Constitution.

Under these rules, article 68 indicated that the National Assembly and the Senate, provided for in the Constitution, are the Constituent Assembly responsible for drafting and adopting the new constitutional text. The Constituent Assembly shall hold its first meeting not later than seven days from the first meeting of the Senate under this Constitution. It particularized in the subsequent articles the mechanism for the election of the President and Vice-President of this Assembly and conditioned stipulated in article 71 to present the draft of the new Constitution to be adopted first to the Constitutional Court to verify its conformity with the "supra" constitutional principles provided for in table IV of the Constitution. Explicitly stating that "new Constitution text passed by the Constituent Assembly, or any provision thereof, shall not be of any force and effect unless the Constitutional Court has certified that all the provisions of this text comply with the Constitutional Principles...". Paragraph 4, in article 71, described that during the conduct of the constitutional Assembly the president could refer to the Constitutional Court any draft proposal for a constitutional text discussed before the Constitutional Assembly, or any part or provision of the present text, if requested to do so by at least one-fifth of all the members of the Constituent Assembly, in order to obtain the opinion of the Court as to whether the proposed text, or part thereof, will commit to "supra" constitutional principles if approved by the Constituent Assembly.

40 Constitution-making and Reform Options for the Process - op.cit. - p. 60-66.

Article 72 of the constitution determined the mechanism for the appointment of committees and bodies, including the appointment of an independent panel of seven South African citizens recognised for their constitutional expertise, not being members of Parliament or any other legislative body, and not holding office in any political party.

The interim Iraqi Constitution of 2005 established the following rules for the adoption of the country's new Constitution. It provided in Article 60 that: "The National Assembly shall write a draft of the permanent constitution of Iraq. And this Assembly shall carry out this responsibility in part by encouraging debate on the Constitution through regular general public meetings in all parts of Iraq and the media, and by receiving proposals from the citizens of Iraq as it writes the constitution".

Article 61 shows the mechanism for adoption and approval of this Constitution, it stipulates:

(A) The National Assembly shall write the draft of the permanent constitution by no later than 15 August 2005.

(B) The draft Permanent Constitution shall be presented to the Iraqi people for approval in a general referendum, in the period leading up to the referendum; the draft constitution shall be published and widely distributed to encourage a public debate about it among the people.

(C) The general referendum will be successful and the draft constitution ratified if a majority of the voters in Iraq approve and if two-thirds of the voters in three or more governorates do not reject it.

(D) If the permanent constitution is approved in the referendum, holding the elections for a permanent government shall be no later than 15 December 2005 and the new government shall assume office no later than 31 December.

(E) If the referendum rejects the permanent draft constitution, the National Assembly shall be dissolved. Elections for a new National Assembly shall be held no later than 15 December 2005. The new National Assembly and new Iraqi Transitional Government shall then assume office no later than 31 December 2005, and shall continue to operate under this Law, except that the final deadlines for preparing a new draft may be changed to make it possible to draft a permanent constitution within a period not to exceed one year. The new National Assembly shall be entrusted to write another permanent draft constitution.

(F) If necessary, the president of the National Assembly, with the agreement of a majority of the members' votes, may certify to the Presidency Council no later than 1 August 2005 that there is a need for additional time to complete the writing of the draft constitution. The Presidency Council shall then extend the deadline for writing the draft constitution for only six months. This deadline may not be extended again.

(G) If the National Assembly does not complete writing the permanent draft constitution by 15 August 2005 and does not request an extension of the deadline in article 60 (D) above, the provisions of Article 60 (C), above, shall be applied.

The Libyan Constitutional Declaration of 2011 also devoted Article 30 for the drafting and adoption mechanism of the country's new Constitution stating: "The National Public Conference shall, within a period not later than thirty days as of its first meeting date, shall:

Elect a Constituent Assembly by free, a direct ballot of non-members to draft the country's Permanent Constitution, called Constituent Assembly of sixty-members, modelled on the sixties commission, that was formed to prepare the Constitution of the independence of Libya in 1951. The General National Congress controls the standards and guidelines of the election taking into account the representation of the components of the Libyan society with its linguistic and cultural specificity. In all cases, the resolutions of the Constitution-Drafting Assembly are issued by a two-thirds majority of the members plus one, to complete the drafting of the Constitution and the adoption of this project in a period of not more than one hundred and twenty days of holding its first meeting.

The draft Constitution shall be referred for a plebiscite (Yes) or (No) within a period not exceeding thirty days from the date of its adoption. If approved by the Libyan people by a two-thirds majority of voters, the commission endorses it as the Constitution of the country and is transferred to the National Public Conference for promulgation. If not approved, the Constitution Drafting Assembly shall re-formulate it and re-refer it to the people for a plebiscite within a period not exceeding thirty days from the date of announcing the results of the first referendum".

Conversely, **Egypt** knew, **since 2011**, many Constitutional Declarations included the formulation and adoption of the country's new Constitution, which has resulted in the adoption of two successive Constitutions in 2012 and 2014.

On 30 March 2011, the Supreme Council of Armed Forces, which came to power after the departure of President Mohamed Hosni Mubarak, issued a Constitutional Declaration allocating article 60 to a statement of the mechanism for drafting and adopting the country's permanent Constitution. The article reads:

"The members of the first People's Assembly and Shura Council (except the appointed members) will meet following an invitation from the Supreme Council of the Armed Forces within 6 months of their election to elect a provisional assembly composed of 100 members which will prepare a new draft constitution for the country to be completed within 6 months of the formation of this assembly. The draft constitution will be presented within 15 days of its preparation to the people who will vote in a referendum on the matter. The constitution will take effect from the date on which the people approve the referendum".

In the wake of President Mohamed Morsi ouster, Interim President Adly Mansour issued a new Constitutional Declaration on 9 July 2013 in the text of article 28 to look into the existing constitution and evaluate it. It indicates therein:

"A legal committee of experts shall be formed, by a presidential decree in a period not exceeding fifteen days from the date of the issuance of this declaration, of two members of the Supreme Constitutional Court and its commissioners' office, two judges, two judges from State Council and four constitutional law professors at Cairo University. The Supreme Council of Judicial Bodies chooses its representatives, and the Supreme Council of Universities chooses constitutional law professors. The committee shall propose amendments to the suspended 2012 constitution within a period of thirty days from the date of its formation. The decree on the formation of the committee shall designate venue and regulations of work".

Article 29 of this Constitutional Declaration shows that "the committee, stipulated for in the previous article, shall submit proposals of constitutional amendments to a 50--member committee representing all categories of society and demographic diversities especially parties, intellectuals , workers, peasants, members of trade

unions and qualitative unions, national councils, Al Azhar, churches, the Armed Forces, the Police and public figures including ten members from the youth and women at least. Each entity nominates its representatives, and the cabinet nominates public figures.

The committee shall wrap up the final draft of the constitutional amendments within sixty days at most from the date it receives the proposal during which it is committed to submitting it to societal dialogue.

The President of the Republic shall issue decrees required for the formation, and the venue of the committee and the committee shall identify the work regulations and procedures guaranteeing societal dialogue on the amendments".

Article 31 sets out the mechanism for the adoption of the new Constitution, which states that "the President shall present the draft Constitutional amendments to the people for a referendum within 30 days of receipt, adjustments would be effective as of the date approved by the people in Plebiscite...".

Based on previous texts, and within the Syrian context, we should take into account the following observations:

1 – Undoubtedly, the interim constitutional document, regardless of name and content, should contain explicit provisions regarding the mechanism for the adoption of the country's new Constitution. This issue shall never be ignored to avoid the resurgence of conflicts and disputes, which might disrupt the entire settlement process.

2 – Those texts should include explicit references to the substance and procedures of that constitutional process, including the setting of precise timing for the commencement and completion of the process as well as a mechanism for electing or appointing the members of the body that would conduct that process, taking into account the capability of selecting persons through election. Note that this issue is considered further in chapter II, which will discuss the drafting body of the country's permanent Constitution.

3 – These texts should include apparent solutions and alternatives in the absence of commitment to the specified working mechanism such as the inability to commit to the timeline, the lack of agreement on the draft of the Constitution, or that the draft is not gaining the trust of the electorate in the subsequent referendum process. Note that providing for all these solutions and alternatives, as is the case in the Provisional Constitution of South Africa in 1993, shall spare the country later crises.

4 – These texts should ensure the presence of women at all stages of the constitutional process, beginning with the membership of the body in charge of writing the draft of the Constitution. Whether an election or an appointment mechanism of the members of the Committee was adopted, the presence of women by at least 30% must be guaranteed based on the obligations of the states under international instruments and resolutions, specifically the CEDAW Convention and Security Council resolution 1325.

5 – The commitment in the principles of participatory, transparency, community participation and the development of mechanisms to activate this to further the role of the constitution as a social contract between the nation and its citizens without exclusion or discrimination should be explicitly stated in all the stages of the constitutional process.

Third - Supra-constitutional principles:

Some interim constitutions contained principles requiring the country's Permanent Constitution to comply with it. Some call these principles "parameters" or supra-constitutional principles. They are a set of rules developed and adopted, mainly in deep conflict settings, such as in South Africa and Burundi. In addition to providing safeguards to the parties with profound concerns about their future (related to security, power and similar). Consequently, these principles are often long and detailed to a significant degree, as in the interim Constitution of South Africa in 1994 and the Arusha Peace and Reconciliation Agreement for Burundi in 2000. In this agreement those principles were adopted in the Protocol to the Convention on peace and reconciliation, entitled "Democracy and Good Governance" and includes "the constitutional principles for the Constitution of the post-transition" characterised by prolongation and detail, which is about to be a complete Constitution. In both cases, the Constitutional Court was tasked to verify compliance with these principles. Angola used a similar approach in 2010; the Constitutional Court ratified that the newly adopted Constitution by Parliament was mostly compliant with the policies set out in the current Constitution.41

Principles that do not accept amendment

The interim constitution of East Timor for 2002 authorized a review of its articles after 6 years from the date of its implementation and its last review date. But indicated that topics which cannot be modified are specific to national independence, the unity of the State, the rights, freedoms and guarantees of citizens, the separation of powers, the independence of the courts, the multi-party system and the right of the democratic opposition and universal free and universal, direct and regular. In addition, cannot take action to amend the Constitution during embargo or during a state of emergency.

The Constitution of the Democratic Republic of East Timor. Articles 154 – 156 – 157.

Despite the controversy surrounding these principles, it remains one of the innovative ideas to respond to the concerns of those who fear the hegemony of the majority in a constitutional or a transparent electoral process. Parties or minorities may make such concerns, previously prevailing in the country, and fear that their interests are likely to be negatively affected by the existence of a new constitution created by the process dominated by the previously excluded majority as in South Africa, for example, and in other States as well. These concerns may also arise from national or religious groups who retreated from the political process due to chronic marginalisation and denial of equal citizenship rights and tended towards separatist inclinations tendencies. They fear of being dragged into a constitutional political process beginning with bright, vivid terms on citizenship and ending in entrenching their exclusion and marginalisation under the pretext of the majority rule and the subordination to the requirements of the distorted democratic process. In all these cases, these detailed principles that the permanent Constitution must adhere to must be approved in advance, and those reluctant or frightened forces are granted strong safeguards to protect their interests. Thereby encouraging them to join the process rather than moving away from it, which ensures minimising the risks of corrupting or thwarting the existing process.

The Interim Constitution of South Africa of 1994 highlights one of the most successful constitutional experiences, in which these principles were positively used enabling the parties to the conflict to provide mutual guarantees and overcome many obstacles that threatened the failure of the entire political process.

41 Constitution-making and Reform. Options for the Process - op.cit. - p. 60-66.

The political factions agreed to incorporate in the interim Constitution thirty-four constitutional principles that give detailed guidance on the content of the new Constitution. They included the form and structures of the government, the relations between national and sub-national governments aimed at ensuring local self-governance, protecting the interests of important minorities, protecting human rights, creating independent public institutions, consolidating the constitution through amendments supposed to comprise roles of the territories in the event of modifications affecting their interests. The interim Constitution embodied all of this, which also established a Constitutional Court, whose task was to verify the reflection of these thirty-four principles in the final Constitution.42

These principles thus cite the obligation to preserve the restored elements of civil peace as they include an affirmation of democratic rights, as well as disciplines associated with organising local communities, the recognition of the Territories, and respect for cultural diversity, and the conduct of security forces. However, the ethnic factor was present through cultural rights: apart from the initial thirty-three rights, thirty-fourth principle was added. It is the right to self-determination within the Republic "all groups, dirt or recognised otherwise by law, which share a cultural and linguistic heritage".

So that those principles achieve their purpose, they should be designed to be subject to verification on the one hand and enforceable on the other. So we find that article 71 of the Constitution of South Africa of 1994 stated that the provisional draft of the country's new Constitution should be compatible and comply with those principles. The second paragraph of the same article says that "the new constitutional text passed by the Constitutional Assembly, or any provision thereof, shall not be of any force and effect unless the Constitutional Court has certified that all the provisions of such text comply with the Constitutional Principles". Consequently, it is necessary to submit the draft Constitution, upon completion and before it is sent to a referendum, to the Constitutional Court to determine its compatibility with the guidelines. Taking into account that the Constitutional Court's decision, which proves that the provisions of the new Constitution are in conformism with the constitutional principles, in this case, is final and binding and no court of law shall review this provision thereof by article 3, paragraph 71.

Add to that , the fourth paragraph of the same article allows five members of the Constituent Assembly to ask the President of the Assembly, during the course of the Commission's work, to present a draft proposal for a constitutional text before the Constitutional Court, or any part of the text of this provision in order to obtain the opinion of the Court as to whether this proposed text, or portion thereof, will commit to the constitutional principles, if approved by the Constituent Assembly.

Indeed, upon the completion of the draft Constitution, 47 lawyers representing 29 political parties, organisations and individuals filed cases before the Constitutional Court because the draft Constitution was not consistent with the "supra-constitutional" guiding principles mentioned in the interim Constitution. The pleadings before the court, which eventually issued a reasoned decision of 296-page after all in which it certainly recognised that nine aspects of the draft Constitution did not meet the principles, notably the provisions on local government. The Constituent Assembly had to review these constitutional aspects. When the Constitution was returned to the Court, it was ratified as meeting all those principles43

42 Constitution-Making and Reform - op. cit.- p. 61
43 Constitution-making and Reform Options for the Process - op.cit. - p. 63.

This option may constitute one of the appropriate constitutional solutions in the Syrian context because of the continuing doubts, mutual concerns and lack of confidence among the parties as it is possible to agree on a set of "supra-constitutional" principles stipulated in the Interim Constitutional document, expressly indicates that they should be in line with the country's permanent Constitution. The purpose of this mechanism is to reassure some or all that those agreed upon principles will not be squandered at the time of drafting the country's Permanent Constitution under the pretext and rationale of the logic of majority and minority. Accordingly, this mechanism could encourage the undecided and the sceptics about the usefulness of any political or constitutional process. Such a mechanism would extract the basic rules needed to safeguard the country's future from the bickering political dealings and transactions or succumb to populism when the country's Permanent Constitution is put to a referendum. This mechanism will also guarantee the strengthening and consolidation of the rules recognised by international resolutions and references relevant to the solution of the Syrian crisis, which has created a set of rules that have become safeguards to overcome the crisis in the country and restore its vitality.

Knowing that adoption of this option in the Syrian situation will require a reconsideration of the existing Constitutional Court system, not only in terms of the mechanism of nominating its members but also in identifying its competencies. Those principles, therefore, shall be echoed, within the key issues, in the interim Constitutional Document.[44]

44 Constitutional Options for Syria -The National Agenda for the Future of Syria (NAFS) Programme - op. cit. p. 122 Ss.

Fourth - Humanitarian and legal implications of the conflict:

While it is established that wars have severe consequences and miserable outcomes, there is no doubt that the resulting loss of life is the most dangerous of all. For this reason, interim or post-conflict constitutional documents care about allocating explicit material to address the humanitarian consequences of the conflict, address its impacts and effects to facilitate the removal of obstacles and impediments for the displaced persons and refugees to return to their homeland and their former residences.

Interim constitutional documents focus on cancelling all previous resolutions that led to forced displacement, denaturalisation, confiscating of funds and property and dismissal from the post. Reference could be made in this regard to article 4 of the interim Iraqi Constitution of 2005 which stated clearly "the Iraqi Transitional Government shall take effective steps to end the vestiges of the oppressive acts of the previous regime arising from forced displacement, deprivation of citizenship, expropriation of financial assets and property, and dismissal from government employment for political, racial, or sectarian reasons". Regarding nationality specifically, article 11 of this Constitution in paragraph (D) states that "any Iraqi whose Iraqi citizenship was withdrawn for political, religious, racial, or sectarian reasons has the right to reclaim his Iraqi citizenship". It also nullified in paragraph (E) "decision number 666 (1980) of the dissolved Revolutionary Command Council is annulled, and anyone whose citizenship was withdrawn by this decree shall be deemed an Iraqi".

Victims

Human losses are not limited only to the dead, wounded and disabled but also extends to refugees, displaced persons, those dispossessed of their homes and deprived of the return right to their homeland and who suddenly turn from citizens to internally displaced persons in their country or refugees in God's wide open land, or various corners of the world they cannot remain in or return to their homeland, during the conflict, owing it to fear, and, after the conflict, because of the loss of documentation or property and their suspicions of legal or political prosecutions.

Article 58 of this Constitution also indicates that the “Iraqi Transitional Government, and especially the Iraqi Property Claims Commission and other relevant bodies shall act expeditiously to take measures to remedy the injustice caused by the previous regime's practices in altering the demographic character of certain regions, including Kirkuk, by deporting and expelling individuals from their places of residence, forcing migration in and out of the region, settling individuals alien to the region, depriving the inhabitants of work, and correcting nationality. To remedy this injustice, the Iraqi Transitional Government shall take the following steps:

1- With regards to deported residents, expelled, or who emigrated, it shall, by the statute of the Iraqi Property Claims Commission and other measures within the law, within a reasonable period, restore the residents to their homes and property. Where this is unfeasible, the Government shall provide just compensation.

2- With regard to the individuals newly introduced to specific regions and territories, the government shall act in accordance with Article 10 of the Iraqi Property Claims Commission statute to ensure that such individuals may be resettled, may receive compensation from the State, may receive new land from the state near their residence in the governorate from which they came, or may receive compensation for the cost of moving to such areas.

3 - With regard to persons deprived of employment or other means of support in order to force migration out of their regions and territories, the government shall promote new employment opportunities in the regions and territories.

4 - With regard to nationality correction, it shall repeal all relevant decrees and shall permit affected persons the right to determine their own national identity and ethnic affiliation free from coercion and duress".

National Commission for the Rehabilitation of Victims and Affected

The Transitional Constitution of the Republic of Burundi of 2001 establishes the National Commission for the rehabilitation of victims and affected, composed of persons belonging to different ethnicities and political currents to assume care and rehabilitation of victims and those affected, preparing, and organizing the return of refugees. The Commission was awarded constitutional powers to deal with land issues and other rights during the rehabilitation of victims, returnees and exile. To be guided in its decisions by the need to reconcile between the objectives to respect the law, fairness, reconciliation and social peace.

Articles 234 – 238 of the Transitional Constitution of the Republic of Burundi 2001

Although the Constitution of Bosnia and Herzegovina of 1995 is classified as neither an interim nor a transitional Constitution document, and was not issued on national will and community participation since it is also one of the documents of the Dayton Peace Agreement, yet it would be useful to refer to its specific provisions on refugees and internally displaced persons. Also to address the effects of war and its aftermath in view of the fact that the humanitarian consequences of the Syrian conflict will not be less cruel than the Bosnian ones if not exceeding its atrocity as well.[45]

Article 2 of the Constitution of Bosnia and Herzegovina of 1995 provides for the right to return, restitution or compensation of property, and the abolition of decisions or actions contrary to the fifth paragraph stating that "all refugees, displaced persons, freedom of return to their places of origin. Moreover, are entitled, in accordance with article 7, to the general framework Agreement, in the recovery of their property, which they were deprived of during attacks since 1991, and be compensated for any property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void."

The most notable observation in the experience of Bosnia in this regard is that Dayton Agreement. It included, in addition, to annexe IV pertaining to the Constitution, another special supplement on refugees annex VII, entitled "Convention on refugees and displaced persons" which was referred to, just like the Constitution, into the heart of the peace agreement itself.

Most essential rules that can be drawn from this convention:

1- The right of all refugees and internally displaced persons in safe return, restitution of property and compensation, including persons who have received temporary protection in a third State: it was emphasised that all "refugees, displaced persons, right freely to return to their home of origin. In addition, they will be entitled to recover their properties of which they were deprived of in the course of hostilities since (1991) and obtain compensation for any property they could not recover. The early return of refugees and

45 The Dayton Peace Agreement initialed in Dayton, Ohio (21 November 1995) and which took place in Paris (14 December 1995) known as The Dayton Peace Agreement.

displaced persons is a crucial goal for the settlement of the conflict in Bosnia and Herzegovina. The Parties confirm that they will accept the return of such persons who have left their territory, including those who have been accorded temporary protection by third countries".[46] Reiterating that this return must be safe by referring to "the Parties shall ensure that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion".[47]

2- The obligation not to obstruct the return of refugees and displaced persons and to overcome obstacles that prevent it: it stipulated that "parties take all necessary steps to prevent activities within its territory, that may hinder or impede the safe and voluntary return of refugees and displaced persons. To demonstrate its commitment to securing full respect for human rights and fundamental freedoms of all persons within their jurisdiction and creating without delay conditions suitable for the return of refugees and displaced persons and the parties shall take the following confidence-building measure immediately as follows:

(a) Repeal of regional legislation and administrative practices with discriminatory intent or effect.

(b) Prevention and prompt suppression of any written or verbal incitement, through media or otherwise, of ethnic or religious hostility or hatred.

(c) Dissemination, through the media, of warnings against, and the prompt suppression of, acts of retribution by the military, paramilitary, and police services, and by other public officials or private individuals.

(d) Protection of ethnic and/or minority populations wherever they are found and the immediate access to these populations by international humanitarian organisations and monitors.

(e) Prosecution, dismissal or transfer, as appropriate, of persons in the military, paramilitary, and police forces, and other public servants, responsible for serious violations of the basic rights of persons belonging to ethnic or minority groups".[48]

3 - Guarantee the right of returnees to determine the place of return and access to appropriate information: it was noted, "Choice of destination shall be up to the individual or family, and the principle of the unity of the family shall be preserved. The Parties shall not interfere with the returnees' choice of destination, nor shall they compel them to remain in or move to situations of grave danger or insecurity, or to areas lacking in the basic infrastructure necessary to resume a healthy life. The Parties shall facilitate the flow of information necessary for refugees and displaced persons to make informed judgments about local conditions for return".[49]

4 - Amnesty for returnees: in order to promote return and mitigate existing fears, article VI provided "granting amnesty to any returning refugee or displaced person charged with a crime, other than a serious violation of international humanitarian law as defined in the Statute of the International Tribunal for the Former

46 Article 1, paragraph 1
47 Article 1, paragraph 2
48 Article 1, paragraph 3
49 Article 1, paragraph 4

Yugoslavia since January 1, 1991 or a common crime unrelated to the conflict, shall upon return enjoy an amnesty. In no case shall charges for crimes be imposed for political or other inappropriate reasons or to circumvent the application of the amnesty".

5 - Establish a mechanism to ensure the recovery of property seized illegally throughout the years of war: Article VII included to set up an independent Commission of internally displaced persons and refugees and, in accordance with article 11, "the Commission shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since April 1, 1992, and where the claimant does not now enjoy possession of that property. Claims may be for return of the property or for just compensation in lieu of reinstatement".

"Non -Paper" on Syria

On 23 March 2017, the Special Envoy for Syria, Mr Staffan de Mistura, distributed a "non-paper" to the negotiating delegations in Geneva entitled "Essential principles of a political solution in Syria" which included 12 principles as the basis for the future of the Syrian State. It Stated therein in regard to addressing the humanitarian impact of the war:

11. All refugees and internally displaced persons will be enabled from returning to their homes, if they wish so, with national and international support and in line with international protection standards. Those who had been arbitrarily detained and the fate of disappeared, kidnapped or missing shall be resolved.

12. There shall be reparations, redress, care, and restitution of rights and property lost for those who have suffered loss or injury in consequence of the conflict. As peace and stability are being restored, Syria shall call for the holding of a major donor conference to gain funds for compensation, reconstruction and development of the country.

In addition to other texts relating to the creation of suitable conditions for return, cooperation with international organisations, and international oversight authorities, and the determination of the fate of missing persons without identity.

Note that, concerning this situation, despite all the previous texts, most refugees did not actively return to their homes due to the ethnic division of the regions, adopted in the Dayton Agreement itself. That is, it blocked other items of the Agreement from activating the terms of return which should be warned of in the Syrian situation. There is a need to avoid the inclusion of conflicting texts so that to preclude the application of some without the use of others.

This matter should receive particular priority in any interim Syrian constitutional document given the vast numbers of Syrian refugees outside the country or displaced within and who have the natural right to a dignified and safe return to their usual places of abode in Syria, which requires providing for their right to return, facilitating that process and overcoming its obstacles. It will be necessary to work on the text and overcome legal barriers, including:

A - Legal documents issue: a large number of refugees and displaced persons complain of the loss of legal documents in whole or in part. Some have lost them in the crisis phase (left or lost during fleeing or disposed to avoid accountability and risks); others have not obtained them mainly because of the crisis (marriages without documentation; births without registration – and inability of securing identity cards or passports), and a third category whose documents are no longer valid, like having expired passports or leaving the country without an absence of proof on their documents. Besides other problems associated with the loss of or non-

recognition of school documents (particularly the spread of forged educational certificates trade, in addition to confronting challenges related to the destruction of civil registry records and burning them in some regions.

B - Legal prosecutions issues: There are other legal impediments to various categories of people wishing to return. The most notable perhaps is the prosecution of those who have evaded military service or deserted it (defectors), staff who have left their jobs without prior legal approval, therefore, they have become subpoenaed and pursued, as well as other legal prosecutions, whether or not linked to the events of the crisis (terrorism cases) or separated from it.

C - Property disputes and expropriation issues: We have to anticipate disputes of this kind as well due to the fact that many people have lost their land and property titles either because of the loss of property documents or by the burning of Government records in some regions that have been burned and destroyed. It is feared this might lead to significant problems, particularly in cases with previous conflicts on ownership or overlapping claims without sorting, as in rural areas and agricultural lands. There will also be the problem that many of those people who have left their homes, others have come and lived in these properties that are vacant of its inhabitants; over time these occupants will not easily by de facto evacuate these properties especially that many have lost their houses by destruction or one would not want or cannot return because his property is in a "hostile" area and he dare not live there, or someone has put his hand on his residence and occupies it, same as his situation. Knowing that this issue has occurred in states that saw disputes of religious or sectarian nature where some residents were displaced to areas consistent with their affiliation and occupied the property of others refusing to leave after the war, as was the case in the 1975 Lebanese war, for example. In addition to the growing phenomenon of forgery and statutory agencies to seize property or real state of families or persons who have become refugees or internally displaced persons far from their property; they will be subsequently surprised that their property ownership was transferred to others "legally" but under "forged power of attorneys".

Requiring the provision of constitutional solutions to these issues and problems and provide for them in the interim constitutional document, as has already been presented ex-ante in the comparative experiences, not leaving it to legal provisions or committees that would find themselves unable to confront those problems and dilemmas that require solutions of a constitutional nature.

Fifth - Amnesty issues:

Amnesties are one of the most controversial issues in both temporary and permanent constitutional documents as well as in peace agreements.

It should be stated at the outset to the position of the United Nations by the fact that the agreements it approves can never constitute amnesty measures in the case of crimes of genocide, war crimes or crimes against humanity or serious human rights violations. Alternatively, those that impair victims' rights to a remedy, including reparation, or victims or societies' right to know the truth.[50] When the circumstances of the litigation are not fully prepared during an armed conflict or in the immediate aftermath, the Organization's policy seeks to ensure the door stays open to "secure space for justice".

Amnesty and human rights treaties

Human rights treaty bodies concluded that amnesties justified by governments as measures of national reconciliation during transitions to democracy following a military rule are inconsistent with the International Covenant on Civil and Political Rights, despite the need to promote strong deliberations regarding human rights policies aimed at strengthening a transition to democracy, as democratic processes could not convert an unfeasible amnesty to a viable one. Rule-of-law Tools for Post-conflict States - Amnesties - the United Nations High Commissioner for Human Rights - New York and Geneva 2009- p. 41.

In practice, this is a controversial matter as well, as it has often failed to achieve its goals of amnesties that exempt those official perpetrators of human rights violations from criminal punishment but appears to have made the beneficiaries of these crimes more treacherous. A well-known example is the amnesty provision on the Lomé Peace Agreement of 1999, which has not only failed to end armed conflict in Sierra Leone but also failed to stop further atrocities. Conversely, peace agreements have been reached without the inclusion of amnesty provisions in cases where amnesty had been said to be a necessary condition of peace. A notable example includes the indictment by the International Criminal Tribunal for the Former Yugoslavia in May 1999 against Slobodan Milosevic, who was then President of Yugoslavia, at a time when he was engaged in negotiations aimed at ending the conflict in Kosovo. Many feared that his conviction would prolong the battle, but Milosevic agreed to withdraw Serb forces from Kosovo shortly after his accusation. One diplomat, noting that incident, concluded, "these and other cases raised serious doubts about the wisdom that peace and justice are opposites that do not meet".[51]

South Africa Model: The Interim Constitution for Southern Africa in 1994 contained a separate chapter on reconciliation, it reads:

"The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and the strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles. Civil war violence left us a legacy of hatred, fear and guilt and retaliation.

50 Rule-of-law Tools for Post-conflict States - Amnesties - the United Nations High Commissioner for Human Rights - New York and Geneva 2009- p. 27.
51 Rule-of-law Tools for Post-conflict States - Amnesties p. 3 op. cit. p.3.

These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for UBUNTU but not for victimisation.52

To advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past".

Interchangeability in seeking Amnesty.

At the beginning of the negotiation process in South Africa, the National Congress Party cadres, imprisoned or exiled, were demanding immunity during the negotiations, but the regime refused thinking that a pardon, in this case, will be used as a means to move against the authority, however, negotiations continued. Ultimately, the other party came to demand pardon recognizing that democracy was inevitably coming.
See: International Forum Pathways to Democratic Transitions Summary Report on Country Experiences, Lessons Learned and the Road Ahead - United Nations Development Programme

Thus, the term "amnesty" which has been operationalized through the rehabilitation law of the National Unity and Reconciliation Commission (Act No. 34 of 1995) emerged. It is the law that passed the establishment of the "truth and reconciliation" committees.

The commission was formed of 17 members appointed by President Mandela from a list of twenty-five candidates selected in turn by an Independent Commission after lengthy consultations and public hearings

Amnesty conditions were identified to be the product of negotiation; it was also an individual matter; anyone seeking pardon should acknowledge committing crimes against humanity. Additionally, punishment need not be physical (imprisonment), but sufficient to dishonour the perpetrator of the offence. The Committee could have granted amnesty for those unless committed felonies. The Committee decides when to grant political eligibility that allows the accused to exercise his political rights, which may be directly after the trial or after a few years or may be denied.

The merit of the experience of South Africa in this regard is that it does not provide for blanket amnesty but on conditional amnesty, requiring both public disclosure of crimes and offences involving severe human rights violations before pardon can be granted. This Committee has thus played a pivotal role in re-establishing national cohesion without wasting the rights of the victims of the former regime and without depriving the previous ruling class of the opportunity to rehabilitate it. Many observers believe that the experience of South Africa had succeeded because it did not shirk its past but addressed it in detail drawing on lessons learned from the political practice and in the formal political discourse.

In his report, the Chairman of the Commission, Archbishop Desmond Tutu, Nobel Peace Prize laureate in 1984, indicated that: "... It is ethically required to know what happened within thirty years of repression, so as the necessity to ensure the cooperation of perpetrators with assurances in return that their political crimes will not expose them to political punishment, for the law that incriminates me sets me free as the Greeks say; practically, justice and judicial professions could not participate in such proceedings since being conducted within the scope of another legal system, i.e. the law of the deposed regime. The committee also represents

52 The word UBUNTU comes from the Zulu language and literally means "humanity", but its intended meaning is used to describe the principle of Southern Africa "humanity towards others" or translates sometimes by "we exist because of others".

the refusal of exceptional justice, and the cleansing formula existing in other places. The Commission is not an exceptional justice. Does not suspend the law under the pretence of approving or protecting it. Finally, the Commission is not a repressive organ camouflaged under the guise of justice and does not want to become a democratic terror system. The civil war will not recur by adopting the war of law".53

Note that the Constitutional Council in South Africa was sued under the pretext of the unconstitutionality of Chapter 20 of the Act that created the Commission which breaches the right of victims to a criminal and civil prosecution of crime perpetrators who enjoyed the pardon, a right guaranteed by the Bill of Rights. However, the Council rejected the request and reaffirmed the philosophy of reconciliation, in a text that reads: ".. the Council considers that the conclusion of the "national unity and reconciliation" constitution recognises the limitation of the right of access to courts. Such amnesty permits the spread and exposure of the truth which enhances the reconciliation and reconstruction process. The Council also noted that this amnesty was one of the key elements of the negotiated solution without which the Constitution would not have been brought to light".54

Lessons learned

International practice and jurisprudence on amnesty and justice cases suggest that each country can either choose between the need to bring the perpetrators of crimes against human rights for accountability or move forward through the process of rapid transformation involving elements of former regime members. There is no magic formula that could be pursued to resolve this dilemma.

See: International Forum Pathways to Democratic Transitions Summary Report on Country Experiences, Lessons Learned and the Road Ahead - United Nations Development Programme

Burundi model: The Arusha Peace and Reconciliation Agreement for Burundi, signed on 28 August 2000, contained controls for the process of reconciliation and forgiveness and required their inclusion in the country's interim Constitution which was subsequently undertaken.

Protocol, I in article VI, sets out the principles and measures relating to genocide, war crimes and other crimes against humanity. It was imposed on the State to take a series of constitutional, legislative and judicial measures; some are political (such as combating the impunity of crimes. Prevention, suppression and eradication of acts of genocide, war crimes and other crimes against humanity, as well as violations of human rights, including those which are gender-based). Some others are judicial such as the enactment of legislation to counter genocide, war crimes and other crimes against humanity, as well as to combat human rights violations.55

And then it obliged the transitional Government to submit an application for the Security Council for the establishment of the international Judicial Commission of inquiry on genocide, war crimes and other crimes against humanity. To engage this Committee (to investigate those facts, classify them, and identify those

53 Philippe-Joseph Salazar - The Truth and Reconciliation Commission in South Africa - Descriptions and lessons on the Democratic Transition - University of Cape Town - South Africa - Website: http://rhetoricreception.wifeo.com/la-commission-de-verite-et-de-reconciliation-en-afrique-du-sud-description-et-lecons-sur-la-transition-democratique-phsalasar-tradr-salim-abdelilah.php

54 Philippe-Joseph Salazar - The Truth and Reconciliation Commission in South Africa - Descriptions and lessons on the Democratic Transition - op. cit.

55 See also: An Analytical Study on Human Rights and Transitional Justice - the United Nations High Commissioner for Human Rights -Addendum - inventory of human rights and transitional justice in recent peace agreements - see United Nations document: A/HRC/12/18/Add1. 21 August 2009 p.3

responsibly. The Government requested the Security Council to establish an international criminal tribunal to prosecute and punish those responsible if the conclusions proved the existence of acts of genocide, war crimes and other crimes against humanity stipulated in the Interim Constitution by article 228 thereof.

About the reconciliation, Article VIII of Protocol I stipulated the establishment of a national commission termed the National Truth and Reconciliation Commission. This Committee shall be responsible for seeking the truth regarding the severe acts of violence committed during the cyclical conflicts since independence (1 July 1962) until the date of signing the Agreement, classifying the crimes, establishing the responsibilities, as well as identifying the perpetrators and the victims. Subsequently, the Commission shall be responsible for arbitration and conciliation and shall propose, upon completion of its investigations, to the competent institution's measures likely to promote reconciliation and forgiveness, order indemnification or restoration of disputed property, or proposes any political, social or other means it deems appropriate. In this context, the transitional National Assembly may pass a law or laws providing a framework for granting amnesty consistent with international law for such political crimes as it or the National Truth and Reconciliation Commission may find appropriate. These rules have already been provided for verbatim in the Interim Constitution in articles 229 – 230[56]

56 Experiences reveal that accountability issues and pardon are often dealt with outside the constitutional document, temporary or permanent, as it clearly shows that the way the post-authoritarian government deals with accountability issues is influenced by the nature of the transition. The negotiating nature of the transition in Spain, for example, led to a consensual decision not to reopen the past. The strong separation from the past with the initial chaos that characterized the Transition Period in Portugal was reflected in the form of an ambitious accountability process but sometimes arbitrary, which included expulsions from the country, prosecutions and massive cleansing in both the public and private sectors. When the Portuguese Transition Period reached a more stable situation, reconciliation has become the formal approach dominating the process. In the Philippines, twice the efforts were to follow-up on
accounting for violations committed during the Marcos regime is evidence of the meagre change the political life has undergone. The former loyalists to Marcos continued practising political affairs including high-level posts, but his wife and son eventually won election-based positions.
In some Latin American States, the issue of accountability was initially rejected due to concerns alleging that the exposure of crimes committed under the military regimes would lead to instability and possibly sabotage the democratization operations. While in most Central and Eastern European States little effort has been made to hold accountable the former communist officials responsible for violations committed during their stay in power. See:
Democratization in the Arab World - Prospects and Lessons from Around the Globe - Laurel E. Miller, Jeffrey Martini -National Security Research Division - RAND Corporation- pp. 26-27- 2013.

Sixth - Subjecting military and security institutions to civilian controls:

Interim constitutional documents normally avoid addressing this issue, referring them to either domestic laws or the country's permanent constitution. Especially if the political and legal process is within the logic of consensus and in the absence of a victor and a vanquished.[57]

Nonetheless, in some documents, there are some indications of this kind, mainly when there are pre-existing military and security breakdown in which the behaviour and practices of those forces are one of the causes of war or conflict

"Non-Paper" about Syria

On 23 March 2017, the Special Envoy for Syria, Mr Staffan de Mistura, distributed a "non-paper" to the negotiating delegations in Geneva entitled "Essential principles of a political solution in Syria" which included 12 principles as the basis for the future of the Syrian State. It stated regarding the military:

10 - Syrians are committed to rebuilding a strong and unified national army, also through the disarmament and integration of members of armed groups supporting the transition and the new constitution. That professional army shall protect the borders and population of the State from external threats in accordance with the principle of the rule of law. The state and its reformed institutions will exercise the exclusive right of controlling weapons of war. There shall be no intervention by foreign fighters on Syrian soil.

We refer, for example, to the interim Iraqi Constitution of 2005, which contained more than a reference on this issue:

1- Armed Forces subject to civilian control: Article 5 of the Constitution states, "The Iraqi Armed Forces shall be subject to the civilian control of the Iraqi Transitional Government, in accordance with the contents of Chapters Three and Five of this Law". And Article 27 paragraph (b)includes an assertion on the interdiction of the formation of any forces not subject to a civilian government as it states: "Armed forces and militias not under the command structure of the Iraqi Transitional Government are prohibited, except as provided by federal law".

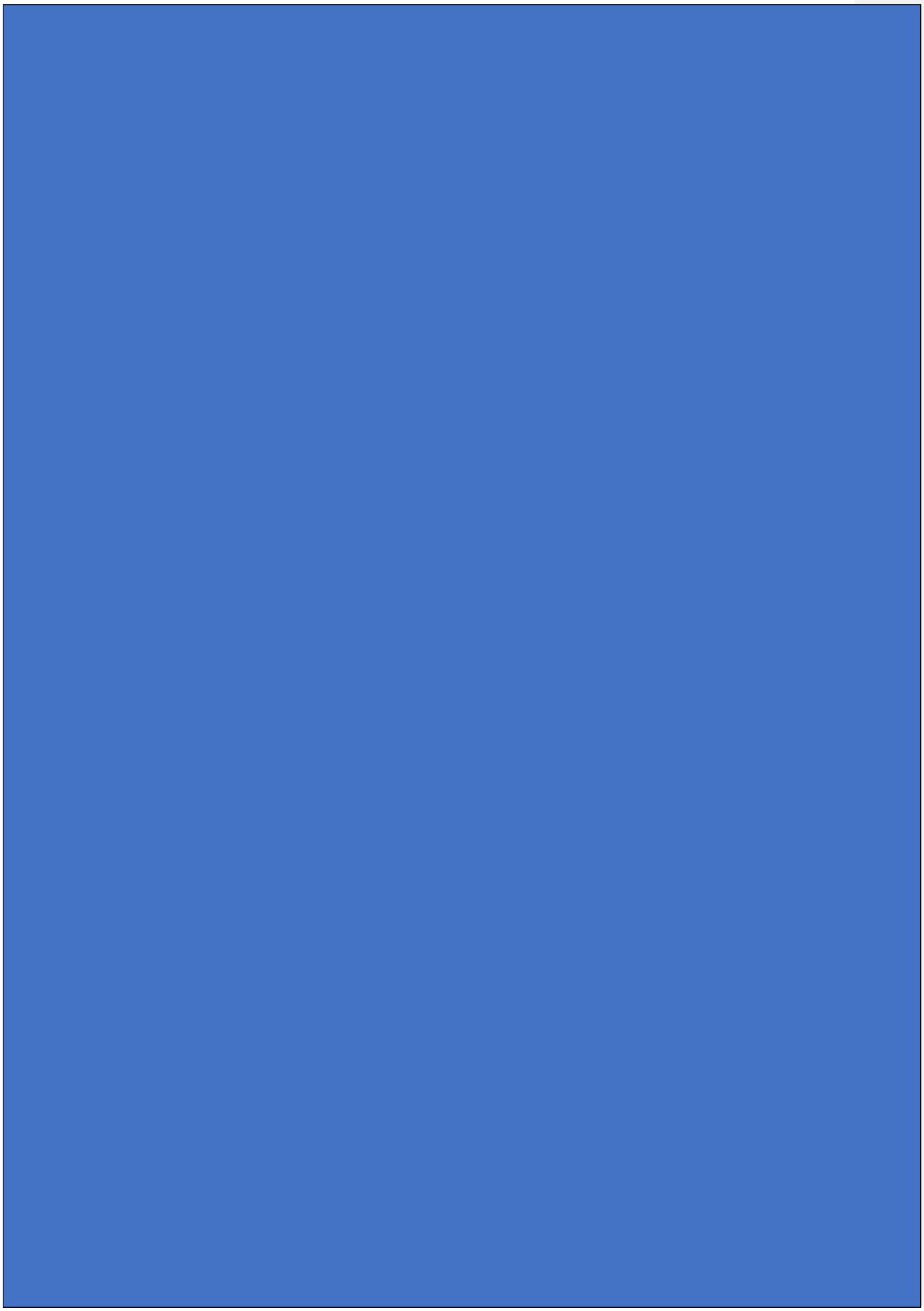
2- Identify the goal of the armed forces and the obligation not to use it against the people: as stated in article 27, paragraph (a): "The Iraqi Armed Forces shall consist of the active and reserve units, and elements thereof. The purpose of these forces is the defence of Iraq". Article 59 paragraph (a), also shows that "The permanent constitution shall contain guarantees to ensure that the Iraqi Armed Forces are never again used to terrorise or oppress the people of Iraq".

3- Subjecting the intelligence services to civilian control and their commitment to act in accordance with Human rights principles: paragraph (d) of article 27 establishes the obligation that "The Iraqi Intelligence Service shall collect information, assess threats to national security, and advise the Iraqi government. This Service shall be under civilian control, shall be subject to legislative oversight, and shall operate pursuant to law and in accordance with recognised principles of human rights".

57 See this problematic of this dilemma in the Tunisian and Egyptian constitutional trials: the constitutional re-establishment- Tunisia and Egypt rebuild themselves - op. cit. - p. 26.

It is certain that this issue would be particularly relevant in the context of the Syrian conflict given the multiplicity of the armed groups, domestic and foreign, currently operating on the ground in the interest of all parties to the conflict. Requiring the inclusion of special provisions in the interim constitutional document, which clearly state the monopoly of the State, alone, of the military and security authority and subject them to civil control according to the hierarchy defined in laws and regulations and their commitment to act by Human Rights Principles as previously mentioned. As well as providing for extraordinary measures to collect and recover the indiscriminate and illegal weapons in the country, whose continued presence outside the legal framework mutually agreed upon by national consensus, will constitute a time bomb threatening to renew the conflict at any time and for any reason.

Naturally, interim constitutional documents do not ignore all the other detailed rules, particularly those associated with rights and freedoms, and the organization of rest of the State authorities, which were not addressed in detail, as being similar to what is typically included in the country's Permanent Constitutions, which would be the focus of what will be in subsequent pages.



The second chapter - The procedural course of the post-conflict constitution.

Preface

The merits of permanent post-conflict constitutions, which follow interim constitutional documents, are of great significance that outweighs the unique value of constitutions in normal conditions. Those constitutions are supposed to contribute to the consolidation of peace and dispel the risk of renewed conflict by addressing its deep-seated causes. They should meet the demands and aspirations of the people, with all its components, and reflect definitive agreements between the parties to the conflict, thereby ensuring the country's transition from one phase to another, in which peace and stability are hoped to reign.

For the constitutions to fulfil this function and successfully accommodate all those aspirations and hopes linked to them, they must take into account specific procedural standards in their formulation and approval. Considering that, these procedural standards and formalistic rules are necessary cornerstones to ensure the legitimacy of any constitution. They guarantee that the constitution is the property of the people which, in turn, makes them partners in the drafting of the constitution and, not only, subject to its provisions.

Specific procedural rules are linked to identifying the party responsible for drafting the constitution, as well as the party who will be adopting that draft text and bringing it into force. Public participation in the constitutional process is considered the prominent element that reinforces the "partnership" of the people in this process and its “ownership", thereby enhancing the role of the constitution and its stature as a social contract.

For decades unilateral individual practices in Syria, and most States of the region, have strengthened the conviction that the constitution is an elitist political act exclusive to the governing authority while the role of the people is limited to giving inevitable consent in a pro forma referendum process that might be organized at times and ignored at others.

While it is hoped that Syria will overcome its crisis, there is another hope that the latest constitutional process also moves beyond the ills and evils of the past decades and allows the Syrian people to be a maker and a partner in this process throughout its different stages. Amidst existing and legitimate fears that the mistakes of the past will be restored and repeated, with old or new inexhaustible pretexts, where the exclusion of the people who possess the inherent power will continue to be excluded in this process.

In this chapter, we show how the procedural course of the constitutional process should be, and how it was ignored in former Syrian Constitutions, and how this disregard could be avoided and overcome in the upcoming Syrian Constitutional process.

The First Research - The procedural course of successive Syrian constitutions

The constitutions of the Mandate phase

Despite the difficult political circumstances that prevailed in the country, due to the mandate and its resistance, "the democratic nature" of the procedural constitutional process remained in place in terms of the existence of an elected Committee and a Constituent Assembly whose members refused to yield to the will of the authority governing /delegated in the drafting and the detailing of the Constitution, which agrees with its whims and desires.

A Constitutional beginning that is "procedurally reasonable"

The Syrian constitutional beginning under the Arab reign 1919 – 1920 was "procedurally reasonable" as a committee had been formed to write the draft Constitution by an elected conference that would also be tasked to discuss and approve those draft articles.

Early in its contemporary history, Syria knew the constitutional experience. This study presents the responsiveness of the Syrian constitutions, since its inception, to the procedural considerations regarding the course of the constitutional document, either in terms of the formation of the relevant bodies concerned with the writing of the constitutional document or in terms of the approval of the constitutional text and its entry into force and obligation.

1 - Royal Draft Constitution under Arab governance 1919 – 1920:

Following the collapse of the Ottoman Empire after World War I in 1918, and the official detachment of Syria and other countries from Turkey under the Treaty of Sèvres in 1920, the first Syrian Government was constituted after King Faisal entered Damascus in early October 1918. The Syrian conference was elected and pledged allegiance to Faysal as King of old Syria (including Syria, Lebanon, Jordan and Palestine). On 6 March 1919, the Syrian Conference decided, at the request of Prince Faisal, to determine the structure of the State and establish a Constitution for the country. A Committee of twenty members chaired by Hashem Al Attasi to draft the constitution was formed. Ten weeks later, it completed the task and produced a draft comprising 147 articles and was revised on 3 July 1920. The draft was presented to the Conference and agreed upon after discussing the first seven articles on 13 July, but the Conference could not pursue its task, owing to General Goro's ultimatum and the ensuing events that ended in the Battle of Maysalun and the invasion of the French army to Damascus on 24 July, the end of the Arab reign and the departure of King Faisal of the country.[58]

2 - The constitutions of the Mandate Phase 1928-1943:

This stage, basically, includes the draft Constitution of 1928, which was disabled and adjusted several times between 1930 and 1943 years.

Article I of the Mandate instrument, promulgated by the Allied in London on 24 July 1924, included the "obligation of the delegated authority assigned to establish within three years from the commencement of the Mandate a basic law for Syria and Lebanon.". In 1925, after the outbreak of the Syrian

58 See:
d. Kamal Gali- Principles of Constitutional Law and Political Systems - "Dar El Ouruba" publications for printing - Damascus 1978 - p. 525.
Jean Habash- A Reading of the Syrian Constitution- A Legal Study issued by Damascus Center for Theoretical Studies and Civil Rights.

revolution, France had to adjust its policy and began the political High Commissioner mandate. De Jouvenel came, followed by Ponso, who on 15 February called for general elections that would give rise to an assembly that would establish a statute for the country.

The Constituent Assembly comprised of 67 members, brought together the leading most prominent national poles in the country, and elected Hashim Al- Attasi its Chair. It also elected a Constitution-making committee from twenty-seven members led by Ibrahim Hanano and chose from among its members a preparatory committee to formulate the draft, and appointed Fawzi Al-Ghazi, Professor of International Law at the Faculty of Law of the University of Damascus, its Rapporteur. 59 After the committee completed its work, the Rapporteur presented to the Constituent Assembly in August 1928 the Committee's report containing the reasons therefor. After an overall discussion that lasted for two sessions, the entire draft was put to the vote and was approved. At the meeting devoted to the project, the High Commissioner informed the Assembly of his objection to the specific articles of the draft for breaching the (international covenants some of which determine the responsibility of the mandated power or demand prior agreement with French Government).60

On 9 August 1928, the Assembly adopted a resolution by a majority of 61 out of 67 members declining the French the request. On 11 August, the High Commissioner informed the Assembly of a three-months adjournment of meetings, its adjournments reiterated, subsequently a decision was issued resolving the Assembly.

3 - Draft Constitution 1949

Although this Constitution did not enter into force, it inaugurated a new stage, previously not familiar, in terms of a governor to individually self-determine the fate of the country and its future constitutionally and appoint a committee that he had freely selected and subjected it to his will.

On 14 May 1930, the High Commissioner, acting in his sole will, issued the Syrian Constitution, virtually the same draft of the 1928 Constitution which had been discussed by the Constituent Assembly after the amendment of certain articles. This Constitution was suspended several years for several times.

In 1943, in the period of General De Gaulle's rule, General Katro issued a decision that reinstated the Constitution. On 27 November 1943, the Parliament unanimously decided that article 116 of the Syrian Constitution concerning the mandate is ineffective (as if it never existed, because a foreign authority added it to the Constitution established by the Constituent Assembly) and considered the Alawites and Jabal Al-Druze provinces within the territory of the Syrian Arab Republic.61

59 Hashim Othman- Syria's Modern History. Riad El- Rayyes Books - Beirut- Lebanon - First Edition, published January 2012, p. 87.

60 see the details of this phase:

d. Ahmed Serhal - Political and Constitutional Systems in Lebanon and all Arab States - Dar El Fikir Al-Arabi - Beirut - p. 234.

60 Hassan El Hassan - Political and Constitutional Systems in Lebanon and other Arab Countries - Lebanese House for Publishing and Public Relations - p.252.

61 d. Ahmed Serhal - Political and constitutional systems in Lebanon and all Arab States - Dar El Fikir Al-Arabi - Beirut p. 237.

3 - Draft Constitution of 1949

On 30 March 1949, a coup d'état led by leader Hosni al-Zayyim took place. He exercised the legislative and executive branches. On 4 June, he issued a Decree to conduct a referendum inaugurating the President of the Republic and empowering him to draw up a new Constitution ratified either by referendum or by the House of Representatives after his election.62 The referendum took place on 25 June, and he was declared President of the Republic (almost unanimously). On 7 April, he set up a Committee of seven members to draft the Constitution by Decree No. 5 of 1949 which was subsequently amended. The Commission completed its draft on 27 June 1949.

The Constitutions of the Mandate phase

The country has entered an advanced stage away from the democratic constitutional process in form and merits. The country's Constitution has been merely a document annexed to a letter by the Supreme Military Council without being subject to any considerations related to democracy, participatory, community participation, or where the role of the people is solely limited to approval and confirmation with "Yes" and no other option.

Nonetheless, the Al-Zayyim's reign ended on 14 August 1949 after the second military coup and before the expiration of the four months deadline granted to him to issue a constitution by the referendum of his election.

4 - 1950 Constitution:

On 14 August 1949 the second coup d'état under the command of Sami Hannawi took place giving power to a civilian government that developed a law for general elections where they elected a Constituent Assembly on 15 November 1949. It issued interim Constitutional provisions and elected Hashem Al Attasi as head of State on 14 December 1949 who enjoyed the powers of the President of the Republic under the Constitution of 1930 until the formulation of a new Constitution.63

1950 Constitution:

The principle of the elected Constituent Assembly has been restored, though that was the onset of the overlap between the constitutional processes that:
It is ostensibly democratic "an elected Constituent Assembly" and the work in a democratically unfavourable atmosphere "coups d'état and the subordination to military rule".
A phase that would take place in the country later by focusing on the democratic form, "election/referendum" while simultaneously working essentially to discharge this democratic form of its content and substance.

Five days later, on 19 December 1949, the first coup of Adib Al-Shishakli took place; the Head of State resigned and then retreated. The Constituent Assembly continued to work on the drafting of the Constitution under the effective control of Adib al-Shishakli. The new Constitution was approved on 5 September 1950 by the Constituent Assembly.

5 - 1953 Constitution:

On 2 December 1951, Adib al-Shishakli assumed the duties of the State presidency after his second military coup. He drafted a Constitution in the name of the Supreme Military Council and sent a letter on 16 June 1952 to Fawzi Sallou who exercised the powers and competencies of the Head of State, the Prime Minister and Minister of National Defense, in which he stated:

"The Supreme Military Council sensing that the country had

62 d. Faisal Kalthoum - Studies in Constitutional Law and Political Systems - University of Damascus publications- Faculty of Law- 2005 p. 695.
63 Jean Habash - A Reading in the Syrian Constitution op. cit.

Lessons from Constitutional history

The Syrian constitutional history reveals the "convenience" to alter constitutions altogether or suspend them in part or amend what does not suit the few.

Thus, the authors of the future Constitution are required to establish the stringent constitutional norms to regulate the interference of the military in the political life, directly or indirectly or subject it to other civilian authorities on the one hand, and on the other set restrictions on amending the constitutional process to make it a lot harder than we have been used to observing in the Syrian reality and draw the Constitution, in some of its provisions, closer to the idea that Constitutions are set in stone with respect to the fundamental substantive rules agreed upon.

reached the necessary stage for the establishment of constitutional life decided to entrust you and the Cabinet by a referendum of the people on the draft Constitution according to this letter and take the necessary measures".64

A matter which elicited irritation and rejection of his opponents who signed a statement in which they declared their opposition to the Constitution and called on the people to civil disobedience.

Naturally, Al-Shishakli did not respond to the demands of the opposition and moved quickly to declare a state of emergency and launched a campaign of mass arrests. In the midst of this atmosphere, the Council of Ministers decided to approve the referendum on the draft Constitution and elect the President of the Republic which had already happened since the referendum took place on Saturday 11 July 1953 and the result was 86,1152 of votes in favour of the Constitution.65 The effect of the referendum was also the inauguration of Al-Shishakli as the President of the Republic.

6 - The Constitution of the Union 1958:

On 1 February 1958, a Syrian delegation headed by President Shukri al-Quwatli visited Egypt and met President Gamal Abdel Nasser. The meetings resulted in the declaration of the agreement on the unification of Egypt and Syria in one State called the United Arab Republic. On 5 February, both Presidents Shukri al-Quwatli and Gamal Abdel Nasser issued a statement declaring the unity and constitutional principles that underpin the State. The declaration governing the transitional period included seventeen principles. The Declaration identified 21 February 1958 to hold a referendum on the new State and the name of the President. Indeed, the referendum was held on time, and the United Arab Republic was founded on 22 February 1958. And on 5 March 1958, President Gamal Abdel Nasser announced from Damascus the detailed Interim Constitution of the State of Unity, which comprised seventy-three articles, seventeen detailing the seventeen principles included in the February 5 Declaration.66

Typically, it is not different here from the earlier phases regarding an individual or an entity to draft the Constitution of both countries together and without the right to any discussion or objection. Without the requirement to engage the people "pro forma" to pass the draft constitution and automatically vote "Yes". The Constitution entered into force as soon as the President of the country announced it without a referendum.

64 Hashim Othman - Syria's Modern History. op. cit. p. 262.
65 Hashim Othman - Syria's Modern History. op. cit. - p. 263.
66 Review documents of this phase: The Syrian Constitution Record- Prepared and Documented by Mazen Yousef Sabbagh - Publisher: Shuruq House for printing and publication - Damascus - Syria - publication date 1431e - 2010 - p. 385 ff.

7 - Constitution of the reign of Secession 1961:

On 28 September 1961, a military coup d'état led by Abdul Karim Nahlawi in Syria led to the separation and mandated a civilian government to draft an interim Constitution. It was approved by the people of Syria by a referendum held on 5 December 1961, which was passed by 617,880 votes of the male and female electorate of the 636,586 voters.67

The (Constituent Assembly and Parliament) were elected, and their first mission was to draw up a permanent Constitution entrusted with drafting a "Constitution of the Republic within a maximum period of six months, thereafter transforming into a Parliament". On 13 September 1962, this Council repatriated the implementation of the Constitution of 1950 with amendments.

Objectively, it did not differ here from the foregoing, as the country was actually under a military rule that carried out the coup d'état and was keen to take into consideration some of the pro forma constitutional matters "referendum/constituent assembly", however, that keenness must extend to the content and essence of this process.

8 - Interim constitutions 1964 – 1973:

On 8 March 1963, the Ba'ath Arab Socialist Party got a grip of power. Through the first ten years after its assumption of power, it promulgated interim Constitutions that were always issued in a superior manner by the Regional Command of the party or the Regional Congress which was often held at exceptional circumstances due to the partisan – political unrest in the country during that period, which saw the issuance of several interim Constitutions in the same way and as follows:68

A - The Interim Constitution of 1964: On 25 April 1964, the President of the National Council of the revolution leadership, Amin Hafiz, issued a Decree No. 991, which reads: "upon the military order No.1 of 8 March 1963... The interim Constitution of the Syrian Arab Republic annexed to this Decree and is considered to be in force from the date of its promulgation". This interim constitution lasted until the movement of 23 February 1966 which suspended its function and decided to dissolve the National Revolutionary Council by Decree No. 1 of 23 February 1966, issued by the interim Regional Congress leadership of the ruling Ba'ath party.

B - Interim Constitution of 1969: On 21 March 1969, the Fourth Special Regional Conference ruling Ba'ath party was held and decided that: "The political leadership shall issue a provisional Constitution to consider, during one month, the end of the Conference".

Accordingly, the Regional Congress leadership of the Ba'ath Arab Socialist Party prepared the country's Provisional Constitution, promulgated and implemented under Decree No. 33 of 1 May 1969, which contained succinct expressions that literally stipulated:

67 Hashim Othman - Syria's Modern History. op.cit. p. 348.
68 Review documents of this phase: The Syrian Constitution Record, op. cit. p. 515 ff.

Constitution of 1973 and 2012

Some of the formal - procedural criteria have been taken into consideration in the constitution-drafting process for the presence of a committee commissioned with writing the draft Constitution as well as presenting it to the people for a plebiscite.
Despite that, these measures seem to be "advanced" compared to previous phases, they have also failed to respond to the due democratic norms of writing constitutions.

Apology

".. In recognition of the importance of the Constitution as a basic document — regulating public life in the country, especially at the current stage, I believe, as a jurist, that the optimal drafting of the Constitution comes through deliberation in a Constituent Assembly, as Syria has known in various constitutional periods, accordingly, I apologize from participating in its work...".

Jurist Abdel Hay Alsayyed

Letter of resignation from the Constitution-Drafting Committee membership 2012

(The Regional Leadership of the Ba'ath Arab Socialist Party, having taken cognisance of the interim Regional Leadership Resolution No.1 of 23 February 1966, decided to declare the annexed Provisional Constitution".

C - The Interim Constitution of 1971: The Interim Constitution was promulgated on 16 February 1971 by a decision of the Regional Command of the socialist Arab Ba'ath party No. 39 dated 1 May 1969 and amended by the interim Country Command No. 141 dated 16 February 1971.

It is clear to us that during this period of almost ten years three interim constitutions were issued to govern the country, during which no formal or substantive criteria were taken into consideration to issuing those constitutions. The role of the constituent bodies and the constitution-drafting committees was absent, and these constitutions were not presented to the people either for their discussion or referendum.

10 - The Permanent Constitution of 1973:

The Interim Regional Leadership of the ruling Ba'ath party had approved the appointment of the People's Council composed of 173 members and mandated it to draft and ratify the country's Permanent Constitution within two years. Subsequently, the Council mandated a Constitutional Commission chaired by Fahmi Al Yusuf, President of the People's Council at the time, to prepare a draft of the permanent constitution, which was presented to the Council and approved. Then it was put to a referendum on 12 March 1973, entered into force on 13 March 1973 and lasted until the current Constitution was adopted in 2012.

11 - Constitution of 2012:

Following the widespread protests movement, the country had experienced in March 2011, the President of the Republic issued on 15 October 2011 Presidential Decree No. 33 concerning the establishment of the National Committee for the drafting of a constitution for the Syrian Arab Republic for approval, in keeping with constitutional precepts. The said resolution identified four months from the date of its issuance for the Commission to complete its work. It included the names of 29 figures, of whom three are females only before the number was reduced to 28 because of the immediate withdrawal of one of its members.[69] Having completed the drafting of the new

69 The intended is jurist Abd al Hay Alsayyed who resigned upon his nomination in this Committee. See the text on the website:

draft Constitution and handing it to the President, the President issued a Presidential Decree No. 85 of 2012, designating Sunday 26 February 2012 the date for the referendum on the draft Constitution of the Syrian Arab Republic. After the referendum, on 26 February 2012, the Minister of Interior announced the proportion who had agreed to the new draft Constitution had reached 89.4 percent of those polled. Afterwards, the President of the Republic issued Decree No. 94 of 2012 to make the new Constitution effective as of 27 February 2012.

This method has never lacked for criticism, of course, both in terms of the appointment of the constitution-drafting committee or the absence of the participatory and transparency criteria necessary for any constitutional process. Criticism was also taken on the conditions and timing of the "writing of the constitution and referendum". Since the constitution was drafted and the referendum process was conducted while the country was politically seething and explosions are reverberating in many regions. Tanks, armoured vehicles and soldiers were deployed everywhere, and the sound of bombs, shells and machine guns overpowered every other sound in several cities and towns.[70]

It appears from the above that the Syrian people and throughout their modern history have known multiple, disparate mechanisms for writing their constitutional documents:

- Appointed or elected Constituent Assemblies.
- Constitutions imposed by an individual governor, a military council or political actors.
- Constitutions that have entered into force by or without a referendum.

But overall, the Syrian people have not yet been given a chance to engage in a real constitutional process that conforms with all due democratic standards, in particular regarding the required rules of participatory, transparency and public participation. Either regarding the drafting of the constitution or the process of discussing it or putting it to a referendum. Noting that, if standards are taken into account, the rest will be squandered or the Constitution will not enter into force, or will not last long. This reinforces the importance to bring about the right conditions for a genuine constitutional process in which all Syrians, women and men, on an equal footing, without exclusion, exception, or discrimination, contribute to a constitutional process that will set a new national contract that will end the country's current crisis and ensure the necessary recovery.

http://syrianmasah.net/arabic/articaldetails10849.html

70 A statement by the National Coordinating Body on "Referendum on the alleged new Constitution " Executive Office - Damascus - on 26 February 2012.

Second Research - Options and alternatives for the adoption of the permanent constitutional document

As already indicated, the procedural course of the constitutional process is part of its legitimacy which strengthens its perpetuity and its commitment. Thus, the foundational path of the constitutional document must respond to the conditions and mechanisms of the maximum possible public participation, supporting the legality of the constitution and urge the highest number possible of male and female citizens to engage in the constitutional process and participate in the resulting new institutions.[71]

The procedural course includes the entity that will assume the constitution-drafting process. As well as the mechanism for its endorsement.

First - The procedural course:

Legitimacy and importance of constituent assemblies

Constituent assemblies acquire their legitimacy from being a participatory, inclusive approach for all to build a constitution emanating from the national dialogue.

The Constituent Assembly gives the country an opportunity to identify its vision and abolish divisions, which would strengthen national unity and define a collective agenda for social and political change.

There are numerous ways by which the constitutional text is drafted and adopted, ranging from democratic and undemocratic methods. We will confine our research in this regard to the option of the constituent assembly being the most democratic and deliberative constitutional options. Given the dictatorial techniques in which the people are not consulted but are imposed on them as a grant from the Governor is not hoped to be an option for Syria in the future. Such constitution loses a central pillar of its legitimacy due to such undemocratic methods, as well as this seems the risk of given the absence of participatory in its preparation and adoption.Furthermore, the risks of resorting to undemocratic methods in drafting and adopting constitutions appear not achieve their function as a social contract between the State and its citizens, and among groups of citizens themselves. The Constitution would then neither express the demands of the people nor respond to their desires and aspirations. The Constitution is not merely rigid and abstract legal texts drafted craftily and adopted skillfully. It is rather an embodiment of patriotic, political, social and economic mobility and should always be a reflection and an expression of that movement. The constitution-drafting method is, therefore, a fundamental part of its legitimacy. According to the American Institute of Peace "not only the final document is the mission but also the way in which it is prepared and adopted". This is for the sake of a long-term institutional structure, which requires a democratic approach to its completion and adoption starting with its procedural path.[72]

71 New Constitutional School: The New Form of the Constituent -Path- Memorandum issued by Democracy Reporting International - Berlin. Germany. Germany.
72 Special Report of United States Institute of Peace, 2005, pp. 1 -2.
referred to in:

Many states have resorted to the option of establishing a Constituent Assembly,[73] tasked with adopting a draft constitutional text,[74] knowing that states' practices differ on the mandate and formation of these constituent assemblies as well as the mechanism for the approval and adoption issued by it.

1 - Mandate:

Regarding the mandate of these Constituent Assemblies, we find that some States restrict their task to the mere adoption of the draft constitutional text. As in the case of the Constituent Assembly in Namibia in 1989, Nepal 2007, Bolivia 2006 and the Egyptian Constitution drafting bodies in 2012 and 2014.

Other states have resorted to entrust such constituent assemblies with other legislative or oversight missions alongside their constitutional function as in the Constituent Assembly for the drafting of the Constitution of South Africa of 1996. The 1994 Interim Constitution in article 68 mandated the National Assembly and the Senate to execute the function of the Constituent Assembly. The Constituent Assembly which drafted the Constitution of East Timor in 2002 was subsequently turned into the Parliament of the country.

Generally, whatever the mandate of this Assembly is, it does not have unfettered freedom to formulate the constitutional content. Since it might be constrained by a set of constitutional or procedural restrictions and controls, such as abiding by a set of supra-constitutional principles agreed on in advance whereby it is not entitled to override or ignore, as in South Africa under 1994 Interim Constitution, also reiterated in Namibia and Cambodia. Alternatively, compelled to consult with groups of people or put its final draft document for voting[75].

2 - Election and appointment:

States not only differ in the mandate of these assemblies or constituent councils but also vary in the process of selecting their members. Some States have resorted to direct elections, others to the indirect election, while the third States sponsored a mixed approach combining election and appointment.

If the members of the constituent bodies are selected by direct election, the constituent body chosen shall then be comprised of representatives elected by the people. This method has many advantages, most notably, it is a democratic way of making a choice and leaves no room for debate about its legitimacy and mostly produces a result accepted by the people, and also has a positive impact on civic behaviour. The election campaigns preceding the constituent body election not only contribute to people's awareness of the political, social and economic problems at hand but also to a revived sense of citizenship among the population especially the electorate.

Mohammed Nassib Awjoun - Murad Aslan - Theory and Practice of State-building in the Middle East A Constitutional Perspective on Iraq and Afghanistan publisher - Publisher - The Emirates Center for Strategic Studies and Research - Publication date: 2014 - p. 27

73 States vary in naming this representative structure, ranging from "Constituent Conference" or "Constituent Assembly" or "constituent council".

74 The selection methods of the constitutional drafting committee members are numerous, as well as the methods of adopting them. These options are detailed in:
see: Constitutional working paper - The National Agenda for the Future of Syria programme- the centre of governance and institution-building and democratization ESCWA pp. 81- 91- 2016

75 International Forum Pathways to Democratic Transitions Summary Report on Country Experiences, Lessons Learned and the Road Ahead op. cit.-p. 25.

The major problem with this option is the "timing of the electoral process". As the haste to conduct any elections before establishing security and providing the requirements of the electoral process would be fraught with risks and may have negative repercussions on the overall political and constitutional process, especially since the peacebuilding process requires a societal "consensus" which will not be achieved according to the victor and the vanquished. Additionally, this method has adverse effects of being costly and time-consuming and does not necessarily lead to results that reflect the real diversity of the people. It might as well exclude committed individuals and competent persons and those who do not wish to stand for election to take part in the constitution drafting process, especially if those experts do not belong to political parties, given that this method discriminates among political parties and makes their representatives within the constituent body very reluctant to make concessions towards the success of the compromise[76]. Of the States that have resorted to this option was Ecuador in 1998, with 90 members, 28.50% of whom were women, directly elected in its Constituent Assembly and Bolivia in 2009, with 225 members, 35% of whom were women, elected in the constituent assembly,

As for selecting members of constituent bodies by indirect election, the members of the body are not directly elected by the people under this method but are elected directly by another elected body, often the legislative authority, both locally or nationally[77]. Federal Germany is one of the States that resorted to this option in 1949, whereby the Constituent Assembly Members were elected by the Legislative Council of the Member States who numbered 65 four of whom were women only. India also resorted to this option in 1950, where the members of its Constituent Assembly were elected by provincial legislatures and had a total of almost 300 members, including 15 women. Iraq also resorted to this option in 2005, as the Transitional Parliament appointed the 100 members of the Constituent Assembly, all of whom were members of Parliament, while a quota of 25% was allocated for women's representation in that Constituent Assembly. Egypt also resorted to this option since the agreement was reached on the composition of the Constituent Body and on the number of its members in June 2012. They reached an agreement on the distribution of the 100 members in the following way: 39 seats for representatives of the parties in Parliament, 6 seats for judges; 9 seats for legal experts, one seat for the armed forces, the police, the Ministry of Justice, 13 seats for trade unions, 5 seats for representatives of Al-Azhar University, 4 seats for representatives of the Coptic Church, and 21 seats for public figures. The number of women in this body numbered 7 out of 100 members.

76 Selecting Constituent Assembly members: Comparative Experiences and lessons learned. Discussion paper issued by the International Institute for Democracy and Elections - November 2012- p.7

77 Selecting Constituent Assembly members: Comparative Experiences and lessons learned. Discussion paper issued by the International Institute for Democracy and Elections - November 2012- p.10

Approval of the Constitution by the elected Constituent Assembly without being submitted to a referendum.

"We the representatives of the Brazilian People, convened the National Constituent Assembly, to institute a democratic state destined to ensure the exercise of social and individual rights, liberty, security, well-being, development, equality and justice as supreme values of a fraternal, pluralist and unprejudiced society, founded on social harmony and committed, in the domestic and international orders, to the peaceful solution of disputes, promulgate, under the protection of God, the following Constitution of the Federative Republic of Brazil".

The Preamble of the Constitution of Brazil -1988:

The **third option** for selecting members of the constituent bodies is through the mixed method which means to adopt an approach of election (direct or indirect) besides the appointment method.[78] Among the States that have resorted to this option was Eritrea in 1997. Its Constituent Assembly included representatives of the legislature, elected by the regional council and representatives of the Eritreans abroad. The number of members of this body reached 527, and a 30% quota was allotted for women. Kenya also embraced this option in 2005 with 601 members, of whom 136 were women, of the National Constitutional Conference bringing together all members of Parliament in addition to representatives of provincial councils, civil society, legally recognized parties, members of the constituent body and other members appointed by the President of the Conference to represent other segments of society. A recent application of this option is the call by Venezuelan President Nicolás Maduro in May 2017 to form a Constituent Assembly to draft a new Constitution in the country amidst popular division whereby his opponents rejected this call and mechanism. The Decree set out mechanisms for the election of the Assembly's 540 members commissioned to draft a new Constitution or the country. According to the decree, the 176 members of the Constituent Assembly will be named by social groups such as unions, student assemblies and retired associations, whereas the remaining 364 members will be elected in elections where municipalities will be adopted as electoral constituencies.

3 - The Approval:

As constituent assemblies finish the draft constitution, state practices differ too. Most States tend to present the draft constitution to a public referendum for approval, as is the case with the Constitutions of Bolivia 2009, Constitutions of Egypt in 2012 and 2014, Constitution of Kenya in 2010 and Constitution of Syria in 2012.

Others consider that the constitution is in force on its approval by the elected Constituent Assembly, as is the case of the Brazilian Constitution promulgated in 1988. This also occurred in the Portuguese Constitution of 1976, which also noted in its preamble "in its meeting in the plenary session on 2 April 1976, the Constituent Assembly does hereby pass and decree the following Constitution of the Portuguese Republic...".

78 Selecting Constituent Assembly members: Comparative Experiences and lessons learned. op.cit, p 11.

Second - International precedents and practices:

Presented below are several models of States that have adopted multiple options. Both in the mode of selecting or appointing the members of the constituent assembly and in the mechanism for the adoption, its approval and entry into force of the Constitution. We have opted to select States that have often suffered from problems, wars or crises thereby making their experience approachable in some form or another to the Syrian reality, which would be equally helpful in drawing out both positive and negative lessons and experiences.

Given that the constitutional process occurred in the context of a political transition in some states, while in armed conflicts and civil wars in others in which the constitution was perhaps expected to be the culmination of the violent conflict phase the country has witnessed and the beginning of the anticipated peace phase.

1 - Constitutions are resulting from a political transition:

We hereby present the constitutional experiences of Portugal 1976, Spain 1978, Brazil 1988 and Tunisia 2014:

A. Constitution of Portugal - 1976:

An authoritarian regime governed Portugal for an extended period between 1926 and 1974. On 25 April 1974, the military took control of power in the country, having been tired of 13-year-long colonial wars in the Portuguese colonies in Africa. The new authorities promised to hold elections and return power to a civilian democratic government in one year. The Constituent Assembly elections were held in 1975 in the first anniversary of the April revolution, in which more than ninety percent of eligible voters participated. These elections took place in the backdrop of political instability involving a conflict between pro-European and left-wing currents that championed revolutionary legitimacy. Despite all the difficulties, the Constitutional Assembly was able to have a majority of members supporting a representative democracy.[79] The Constitution-drafting process lasted from June 1975 until April 1976.

Non-exclusion - A Spanish lesson 1978

To draft the new Constitution, the Constituent Assembly selected a Committee of seven of its members who represented all the different perspectives of the political spectrum in the country.

The diversity of the committee's composition can be seen from the fact that one of its members had been a minister in the governments of the dictatorship, another was a member of the Communist Party, a third belonged to the Catalan Nationalist Party, a fourth was a member of the socialist party, while the remaining three were members of the Centre Party.

B. Constitution of Spain - 1978:

The Spanish transition to democracy began a few months after the death of General Franco in November 1975, after King Juan Carlos I appointed Adolfo Suárez as Prime Minister and who proposed a political reform of a democratic nature in July of the following year which was later widely approved by referendum in late 1976. The reform plan involved holding free general elections to choose a Parliament of two chambers given the mission of the Constituent Assembly. This took place

79 Eduardo Cabrita - Local and Regional Government in the Portuguese Constitution: A Case Study on Democratic Transition - A study published in a book: Constitutional Reform in Times of Transition: Prioritising the Legitimacy of the Process, op. cit p. 30 -31.

in July 1977, and a new constitution was endorsed in December 1978.

The new constitution-drafting process was relatively quick, though it allowed for widespread debate to take place at all levels.

After five months of work, the Committee completed the formulation of the preliminary draft of the Constitution, published in January 1978. This followed a period allocated for the amendments, the Committee concluded the appropriate modifications in April and opened the way for the discussion of the draft in the Constituent Assembly.

The debate extended to 24 sessions by the Constitutional Affairs Committee and 12 by the Parliamentary plenary. The preliminary draft was then submitted to the Senate where it was discussed over 17 meetings in the Constitutional Affairs Committee and ten meetings in the plenary of the Council. The discussion finally ended on five October. As the Senate had made amendments to the preliminary draft, a mixed committee of MPs and Senators had to be created, and their agreed version of the document was published on 28 October. It was put to the vote on 31 October in both chambers. In the Chamber of Deputies, the preliminary draft obtained 325 votes in favour out of 345, with six voting against and 14 abstentions. In the Senate, out of a total of 239, 226 voted in favour, five against and eight abstained. After that, a popular referendum was held on 6 December, and the preliminary draft was approved by 87.78 percent of the citizens who voted.[80]

C. Constitution of Brazil -1988:

With the end of the military rule and the re-democratisation of Brazil in 1985, a controversy arose over the need to draft a new Constitution to replace the Constitution enacted by the military government. In November 1985, the National Congress, which had retained limited power but remained in place during the military regime, set forth that it would be obligatory on members of the National Congress (including both Members of the House of Representatives, to be elected in 1986 and of the Federal Senate, elected in 1982) to establish the Constitutional Convention which would make the new constitution.

After the elections of November 1986, the Constitutional Convention was convened on 1 February 1987, presided over by the Chief Justice of the Brazilian Supreme Court. The Constitutional Convention included members from all Brazilian States and the Federal District (Brasília), Including 487 elected Representatives in 1986, and 72 Senators, of whom 49 were elected in 1986 and 23 were elected in 1982 (starting their eight-year term of office in 1983).

The 559 members of the Constitutional Convention were distributed over 12 political parties. Later, three of its members became presidents of Brazil, governing the country in sequence for 19 years between 1992 and 2010. The final text suggested by the Drafting Committee, with 305 articles, was confirmed by the

80 Narcis Serra - Constitutional Reform and Civil-Military Relations in Spain - A case published in a book: Constitutional Reform in Times of Transition. Prioritising the Legitimacy of the Process - op. cit. p. 43- 45.

Constitutional Convention Plenary Assembly and enacted on 5 October 1988, becoming the new Constitution of the Federative Republic of Brazil.[81][82]

D. The Constitution of Tunisia - 2014:

Decree No. 35 of 2010 was issued on 10 May 2011 regarding the election of the National Constituent Assembly. The Preamble of this decree noted that "in order to bring to an end the practice of the former regime that fed tyranny, the absence of the will of people, the illegal abduction of power and the falsification of the elections. And following the principles of the revolution of the Tunisian people aimed at upholding democracy, freedom, equality, social justice, dignity, pluralism, human rights and rotation of power, and based on the will of the Tunisian people to elect a National Constituent Assembly entrusted with the drafting of a new Constitution, and as the former Law did not guarantee democratic, pluralistic, transparent and impartial elections, the parties have agreed to elect the National Constituent Assembly, pursuant to the following provisions".

A quota for migrants -Tunisia

Eighteen out of 217 seats were allocated for non-resident citizens, including 10 seats for 500,000 Tunisians residents in France.

Then this decree included a precise mechanism for the election of the National Constituent Assembly members who shall be elected on the basis of " general, free, direct and secret elections pursuant to the principles of democracy, equality, pluralism, impartiality and transparency".[83]

Who has the right to vote and are deprived: The decree showed those entitled to elect the members of the Constituent Assembly are "all Tunisians, both men and women, who turned 18 before Election Day, enjoy their full civil and political rights and are not deprived of any electoral right indicated therein".[84] In addition to those persons who are sentenced and in custody and those whose assets were confiscated after 14 January 2011 were prevented from exercising this right".[85] In other words, any whose money was confiscated after the Tunisian revolution.

Who has the right to stand or cannot stand for elections: under this decree, any voter who has right to be a member of the National Constituent Assembly shall be 23 of age the day he/she presents his/her candidacy. But this right was banned on:

"Whoever took office in the outgoing government of the former president except for those who were not part of the Constitutional Democratic Assembly and all those who were entrusted with a position within the Constitutional Democratic Assembly in the former president's government. The relevant positions shall be determined upon the suggestion of the High Commission for the Realization of the Goals of the Revolution, Political Reform and Democratic Transition.

81 And they are: Mr. Itamar Franco, Mr. Fernando Henrique Cardoso and Mr. Luis Inácio Lula da Silva.
82 Pedro Dallari - Brazil: The Constitution-Making Process and the Political System - A study published in a book: Constitutional Reform in Times of Transition. Prioritising The Legitimacy of The Process - Editor (Álvaro Vasconcelos - Gerald Stang) - Arab Reform Initiative. Paris. France - May 2014 - p. 53- 58.
83 Chapter 1
84 Chapter 2.
85 Chapter 5.

All those who implored the former president to run for a new presidential term in 2014. The High Commission for the Realization of the Goals of the Revolution, Political Reform and Democratic Transition shall set a list with the names of those persons".[86]

A quota for women: This Decree provides that "candidates shall file their candidacy applications on the basis of parity between men and women.[87] Lists shall be established in such a way to alternate between men and women. Lists that do not follow this principle shall only be admitted when the number of seats, in the relevant constituency, is odd".

The elections took place on 20-23 October 2011. The Constituent Assembly consisted of 217 members. Representatives of political parties and independent lists were elected. Voting was based on closed lists, and the election took place by proportional representation while taking into account the largest remainders.[88] It should be noted that despite the requirement of the Elections Ordinance to equate and rotate between women and men on the candidate lists, the result was that only 58 women out of a total of 217 members reached the Dome of the Council or 29%. Owing this result to the nature of the adopted voting system, which is the system of proportional representation, which gives the heads of lists the best chances of winning seats and provided that the vast majority of the latter was assigned to men; thus the 50/50 level candidacy did not lead to the 50/50 representation on the level of composition of the Council. These experiences reveal the importance of focusing on electoral laws at an early stage to redress women in all electoral processes that can be carried out in the country.[89]

A quota alone is not sufficient.

Although the Tunisian Electoral Decree stipulates: "applications are presented on the basis of equality between women and men principle", only 58 women out of 217 were elected members of the council in a 29 percent only.

2- Constitutions resulting from an armed conflict:

We present here the Constitution of East Timor in 2002 and Afghanistan in 2004.

A - Constitution of East Timor - 2002:

Elections were held to select the members of the Constituent Assembly in East Timor in 2001. The Constituent Assembly consisted of 88 members elected through a mixed electoral system (the First Past the Post system and the Proportional Representation). One representative of each of the 13 provinces of the country was allowed to be elected and 75 members elected at the national level. Anyone over the age of 17 years could vote provided that he or she was born in East Timor or outside East Timor but at least one parent born in East Timor or was a husband or a wife that responds to the clauses above.

86 Chapter 15.
87 Chapter 16.
88 The Constitution-Making Process in Tunisia - Final Report - 2011-2014 -Carter Center - p. 23 Ss.
89 Selecting Constituent Assembly members: Comparative Experiences and lessons learned. op.cit, p 10-11.

Every elector who meets the voter attributes may run for Constituent Assembly on condition of competing in one district while there was no representation for non-resident citizens.[90]

The Constituent Assembly involved 66 men and 22 women. It succeeded in promulgating the new Constitution of East Timor which came into force in 2002 after 72 members of the Constituent Assembly voted in favour of the draft Constitution while 14 members objected. Subsequently, the Constituent Assembly converted itself into the country's Parliament in May 2002.

B - Constitution of Afghanistan - 2004:

The Bonn Agreement of December 5, 2001, provided that the Afghan Transitional Administration establishes a constitutional commission to prepare a draft constitution that would be debated and adopted by a Constitutional Loya Jirga. The Constitutional Loya Jirga was to be convened within eighteen months of the establishment of the Afghan Transitional Administration.[91][92]

The Decree establishing the Afghan Constitutional Commission, called Loya Jirga, was issued in July 2003. According to Article 2 of this decree, the Commission would comprise 500 members, including 450 elected and 50 appointed.[93][94]

Special Quotas for refugees and displaced persons

In addition to ensuring the representation of women and minorities, the decree on the establishment of the Afghan Constitutional Commission, Loya Jirga, of 2003, allocated a number of seats for refugees, 24 seats for refugees and 6 seats for displaced persons elected in their whereabouts.

Election mechanism and ensuring the representation of women: provision for election of 450 members as follows:

- 344 members, elected by the representatives of the Loya Jirga (Former special council).
- 24 elected refugees from Iran and Pakistan.
- 64 women elected by women — two women per province.
- Nine elected Kochis (Nomadic Tribes)
- Six elected Internally Displaced Persons from three territories.
- Three elected Hindu and Sikhs.

90 Selecting Members of the Constituent Assembly: Comparative Experience and Lessons Learned -op. cit. - p. 8 -9.

91 It must be pointed out at the beginning, in connection with this constitution, that the intervention of the West in that constitutional process was very clear.
And the United States of America and the United Nations were influential in that process. as well as the staff of both parties were ever-present round-the-clock to monitor the discussions. See:
Mohammed Nassib Awjoun - Murad Aslan - Theory and Practice of State-building in the Middle East Constitutional Perspective on Iraq and Afghanistan - op. cit. p. 32.

92 Constitution-Making and Reform Options for the Process - op.cit. - p. 330.

93 The actual number of the Loya Jirga members reached 502 after adding representatives in line with the number of provinces as well as to ensure representation of each province and all points of views.

94 The Afghan people representatives adopted the current Constitution of the Islamic Republic of Afghanistan in the Constituent Assembly (Loya Jirga), which held its meeting between 13 December 2003 and 4 January 2004, and was approved by the President of Afghanistan on 26 January 2004.

Appointment mechanism and ensuring the representation of women: Article 6 of the Presidential decree authorised the President to appoint 52 members of the Constitutional Assembly. Half of them to be women and the rest appointed by the President from among legal experts, constitutional specialists and other disciplines.

Election Controls: The Loya Jirga Decree necessitated that members must be elected in free and fair elections far from politics and ethnic interventions, and the criterion of election should be the commitment to national unity and the supreme interests of the people of Afghanistan. Requiring candidates to be literate and have adequate knowledge of constitutional principles.

Those prohibited from participating in the constitutional process: The Loya Jirga decree forbade the members of the cabinet, some judicial officers and the Afghanistan Independent Human Rights Commission, from voting or expressing their views, although they were allowed to participate in the elections only as observers. Conversely, this Decree has deprived the basic eligibility of senior Government officials of participating in the Afghan Constitution Commision including governors and deputy province, district administrators, mayors, army, police and national security personnel of the Directorate.[95]

Finally, the foreign factor, among others, must not be disregarded in the Afghan constitutional process as the United States has played the most prominent role in drafting the Constitution alongside the warlords of the local allies.

It seems that external interference in the Constitution-making processes has clearly caused grave harm to the emerging State following the building process. The fact that such intervention makes it easier for key States to refashion the structures of the imploding states and determine their future obligations by the interests of the foreign States involved and not in the interest of the national state concerned. As a result, in the Afghan case, for example, that state lacks a "functioning institutional capacity, an economy that is not dependent on aid, and a full application of the Constitution". Obstacles such as security, limited economic recovery, inadequate resources, ethnic fissures, governance in a drug-mafia state, and the rivalry between the regional powers impede the nation-building process in Afghanistan".[96]

95 Selecting Members of the Constituent Assembly: Comparative Experience and Lessons Learned -op. cit. p.7.
96 Mohammed Nassib Awjoun - Murad Aslan - Theory and Practice of State-building in the Middle East A Constitutional Perspective on Iraq and Afghanistan, op. cit.- p. 23.

Third - What could be drawn upon in the Syrian reality:

Based on all the foregoing, it is clear that there are numerous options many states have resorted to in the context of the procedural course of drafting the permanent constitution of the country in the post-conflict phase, whether in the formation of the constitutional drafting committee or its approval method and adoption.

For Syria, there does not seem to be a vivid common vision until now on the path of the next Constitutional document or which is supposed to follow the phase of the cessation of war. Mainly that the constitutional track, procedural and objective, has become a substance of political debate and negotiation, such as the issue of terrorism, which impedes the necessary consensus around it. Although international precedents and practices presented in the context of the preceding pages of chapters I and II have clearly revealed that States in a setting similar to the Syrian reality have actually resorted to constitutional solutions in two stages:

Substantive issues that should not be ignored whatever option would be adopted in Syria.

1 – A minimum quota of 30 percent for women.

2 – Just and equitable representation for refugees, displaced persons and migrants.

3 – Present the draft Constitution to a public referendum and remove the obstacles to the participation of all Syrians, at home and abroad in this process.

First Phase: Following the signing of the peace agreement: during which the option of the interim constitutional document governing the affairs of the country during the recovery phase is adopted. The drafting of the final new Constitution of the country is being undertaken. This phase lasts for two to three years.

Second Phase: Follows the recovery phase, during which the Permanent Constitution which has been drafted throughout the recovery phase that has been utilised to carry out the requirements of civic education and community participation to ensure and reinforce the legitimacy and charter of the State's final Constitution.

In the process of forming the Constituent Assembly that will draft the State's final Constitution and the preference between the two options of the election, direct or indirect, or appointment, the election is undoubtedly the best democratic way to express the will of the people only if the fundamental political, legal, security and logistical merits are fulfilled. The elections require an atmosphere of tranquillity, freedom, security and stability including fair and equitable election laws for all and an environment that allows the spread of genuine awareness and addresses the negative consequences of exclusion and intimidation. This would not be directly accessible after the cessation of the Syrian war. Bearing in mind that constitutional jurisprudence requires that certain conditions must exist to democratically formulate the Constitution that is established by the Constituent Assembly. Some are that the Constituent Assembly shall be elected by the people, whose members would not be appointed and that the election would be democratic in accordance with the principles of a universal, free, equal, direct, secret suffrage, under the supervision and control of the judiciary. For the election to be free, strictly speaking, it is imperative that there would be multiple options for electorates provided by political parties in democratic systems. Which would give all existing political parties, without exception, the opportunity to participate in the election of the Constituent Assembly, as well as the Constituent Assembly shall exercise its work freely and impartially that is free from all political pressures that may affect their work.

Constitutional Alternatives for Syria

A logical view of the Syrian reality evidently reveals that it would not be easy to fairly have fair elections for the members of the Constituent Assembly under complex and difficult security and social conditions, especially in the absence of stability and the deteriorating security situation that prevails in the aftermath of any crisis as is the current case in Syria. In addition to the presence of a large number of refugees and displaced persons would make it arduous to organise an election before their return to their cities and villages and their sense of relative stability before exercising their right to vote. There are also concerns that the Syrian voter in the event of an election may not vote by legal and constitutional competence and experience, or on the basis of his belief of the project and the real vision of the candidate. The election process of the founding committee may be affected by political, sectarian and religious strife in the society which might produce a constituent assembly of a level that doesn't reward the aspirations of the Syrian people. Since it would be difficult to convince all Syrian voters that they would be selecting a Syrian Constituent Assembly, a highly technical and complex mission that requires experts, visionaries and knowledgeable people, at a time when many Syrians would go to the ballot box to select those who represent their political platforms, communities, ethnicities or clans.[97]

Two options could be considered:

Option 1:

The Constitutional Constituent Assembly elections shall not be held until at least two years of the beginning of the peace and recovery phase. Whereby the drafting process of the country's final Constitution commences in the third year, when its merits are partially achieved through the return of refugees and displaced persons, and the promulgation of new laws for elections, the media, civil society, the reorganization of the judiciary, and the creation of new institutions mandated by the interim Constitution. Thereby creating a relatively favourable environment for a serious electoral process that would yield bodies or authorities who actually reflect the will and orientation of the Syrian elector.

Note that this option means that the interim/transitional phase to be governed by the Interim Constitution may extend to 3-4 years instead of two as being promoted.

This option coincides with the "logic" of not rushing through the country's final Constitution and starting that process in an unhealthy and inappropriate environment which produces a Constitution that does not enjoy the required unanimity and provokes separation and division instead of contributing to the efforts of reinforcing national reconciliation and unity. However, it constitutes in return a serious option because it requires a consensus on an interim constitutional document that is comprehensive and valid to rule the country for years to come. And shall be alerted that the length of that period might raise additional problems and disagreements in the absence of resolving substantive issues expected to be decided by the final Constitution. alert

Second option:

Attempting to lessen the "Ills" of expediting the course of the final constitution of the country in view of, and regardless of the option resorted to in this case whether (A constituent assembly directly elected by the people

97 The Roadmap for democratic transition in Syria - A document by the Syrian Expert House and the Syrian Center for Political and Strategic Studies - August. August -2013 - p.50

in inappropriate atmosphere, or an elected Constituent Assembly indirectly elected through a Syrian national conference being discussed, or a Constituent Assembly appointed on the basis of consensus and quotas) all of these options would not produce a Constituent Assembly that meets the duly democratic standards and requirements.

To avoid some of the obstacles associated with the ineffective performance of political parties and civil society, the lack of expertise of the members of the constitutional drafting assemblies, and the disputes and divisions, some States have resorted to the option of establishing a special commission for the constitutional process dubbed the "Constitutional Commission". It comprises not only a pool of experts most of them in law but also experts in economics, political science and public administration commissioned with the preparation of the draft constitution, discussions and the operationalization of the rules of public participation with the people to prepare a constitutional document that reflects the wishes and aspirations of the people mainly targeted by its provisions.[98]

Despite the fact that the Commission would probably be subjected to the option of appointment and compromise, the stakeholders' participation could be expanded in the nomination and appointment process so that the civil society will have a leading role in this context. It should be mentioned that the importance of the commission lies in the fact that it would put the overall national interests above the narrow factional interests more than any constituent assembly or a parliamentary committee. Being relatively neutral helps this part of the process, the vital decisions on the draft Constitution, be to a certain extent kept away from the political parties and will most probably be more effective in building a national consensus. Its small size will , most likely, as well as its expertise, allow for a deliberative process more than what could be accomplished in a constituent assembly and promote public participation whereby the commission plays an important and substantive role in strengthening the participatory process of the Constitution through its focus on operationalizing the rules of community participation.[99]

The number of experts in these commissions ranges between a maximum of 12 and 25 in countries. The Commission in Fiji, in 1997, was composed of three members, it was too small a commission. In Zimbabwe, in 2000, the members of the commission were up to 500, which is too large. It is noteworthy that women's representation should always be taken into account in all stages of the process in fair proportion with a minimum of 30 percent as required under the CEDAW Agreement and international standards which the government of the Syrian Arab Republic has committed to and ratified. Given that the representation of Syrian women in the last Constitutional Drafting Commission of 2012 does not exceed 11% (3 women out of 27 members), which is a tiny percentage and does not comply at all with the "right" and the status of the Syrian women. This requires the inclusion of fair and equitable representation of women in all stages of the constitutional process, regardless of the option to be adopted.

Similarly, the representation of refugees and displaced persons must not be ignored in this process, whatever option is to be adopted. As no State whose millions of its inhabitants have become refugees abroad can ignore or turn a blind eye to this picture. We have presented how international precedents have allocated quotas for

98 Kenya, Fiji, Eritrea, Uganda and Afghanistan are from States which have resorted to this option with varying effectiveness and success in accordance with the margin of freedom and independence and the extent of interference in their work.

99 Constitution-making and Reform Options for the Process - op.cit. - p. 267

refugees or migrants in the Constitution drafting bodies and associations, as with Afghanistan regarding refugees and internally displaced persons and Tunisia concerning immigrants and residents abroad. This humanitarian problem, which could last for many years, must not be expected to end once the war is over. Note that the requirement to represent refugees and migrants in the function of these committees, bodies and commissions is in the interest of both, those groups and the State as a whole. Because no State, any State, may disregard the fact that it has lost considerable human potentials which have often represented the future and hope of that State.

Given the significance and gravity of the Constitutional process in settling the Syrian conflict and the sustainability of the choice of peace that is being worked on, establishing a Ministry of Constitutional Affairs could also be contemplated as an option in the first agreed upon government after reaching the desired peace. An option many States had resorted to, like Uganda in 1986, where the laws by which the Constitutional Commission and the Constituent Assembly in Uganda were established (the two-main consultative and decision-making bodies in that process) provided vital roles for a Minister of Constitutional Affairs whose post was set in 1986. Examples of other cases in which special authorities have been found to coordinate the constitution-making process and bolster the Albanian situation in 1998 are Parliamentary Constitutional Commission established as the primary constitution-making body and a Ministry of Institutional Reform and Relations with the Parliament to assist the Commission in regulating the consultative constitution-making process envisaged by the parliament.[100]

It would be logical to reflect on such an option in the Syrian situation to subsequently get the constitutional case out of political tugging and establish a precise mechanism that enjoys permanence, continuity and necessary means until the adoption of the country's final Constitution.

Furthermore, whichever option is to be adopted, the final draft Constitution should be presented to the people for the referendum, provided that adequate discussions for all viewpoints from various categories and sectors of the population precede the referendum. This naturally entails asking the people to participate in the referendum process only after ample time has elapsed since the proposed draft constitution has been declared public so that citizens have sufficient opportunity to learn about the proposed draft Constitution to stand on both its advantages and drawbacks.

In connection with the foreign interference in the context of the Syrian Constitutional process, it currently appears that the most frequently used terms are those that confirm decisively that the future Constitution of the country "will be created by the Syrians themselves". This decisiveness and affirmation come at a time when the United Nations and many international actors involved in the Syrian conflict, regionally and internationally, sponsor the track of the negotiation process, including the "Constitutional basket" which constitutes its most prominent axis. Thereby, calling into question the compatibility of this reality with the proposition that the Constitution will be created by the Syrians themselves.

This requires an early and clear distinction between influencing the "constitutional process" on the one hand, and "the content of the constitution" on the other. Whereby the content relates to the provisions of the Constitution, while the process refers to the steps of the constitution-building cycle, which directly covers multiple phases of negotiation, recognition and implementation.

100 Constitution-making and Reform Options for the Process - op.cit. - p. 288.

To maintain the credibility of the expression "the Constitution will be created by the Syrians themselves", there should be limitations on the interference of international and the United Nations to certain aspects of the Constitutional process without the content of the Constitution. That is, restricted to political and diplomatic support to the process including technical and logistical support, funding issues, technical expertise, and putting the Syrian stakeholders capable of influencing the local context in a position of decision-making on issues related to the Constitutional process.

Third Research - Public participation in the Constitution Process

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For decades, and on a global scale, the constitution has been an elite-dominated process issued by the governing authority, whatever it's called, as a grant to the people under its provisions, who must comply, ipso facto, with its rules and submit to them with no discussion or participation and also often with no further knowledge of such regulations and provisions.

This "condescending" notion for the drafting and adoption mechanism of the constitution is incompatible with the very concept and purpose of the constitution itself and its promotion as a social contract which regulates the relationship between the components of the nation among themselves and between the state and its citizens and residents on its territories as well.

Constitution-drafting in times of division

"In a divided society, the constitution can be much more than a set of rules for the structure of government. The constitution-making process is a unique moment—an opportunity to build consensus, a shared sense of identity, values, and purpose, and to resolve major differences".

Constitution-making and Reform
Options for the Process - Interpeace -2012

The ensuing political, democratic and legal developments have changed this concept. Constitution-making is no longer an absolute prerogative of the governor or pursuant to parliaments and constituent assemblies, constitutional experts or the state. As the diverse public participation in constitution-making has become a fait accompli, necessitated by the expansion in the concept and the content of the democratic rights of the

people, an international right recognized by international law, and a moral right for both citizens and state officials.101

This participatory process of constitution-making is becoming increasingly crucial in states rebounding from major crises they have known or seeking out of internal wars they have been gripped by. As fears prevail, then, the warlords and leaders of the conflict will be signaled out to conduct the entire constitutional process to consolidate their gains, "constitutionalize" their interests and the power-sharing system and the spoils they have agreed to at the expense of the people who often pay the price of war and the price of its settlement too.

Notwithstanding its importance and gravity, this issue does not seem to be raised on the negotiating track and the current Syrian political and constitutional debate currently in place. Whereby the "marginalisation" of the people, the exclusion, the "pretence" of its representation and the talk on its behalf are always and routinely carried out. Once under the pretext of being unable to access or communicate with the people due to the security and military reality, the massive waves of asylum and displacement, and several times on the grounds of prior knowledge of what the people want, without having to ask and communicate with them.

In the subsequent pages, we introduce the concept of public participation in the constitutional process and highlight several international experiences and practices in an attempt to bring them down to the Syrian reality to draw upon the excellent and appropriate methods that could be currently or subsequently pursued in the context of the Syrian Constitutional process. Certainly not in a way to clone frigid, dry and incompatible constitutions and translate them in a vacuum seeking to market them, as is currently happening, but by trying to avoid the mistakes of others, not to reproduce them, and try to draw successful practices and contemplate about their suitability and compatibility with the present and the future Syrian reality.

First - The concept of public participation and how to exercise it:

It is well established that the success of the constitutional-making process as a whole depends heavily on the backing and assistance it receives from various sectors of society and on the participation of the public, requiring opening channels of communication and allowing free debate on different options and constitutional solutions that emanate from the various segments of society.102 While acknowledging the role played by political elites in making decisions on how to structure a new nation, there is now an established trend aiming at building mechanisms for broad participation in the process. In order to avoid a constitution that merely

101 Participation and Societal Consensus-Building in the constitution-Making process: Lessons Learned from International Experiences - Dr Yaseen Farooq Aboul-Enein - Nadia Abdeladim - Social Contract Centre publications - Cairo 2013. p. 5

102 Guidelines for Human Rights and Constitution-Making - Prepared by Professor Dzidek Kedzia - Social Contract Center Publications- Cairo 2013. p. 8

distributes the spoils among competing factions and to improve the new constitution probabilities of enjoying a high degree of popular legitimacy.[103]

Hence, the concept of public participation or participatory in the constitution is a harbinger to denote the "process by which citizens are informed about modus operandi and options presented, thus giving them a genuine chance to express their views directly to decision-makers in the drafting and discussion of the Constitution".[104] Although that real participatory as we will show in subsequent pages is not only limited to a mere "voice an opinion", but even more so " to influence and guide the resolution".[105] Since it means that the public has the chance to express its opinion on the content and on issues related to the constitution-making process through participation in dialogues and discussions, conducted in this regard, and to participate in relevant decision-making, take special initiatives for lobbying or pressuring the organs establishing the constitution and consult with them regarding matters they wish to include in the constitution, until the constitution comes to reflect their needs and aspirations.[106]

Public participation and national reconciliation

Public participation in the constitution-making process is depicted as promoting national reconciliation and unity and thus contributes to political stability. This process generates a shared sense of belonging and destiny which is a critical element in achieving national unity. It also helps different and conflicting factions and groups find consensus and get to know the other's point of view. Thereby, this process enhances the opportunities for achieving national reconciliation among conflicting groups.

It is therefore advisable to encourage such talks, not only between the people and the constitution-making penholders but also among the people themselves, which deepen their understanding of the histories, contributions, concerns and aspirations of others. These are very important issues to strengthen national unity, conflict resolution and peacebuilding.

Constitution-making and Reform Options for the Process - Interpeace - 2012

1- The importance of public participation in the constitutional process:

Experts agree that public participation has clear advantages for the process and the prospects for long-term constitutional governance. Most objectives pursued in the constitution-making process cannot be achieved without grass-roots participation. It so goes beyond the "right" to participate or the "desire" to draft the best constitution with a view to achieving overarching and more severe goals related to reconciliation and strengthening national unity, especially for States that

103 Constitution-Making and Reform Options for the Process - op.cit. - p. 9.
104 Constitution drafting process in Tunisia - The final report - 2011 - 2014 -Carter Center - p. 81.
105 Consequently, participatory takes several forms as it is not limited to the representation in the Constituent Assembly and the participation in the constitutional plebiscite but could extend to make recommendations and suggestions to the Constituent Assembly or any other entity drafting the Constitution, lobbying, carrying out media campaigns and participating in the national dialogue and public consultations. Civic education (education) is one of the most important methods in preparing the citizen for public participation and public consultations, collecting the citizens' views and proposals and effectively analysing them are among the most important factors in the success and credibility of the participatory. See:
Participation and Societal Consensus-Building in the constitution-making process: Lessons Learned from International Experiences - op.cit. -p.12
106 Participation and Societal Consensus-Building in the constitution-making process: Lessons Learned from International Experiences - op.cit. - p. 11.

have suffered from war and crises on the one hand, and the legality and acceptance of the first constitution on the other, down to its role in expanding the constitutional and social reform programme on the third.[107]

Public participation strengthens national unity and along with the mechanisms of broad consultations can play a significant role in building democratic institutions based on the rule of law and respect for human rights. This is especially important for groups that have suffered from marginalisation in previous phases. As in the experience of South Africa during the regulation of public participation in the drafting of 1996 Constitution, which concentrated on soliciting people's views partly on involving black citizens of South Africa for the first time in the political process after decades of isolation and exclusion.

Also, successful public consultation is considered a prerequisite, among other requirements, to the legitimacy and acceptance of the new constitutional system. In so far as the constitution wins a consent based on widespread consultation, a sense of ownership of that new constitution is rightly fostered in the citizens. They will spontaneously work to operationalise and respect it. Thereby reinforcing the likelihood of its sustainability, given it represents a broad consensus and responds to the demands of the people, which reduces requests for reconsideration and negotiation about it in the future.

Out of the substantial benefits of public participation, we can also mention its relevance in expanding the constitutional and social reform programme given the new ideas it provides that contribute to the disclosure of issues that may be controversial or remain hidden or anonymous. Accordingly, participation has two effects, on the one side to avoid any shortfall in the availability of information, and on the other, bring a detailed picture of their concerns and hardships that would give a greater balance to the process which is usually monopolized by elites and experts involved in the constitution-making and who seldom realize the misery of the majority of their population. The participation of ordinary people in the process makes them aware of the contents of the constitution, how it protects their interests and how they can use its provisions to safeguard their rights.[108]

Conversely, it is usually possible to warn of potential risks of the community participation process if it is not well-prepared or the will is not sincere in meeting its requirements. Of such risks, for example, transforming the process into a theatre to display political differences and highlight and consolidate national or religious differences or others and to instil feelings of separation, divisiveness, and incitement rather than being a deliberative process conducive to building consensus and reconciliation. Also, caution must be exercised, as public consultations might raise the expectations of the people towards what the constitution will provide, because the omission of the draft constitution for something the people perceive as important, might lead to a sense of disappointment with the process and even with the constitution.

107 see in particular:
Lessons Learned from Constitution-Making: Processes with Broad Based Public Participation - Democracy Reporting International - Briefing Paper No. 20- November - 2011 - p. 4 - 6
Constitution-Making and Reform Options for the Process - op.cit. - p. 86 - 87.
108 The Millennium Declaration, Rights, and Constitutions - Yash Ghai Jill Cottrell - UNDP - 2010 - p. 76.

2 – The legal basis for the "right" of public participation in the constitutional process

It should be emphasized at the outset that public participation in constitution-making evolved from a "style of drafting and motivating" to a "right" that finds its main thrust in International Law. This Law states that the right to participate in activities related to public issues and provided for in the International Covenant on Civil and Political Rights which includes a right to participate in the country's constitution-making in which the individual lives.[109]

The international legal basis for public participation in the constitutional process

The first paragraph of article I of the International Covenant on Civil and Political Rights provides for the right of all peoples to self-determination, including the right to the concept of collective right to select the Constitution or type of governance of a group. Regarding the right of individual contribution, article 25 of the International Covenant on Civil and Political Rights states that " each citizen shall have, no distinction should be made between citizens as regards their participation on the grounds mentioned in article 2, the following rights and no unreasonable restrictions should be imposed.

In its general comment No. 25 of 1996, paragraph (6), the United Nations Human Rights Committee emphasised that the direct involvement of citizens in the management of public affairs includes procedures relating to the Constitution-drafting process.[110] And the UN Human Rights Committee concluded in the case of Marshall v. Canada that constitutional conferences or conventions are kind of considered a form to "conduct public affairs" in the spirit of article 25 (a) of the ICCPR.[111]

This was confirmed in the concluding observations of the 2005 state report on Bosnia and Herzegovina, where the UN Human Rights Committee recommended that Bosnia "should reopen talks on the constitutional reform in a transparent process and on a wide participatory basis".[112]

In addition, paragraphs 4 and 8 of the General Comment No 25 explicitly state that citizens take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives, an activity which is in turn protected by other human rights.[113]

Along with the previous international commitment, many states have explicitly committed to conducting community participation in drafting or amending the constitution and provided for in the charters of the process, whether it is an interim or transitional constitution, a national law, a presidential decree, the rules of procedure of the Constituent Assembly or the body commissioned with the constitutional process.

For example, the Presidential Decree in Afghanistan which considered that the Constitutional Commission functions are to (facilitate and promote public information on the constitution-making process during the entire period of its work; conduct public consultations in each province of Afghanistan, and among Afghan refugees in Iran and Pakistan and, where possible, other countries, to solicit the views of Afghans regarding their national aspirations; receive written submissions from individuals and groups of Afghans within and outside the country wishing to contribute to the constitutional process; conduct - or

109 Millennium Declaration, rights and constitutions op. p. 45.
110 CCPR/C/21/Rev.1/Add.7- 27 August 1996.
111 UN Doc. CCPR/C/43/D/205/1996
112 CCPR/C/BIH/CO/1-22 November 2006
113 CCPR/C/21/Rev.1/Add.7 - 27 August 1996.

authorise others to conduct studies - on the options of the draft constitution; prepare a report analysing the views of Afghans gathered during public consultations and made the report available to the public, and disseminate, and educate the public about the draft constitution).

It is observed in this decree that public consultations were not confined to citizens within the country but has also included the Afghan refugees wherever they lived namely in Iran and Pakistan, the two States who have hosted Afghan refugees at the time. This Presidential order is also accounted for requiring the Constitutional Committee not only to conduct public consultations but further to invest and take advantage of these consultation results as they were obliged to prepare a report analysing the Afghani views obtained as a result of these consultations to benefit from them.

The Constitution of Kenya Review Act of 2001 mandated that the Constitutional Review Commission of Kenya would within two years (conduct and facilitate civic education programs in order to stimulate public discussion and awareness on Constitutional issues; collect and collate the views of the people of Kenya on proposals to alter the constitution and on the basis thereof, to draft a bill to alter the constitution for presentation to the national assembly, parliament; and carry out or cause to be carried out such studies, researchers and evaluations concerning the constitution and other constitutions and constitutional systems as, in the commission's opinion, may inform the commission and the people of Kenya on the state of the constitution of Kenya).

The Constitution of Kenya Review Act of 2001

The Constitution of Kenya Review Act must:
Visit every constituency in Kenya to receive the views of the people on the constitution.
Without let or hindrance, receive memoranda, hold public or private hearings throughout Kenya.
And in any other manner collect and collate the views and opinions of Kenyans, whether resident in or outside Kenya.
And for that purpose, the commission

The importance of stipulating in the regulating document of the constitutional process to conduct this process and to invest its results too so as the executing body will then be obliged to carry out the process. More importantly, in some constitution, these consultations have become a source of the new constitution as the Ugandan experience reveals in this area. In Uganda in 1995, the law establishing the Constitutional Commission directed the Commission to achieve “a national consensus” on constitutional issues, and required it to.." seek the views of the general public through the holding of public meetings and debates, seminars, workshops and any other form of collecting public views,” it also required the commission “to study and review the [then existing] Constitution” in order to make proposals for a new constitution that would, among other things, “establish a free and democratic system of government that will guarantee the fundamental rights and freedoms of Ugandans". This is what the Commission committed to which indicated in in its final report that it had used four major resources to prepare its recommendations for a new Constitution. They were the people's views; the commission's own study of "our cultures, common history, problems and people’s aspirations"; its "mandatory review of the [then] current Constitution"; and "comparative study of constitutional arrangements of other countries".[114]

On the other hand, we have to "warn" of the "vague provisions" which refer to this principle in general without imposing any clear obligations to operationalise it. For example, the Iraqi Constitution of 2004 referred to the Law of administration for the state of Iraq for the Transitional Period of 2004, in article 61, paragraph (a) in

114 Constitution-making and Reform Options for the Process - op.cit. - p. 114-115.

which it provides that the National Assembly shall write the draft of the Permanent Constitution and in paragraph(b) of the same article provided that "the permanent draft constitution shall be presented to the Iraqi people for approval in a general referendum, and in the period leading up to the referendum, the draft constitution shall be published and widely distributed to encourage a public debate about it among the people". The concept of public participation has been diminished to the mere release of the draft constitution before the referendum and encourages discussion among "the people", which is a promotional educational process unrelated to the genuine public participation ought to begin both before and during the writing of the draft Constitution, as well as prior the referendum to allow feedback and include the appropriate views into the core of the draft not just "inform" the people of the draft constitution after the completion of writing. There is also no obligation to elicit and analyse the views of the people as in previous African Constitutions. The most prominent critique here is its disregard of the refugee's engagement in this process despite the presence of millions of them outside the country. This was entirely ignored contrary to previous Afghan texts.

This shortcoming is also witnessed in the Egyptian Constitutional Declaration issued by President Pro Tempore Adly Mansour on 8 July 2013, which laid the foundation for the promulgation and adoption of the current Egyptian Constitution of 2014. It provides in article (28) for the formation of a committee of experts of eight persons specialised in proposing amendments to the suspended 2012 Constitution so that its mandate shall come to an end within thirty days after its formation. And by the article (29), "the aforementioned committee in the previous article shall present the proposed constitutional amendments to a fifty-member committee... The committee must finalise the final draft of the Constitutional amendments within a maximum of sixty days from the date of receiving the proposed amendments, during which it shall provide such for social dialogue".

Therefore, identifying a duration of 60 days to study the proposed Constitutional amendments, prepare the final draft, and also hold a "social dialogue", seem woefully inadequate which will be automatically transformed into a formal process nothing else as what happened later.

3 – Identification those targeted for public participation and those that prepare it thereto:

The public participation process should be inclusive of "all groups of people" in the formulation of the constitutional document, so we find that previous constitutional or legal provisions that have referred to this process spoke of the “Iraqi people, people of Kenya, Afghanis … ". This is natural and logical as this process must be inclusive and reach all without exclusion, exception or discrimination.

Nonetheless, it should be recognized that specific groups ought to be targeted, accessed, engaged in debate and presented with ideas and views on the constitutional process as, perhaps, they will not be automatically able to do so given the presence of several constraints that traditionally entrench their exclusion from this process. These categories to be focused on, for example, are (women, either because they are generally disregarded in society or because of organizers are subject to the prevailing, exclusionary social norms that make it hard for women to participate in the same ways as men do.[115] Also, those belonging to ethnic or religious minorities; marginalized caste groups who are excluded from meetings, live in remote areas, belong to small language groups, or do not understand constitutional issues; the elderly, who may have to stay at home; the sick, the disabled; and immigrants, who, even if citizens, may be victims of exclusion).

115 Constitution-Making and Reform. Options for the process -Op.cit. - p. 78-79.

The role of political parties, organizations and official institutions in the public participation process.

International precedents and practices reveal that cooperation with parties, organizations and existing formal institutions may be useful or necessary for the success of the public participation process; however, it must not be the sole platform to complete that process.

Not all groups may exist or are effective or may not even represent all the people but might be a cause of the conflict.

It should not be assumed that all persons are affiliated to any of other groups or want to participate only in these groups. A person may have concerns other than being affiliated to any of those bodies and would be willing to participate directly as an individual

As for the party conducting the process, the Constitutional Commission established to prepare the draft constitution is often charged with administering the public consultation process. International precedents reveal quite a few good practices in this regard by the particular circumstances of States:

In some cases, the body involved in the constitutional process established committees of its own to hold consultations with the people. As has been the case, for example, in Bolivia in 2009 and Nepal in 2010.

In other cases, with a view to expediting the process, before establishing a constitution-making body, specialised bodies were mandated to conduct community consultations and present the findings and suggestions to the constitution-making bodies immediately as created. This was, for example, in Colombia in 1991 and Timor-Leste in 2002.

Without losing sight of the civil society organisations – international and local – setting up grass-roots consultations in an attempt to open the process and involve the people.[116]

International practices also reveal the influence of the body in charge of the actual preparation of the draft Constitution on public participation. People often engage significantly when an Independent Commission prepares the draft Constitution, as was the case in Kenya, Uganda, compared to its involvement rate when the draft Constitution is developed by a Committee of the legislature or a Constituent Assembly as community participation and transparency are less clear.[117]

4 - Content of the public participatory process:

Defining the content of community participation process depends at what stage this process is carried out and whether consultations and community participation had begun prior or after the launch of the constitutional process.

Some States have opted to begin the community participation process before the initiation of the constitutional process itself. A method that can be uniquely appropriate to States in conflict and in need of resolving many decisions, including the identification of whether the constitution-making process is necessary and desirable? How to implement it and how to utilize it to encourage critical stakeholders or political actors to commit themselves to the process? Public consultations might sometimes end up conducted through a referendum to resolve key issues such as what took place in Colombia, Spain and Venezuela.

116 Constitution-Making and Reform Options for the Process -Op.cit. - p. 116.
117 Constitution-making and Reform Options for the Process - Op.cit. - p. 82.

Discussion and consultations, at this early stage, affect the procedure of structuring the process itself, including the types of bodies and institutions that should be used, selection and election of their members, mechanisms of public participation and a timetable for the process. In the course of the preparation of the Constitution of South Africa of 1996, the community liaison department conducted popular consultations with civil society and community leaders to identify the best technique and conduct popular participation activities for legitimate and credible consultations. In Afghanistan, women's groups were consulted about how their representatives should be selected.

Public consultations processes focus during the constitutional process of assisting in the preparation of a list of issues for consideration as part of the reform or drafting programme.

After preparing an elaborate proposal for the draft constitution, before the last debate on its adoption, the consultations process is centred on collating public input on the draft prepared. Some States also used people's views to identify and resolve some likely divisive or contentious issues to assist in determining and deciding on them.

But caution should be exercised that the participation procedures are very complex and may lead to the manipulation of the constitutional reform process, slowing it down or blocking it.[118]

Two main remarks should be provided here:

The first observation: some countries seek public participation in the last phase after the completion of the draft constitution which might be faster and certainly less expensive, but less democratic and effective as to might exclude some other troubling issues to the people from the debate. This might lead to frustration among groups that feel the draft constitution does not reflect their concerns or that the problems have been decided prematurely. Also, constitution-makers might also be less inclined to alter the draft constitution, which took a long time to negotiate and prepare. Thus, ideally, the people's views should be acquired both in advance of a draft being ready to help in its development and after it has been completed to test whether it meets the people's concerns.[119]

Second observation: numerous studies and research warn against "the cost of community participation" if completed comprehensively as should be conducted (for example, the costs of constitution-making in Africa have been estimated as equivalent to US $30 million for South Africa, $10 million for Uganda, $ 6 million for Ethiopia and 4.5 million for Eritrea or between 15 cents and $ 1.5 per person in the Country).[120] And reference should be made, first, that this cost covers the entire constitutional process not only community consultations activities and it should be emphasised, second, that the price remains quite low if compared to the costs of war and conflict if kept going. In many cases, the Constitution is the culmination of the solemn declaration for peace and overcoming conflict and previous bloody wars It would, therefore, be surprising that States allocate open budgets for war when in fact they adopt full austerity when the time comes to spend less in times of peace.

118 Guidelines for Human Rights and Constitution-Making - op. cit. P. 8
119 Constitution-Making and Reform Options for the process -Op.cit. - p. 112.
120 Constitution-Making and Reform Options for the Process - op.cit.- p. 37.

5 - Effectiveness of public participation in the constitutional process:

There is no established rule on the effectiveness of public participation process, that is, its ability to make a real difference in the constitutional process, both in terms of form or content. There exist successful and failed precedents and practices. Effectiveness depends on, inter alia, endorsement by all political actors, and the explicit support of the authorities, including the constituent assembly, along with the presence of a realistic timetable and the verification that the contribution is a well-studied, transparent and rule-based process. Safeguards must be put in place to shield the process from being monopolised by populist movements, influential individuals, lobby groups, partisan politics or be restricted to narrow biased attitudes and considerations.[121]

A positive outcome of the public participation and national consultations in Tunisia, during the preparation of the 2014 Constitution, is the inclusion of the rights of political opposition in the draft Constitution, a case raised during national consultations, as well as on other occasions. In Nicaragua, the proposals of the citizens and the citizenry received great acceptance made the body responsible for drafting the Constitution to introduce over 50 amendments to the draft Constitution.[122] These amendments encompassed forty-five articles out of the hundred eighty-three constitutional provisions.

Achievements

Community participation contributed to the inclusion of the rights of the political opposition in the Constitution during the preparation of the Tunisian Constitution and the insertion of over fifty amendments to the draft Constitution of Nicaragua.

Conversely, other experiences suggest that public participation has not decisively affected the content of the draft Constitution. In East Timor, public consultations followed by a public report summarising the views of male and female citizens were prepared. The report was subsequently referred to the Constituent Assembly. But the latter did not express much interest in the views of all citizens [female] and citizens [male] and continued to work on the draft constitution prepared by the majority party within the Constituent Assembly.[123]

It can be said that the success of this process in achieving its goal depends on two main factors. The first is genuinely associated with the sincerity, the will, and the plan of the those involved in the public participation and the constitutional process as a whole, and the second related to the efficacy and the ability of the target audience, i.e. persons and bodies taking part in this process.

The impact and effectiveness also depend on the approach taken by the decision-making body in the collection and analysis of people's views, the importance given to them and how the official bodies (constitutional commissions, constituent assemblies) address oral or written proposals submitted to it. Suggestions may be manipulated or analysed with bias, or some views may be kept discreet. It is therefore emphasised that transparency and truthfulness in examining the views are essential to the credibility of the whole process. In Kenya, for example, the decision-making bodies conducted extensive popular consultations and strenuous analysis of popular views and incorporated them in the draft Constitution and its final text. While the decision-makers in Afghanistan were essentially political leaders; the commission was not an independent body, and

121 Lessons learned from Constitution Making: Processes with Broad based public participation -p. cit.- p. 2
122 Constitution drafting process in Tunisia - The final report - 2011- 2014 - Carter Center - p. 85.
123 Participation and Societal Consensus-Building in the constitution-making process: Lessons Learned from International Experiences- op.cit. - p. 12.

the views that had been collated and analysed by the research section and the Afghan secretariat were ignored.124

As for the impact of the target audience, it is established that community participation in the constitution-making process first requires the citizens be helped to understand the reality of the Constitution and prepare well for this participation through education and civic education. Seldom can public participation be effective without the civic education that enhances the understanding of "the people" for the structures and mechanisms of the state and its obligations towards its citizens.125

This is what Rwanda had done, for example, in 2003 before the referendum on its Constitution in the last two years of civic education preceded the referendum in Ruwanda. Copies of the draft constitution were distributed, and intensive efforts were made to reach marginalised groups, including those who could not read or write, to inform them about the contents and help them decide whether to vote for the draft. These efforts seem to have led to high voter turnout and an overwhelming vote in favour of the constitution.126

As a result, lessons learned from countries undergoing constitution-drafting processes, both those that have just emerged from conflicts or those undergoing democratic transformations reveal the commitment the rules of public consultations have resulted in strengthening the legitimacy, added value and a greater acceptance of the new constitutional system.127

124 Constitution-Making and Reform Options for the Process - op.cit. - p. 83.
125 Participation and Societal Consensus-Building in the constitution-making process: Lessons Learned from International Experiences- op.cit. - p. 5.
126 Constitution-Making and Reform Options for the Process - op.cit. - p. 92.
127 Constitution drafting process in Tunisia - The final report - 2011 - 2014 -Carter Center - p. 81.

Second - International precedents and practices:

It is evident, from all the preceding, the importance of operationalising the rules of public participation in the constitutional process since its inception, sometimes before it begins, as presented in the preceding pages, which depicts to us that public participation is considerably greater than merely being a formal or a procedural track, because it is an essential cornerstone of the legitimacy of the constitution as a whole and as crucial as texts it will contain. The people's sense of "ownership and creation" of this project will foster its viability and sustainability.

The subsequent pages offer the experiences of some states in this respect, taking into account two key points:

Firstly- We have resorted to the selection of States that have gone through problematic conditions as Syria. Some of which have witnessed wars, divisions, exclusion and marginalisation; indeed the situation of few was worse than that in Syria in terms of illiteracy and education, national and ethnic diversity, multilingualism and the stretch of the country's acreage. As well as the adverse economic conditions of post-conflict States. Nevertheless, efforts have been made to respect the rules of public participation, which have succeeded and failed. But it has committed to its principle, which is indeed to its credit.

Secondly- we will present here successful and unsuccessful experiences to benefit from respectively by avoiding their mistakes and not falling into them later. We will designate a subsequent paragraph to what could be used in the Syrian reality.

1- Uganda 1995:

After decades of turmoil in this country of more than fifty leading ethnic groups, divided according to regional, religious, economic and racial lines, after a four-year insurgency, a new government came to power in 1986 and established a Ministry of Constitutional Affairs to develop a participatory constitution-making process.

In 1988 a law established the Uganda Constitutional Commission, composed of twenty-one members, with a mandate to develop a new draft constitution. The UCC was to "involve the people of Uganda" in deciding on the constitution, work toward a "national consensus" on constitutional issues, "seek the views of the general public," and "stimulate public discussion and awareness of constitutional issues."

The UCC did its work in five key phases:[128]

First - in 1989, it developed an agenda of constitutional issues by consulting the grassroots widely, holding or attending about 140 seminars all over the country attended by almost seventy thousand people. The process identified twenty-nine key constitutional topics and many secondary issues.

Second, in 1990, it developed educational materials on the agenda of issues, including publishing of copies of past constitutions, and preparing

a 111-page book entitled "Guidelines on Constitutional Issues", a pamphlet containing "253 guiding questions" a pamphlet on how to prepare written proposals and views, as well as educational posters. Commissioners

128 Check fully this experience in The Constitution and Reform. Options for the process -op.cit. - p. 348 - 349.

were divided into teams to present the educational materials at seminars held in all of Uganda's 890sub-counties.

Third, in 1991, it focused on receiving the views of the people in the form of written submissions and oral presentations, with commissioners, again holding public meetings across the country to obtain views and assure the people that their views would not be tampered with after being submitted.

Fourth, from late 1991 to early 1992, the commission analysed all views received, translating submissions presented in local languages and summarising what all submissions had to say on each of the twenty-nine agenda issues. In the process, it became clear there was consensus on most issues, and a few remained contentious, and statistical analysis of the views was used to help the commission reach its decisions on these.

Fifth, in the latter part of 1992, the commission's final report and a draft constitution were prepared, presented to the government, edited and published in 1993.

Additionally, the Uganda Constitutional Commission also prepared an interim report in 1991 on adopting the new constitution, analysing the people's views who have shown their opposition to assigning those tasks to the national legislature, and endorsing its assignment to a Constituent Assembly. The government accepted that advice.

In March 1994 elections for a Constituent Assembly were held. It comprised 214 directly elected constituency members, 39 indirectly elected women's representatives, and 31 interest-group representatives. The Constituent Assembly commenced its meetings in May 1994, and on 22 September 1995, it enacted the adopted draft constitution. Although the President, had the power to call a referendum on any case in that draft, no such referendum was called for, and the Constitution was promulgated on 8 October 1995.

2- South Africa 1996:

The South African approach in the constitutional drafting process is a positive and successful broad public participation example.[129] The leaders of the Constituent Assembly leaders declared that they would like to engage the members of the public and consult them about the Constitution, as this would create a sense of ownership and legitimacy for both the process and the Constitution. The administrative management body of the Assembly established a community liaison department, which took four months to plan the participatory process. During which emphasis was placed on reaching as many citizens as possible, including illiterate and underprivileged citizens, by convening popular constitutional town hall meetings and meetings with civil society organisations on specific issues, the use of advertising and media campaigns, and civic education workshops.

The Community Liaison Department worked in close coordination with the Constitutional Assembly's media department to develop a campaign to raise awareness in the ongoing process and to encourage the public to participate. The media campaign emphasised the role of the public in the process, and the advertisements included messages such as "It's your right to decide your constitutional rights" and "You've made your mark" and "You voted; now have your say".

129 Review fully this experience in:
Lessons learned from Constitution Making: Processes with Broad based public participation - op. cit.- p. 8-9
Constitution-Making and Reform Options for the Process -op.cit. - p. 93 - 94.

The Community Liaison Department also offered civic education programmes related to the process and constitutional issues through the use of posters, brochures, leaflets, a biweekly constitutional newsletter, called "Constitutional Talk": it distributed 160,000 copies each week, booklets such as "You and Building the New Constitution", books and videotapes, and an official website. Also a weekly television programme, "Constitutional Talk", to promote discussions on constitutional matters, such as the death penalty. An hour-long radio talk show was organised in eight languages and reached more than ten million South Africans each week. Ten thousand people also made use of a telephone "Constitutional Talk Line" to call in and leave submissions or receive information. The talk line was available in five languages.

Figures from the experience of South Africa 1994 – 1996

30,000,000: people heard of the constitutional process
20,000,000: people knew they were able to make proposals
120,00,000: copy of the final Constitution distributed free of charge
10,000,000: citizen was reached by the radio programme
7,000,000: copies of the Constitution annexed to pictures and illustrations were reprinted for the benefit of the illiterate in the country.
45,000,000: copy of the draft Constitution was distributed free of charge
117,000: people got in touch with the members of the Constituent Assembly.
160,000: copy from the constitutional newsletter was weekly distributed called "Constitutional Talk".
13,443: proposal submitted by citizens on the content of the Constitution.
10,000: citizen made use of a telephone called "Constitution Talk Line" to call in and leave suggestions or receive information.
1,000: coaching workshop was organized within a year.
600: civil society organizations participated in the process.
486: Educational workshops for the Constitution
11: official language the final text of the Constitution was translated into
8: languages a weekly radio programme spoke of the Constitution.
4: months of planning for the participation process

The community liaison department also established a constitutional education program, which was linked with hundreds of civil society organisations despite not initially planned for. The 486 face-to-face workshops targeted the country's disadvantaged communities.

Educators specializing in civic education have also been appointed, and a manual was created to ensure that the messages and the methodology were consistent. The three-hour workshops used participatory methods such as role-playing. The objectives were to educate disadvantaged citizens about the process, South Africa's constitutional history, and human rights and also to encourage participants to provide input. The workshops did not educate people about specific constitutional issues or options or the draft constitution. Most of the workshops were held after the constitutional public meetings were conducted.

The meetings were organised in the multi-party panels of Constituent Assembly member, which included all nine provinces. Views were sought regarding constitutional matters before the draft Constitution was prepared. The public saw for the first time previously warring factions sitting peacefully together discussing constitutional issues. The process was also precedent-setting in that black South Africans were included in politics as they had never been before.

Four and a half million copies of the draft constitution, in a simplified format, and twelve million copies of the final constitution were sent through the mail for free, distributed in taxis, newspapers and schools. Copies of the final constitution, in particular, were sent to the members of the official security forces. Braille versions and recordings of the final constitution were also made, as were comic-book versions of the bill of rights. Teaching aids on the final constitution were distributed to schools.

These materials created to promote constitutionalism and ownership of South Africa's new constitution, and to carry out these postadoption tasks were distributed during "National Constitution Week". The community liaison department remained in operation for a few months after the Constituent Assembly concluded its work.

As a result, there was direct contact between the members of the Constituent Assembly and over 117,000 people. Citizens presented 13,443 submissions, and over two million citizens signed petitions addressed various themes. The process of considering the proposals was in two stages: The Secretariat of the Constituent Assembly processed submissions and summarised by the technical groups of the various thematic committees to make them more accessible. Special consideration was given to submissions by organisations or groups with specialised knowledge on contentious issues.

After the publication of the draft Constitution, the public was again invited to contribute and submit their views on delicate issues relating to the draft text of the constitution. The submissions were condensed then distributed by groups based on the topics addressed and attached to the respective article of the Constitution on that topic. Then circulated for consideration by the members of the Constituent Assembly. Subsequently, the final negotiations began to amend the text in light of the proposals.

An external evaluation determined that three-quarters of the South African people— about thirty million— had heard about the process, and nearly twenty million knew that they could submit constitutional issues. Nonetheless, the depth and creativity of South Africa's participatory process have inspired numerous other people in the whole world.

It can be argued that the successful track of the community participation in South Africa was based on two essential elements, the cross-mentoring programmes and the effective initiative to confer with the citizens. Knowing that South Africa did not have any tradition regarding civil or constitutional legislation. A significant proportion of the population lived in rural areas away from the media. Studies have shown, however, that the mentoring campaign was able to target 73 percent of all adults, the ratio of familiarity with the Constitution was relatively high, and a sense of ownership to the Constitution was high, confirming the success of the participatory track.

3- Kenya 2004:

The process was laid down by an Act of Parliament prepared after roundtable discussions involving many parties and civil society. The law's principal objective was a 'people driven' process, a phrase that inspired many, though prompting ridicule from a few. The Act calls for the people to be given opportunities to 'actively, freely and meaningfully participate in generating and debating proposals to alter the constitution' [section

5(c)] and the process was to ensure that the 'final outcome of the review process faithfully reflects the wishes of the people of Kenya' [section 5(d)]. As far as possible, decisions were to be by consensus.130

The Constitution of Kenya Review Commission (CKRC) started the process and appointed by the president on the nomination of parliament. It provided civic education to the public on constitutional issues with the help of civil society organisations already involved in this work and established constitutional forums composed of locally elected leaders (in each of the 210 electoral constituencies), to promote discussions on reform to facilitate on consultations with the residents of each constituency. It also appointed a coordinator for and set up a small library in, each of the 74 districts. The public conducted their debates, and many organisations held meetings to prepare their submissions to the CKRC.

Based upon community consultations
What the people of Kenya wanted from the new Constitution

- **Give us the chance to live a decent life: with the fundamental needs of food, water, clothing, shelter, security, and basic education met by our own efforts and the assistance of government**
- **We want a fair system of access to land for the future and justice for the wrongs of the past**
- **Let us have more control over the decisions which affect our lives, bring government closer to us—and let us understand better the decisions we can't make ourselves but affect us deeply**
- **We don't want power concentrated in the hands of one person**
- **We want our MPs to work hard, respect us and our views—and the power to kick them out if they don't**
- **We want to be able to choose leaders who have the qualities of intelligence, integrity, and sensitivity which make them worthy of leading**
- **We want an end to corruption**
- **We want police who respect the citizens—and who can be respected by them**
- **We want women to have equal rights and gender equity**
- **We want respect and decent treatment for the disabled**
- **We want all communities to be respected and free to observe their cultures and beliefs**
- **We assert our rights to hold all sections of our government accountable—and we want honest and accessible institutions to ensure this accountability.**

Millennium Declaration and rights and constitutions - United Nations Development Programme - UNDP

The CKRC succeeded in generating a nationwide discussion on critical issues, and, for several months, constitutional matters dominated the media. The public response was overwhelming In each constituency, at least one meeting, generally lasting two full days, was held to receive views Over 37,000 submissions were received, from institutions, groups, and individuals, ranging from lengthy presentations to a few sentences. All oral submissions were recorded, in writing and on audio and videotape. Interpreters, of spoken and sign language, were available and summaries of the views were sent back to the locality to check for accuracy. The views were carefully reviewed and analysed, qualitatively and statistically.

The draft prepared by the CKRC on the basis of the proposals was submitted for public consultation and then to the National Constitutional Conference (NCC) which comprised all members of Parliament, three delegates elected from each district, forty-two representatives of political parties, and 125 representatives of religious, women's and youth groups, the disabled, trade unions, and NGOs, 629 people in all. It was the most representative body ever assembled in

130 Check fully this experience in The Millennium Declaration and rights and constitutions op. cit.- p. 78 – 79

Kenya. Its function was to debate, if necessary, to amend, and adopt the draft constitution presented by the CKRC.

Finally, there was the National Assembly (NA) which was to enact changes to the constitution by formal amendments. The NA was to be assisted in the discharge of its functions about the review by a Parliamentary Select Committee so as the National Constitutional Conference was to adopt the provisions of the draft constitution by the votes of two-thirds of all its members, failing consensus. If on any point such a vote was not forthcoming. The provision in question was referred to the people in a referendum, and the results of the referendum were incorporated in the draft adopted by the NCC, before sending it to the National Assembly. The NA could either approve or reject the draft but could not modify it.

In the opinion of many Kenyan citizens, the 2004 draft still has a considerable hold over the popular imagination, arguably partly because of the actively participatory process by which it was prepared.

4- Nepal, 2009:

The Nepalese public consultation process in 2009 is a cautionary tale about launching a public consultation process without a clear and agreed upon plan.[131] There was little effort to prepare the public for consultations. The constitution-making body started the consultation process by requesting that the members of the public to phone in, e-mail, or send their views by mail, when few responded, a three-hundred-item questionnaire was prepared and distributed at the face-to-face public consultation meetings. However, the questionnaire was not tested beforehand, and it was overly complicated and confusing. Highly educated Nepalese had a hard time understanding the questions. Additionally, the public did not have sufficient time to review and answer the question. The respondents were expected to hand in the questionnaire at the end of the meetings.

Moreover, the meetings were organised at the last minute with little notice; there was no harmonised plan for conducting the meetings or recording the views. They were poorly attended.

The exercise did generate thousands of views. But the constitution-making body did not have a plan for analysing the views and reporting the results.

In the end, each member of the constitution-making body was given about a thousand submissions to analyse. The methodology ranged from ignoring the submissions to handing them over to civil society actors or friends to assist with the analysis.

The resulting analysis did not accurately reflect the views gathered, and at times was manipulated to suit the members' views.

5- Tunisia 2014:

The Tunisian constitutional experience is considered from the best Arab experiences undertaken recently compared to the prevailing practices and breaches in the Arab world. However, the evaluation of its experience by the firmly established and immutable international standards raises some comments and criticisms by competent human rights organisations which witnessed and monitored and then value that process.

131 Check fully this experience in The Constitution and Reform. Options for the Process - op.cit. - p. 117.

It is noteworthy that there was a will to involve citizens in the process. However, lack of planning, methodology, and—to a certain extent—understanding of what public participation meant resulted in limited opportunities for citizens' involvement. Those that did exist were often poorly communicated to the public.[132]

The beginning was when the rules of procedure were formulated, which allocated one week per month for the members of the National Constituent Assembly to engage directly with citizens. (Chapter 43) However, these "outreach weeks" or "week of the regions" never materialised. There was no administrative, financial, or logistical support provided by the NCA for outreach activities, which were left to the initiative and individual commitment of the deputies.

Participation in the Arab constitutional heritage

It should be noted that participatory and transparency principles are relatively modern concepts in the Arab constitutional heritage, as the governing regimes have not been, over their history and with their different orientations, concerned at any time with consulting with the people, requesting its view or informing it of what is being planned for its present and its future.
Rather, for long decades giving an opinion was indeed precarious.
At a time when the quest for knowledge and access to information often requires accountability and punishment.

In the first months of the constitution-making process, some members appeared very committed to reporting to their constituencies and were able to mobilise on their own while others relied on their political party structures to prepare meetings. But without any formal institutional support, these initiatives remained rare, and citizens began expressing scepticism toward the NCA, whose work was neither well known nor well-understood. Ironically, instead of addressing complaints by increasing outreach, the week devoted to this task was cancelled altogether.

Thus, the only foreseen mechanism to encourage regular contact and exchange between deputies with their constituencies was not better designed and finally dropped altogether.

Early on, the National Constituent Assembly bureau appointed a Deputy Assistant to the President of the Council, in charge of the relationship with citizens and, civil society and Tunisians Abroad. The deputy set up a working group that launched several projects to consult citizens through various means but lacked logistical means and support and, to a certain extent, internal backing.

Furthermore, the few opportunities put in place for citizens' involvement were not coupled with any information campaigns and thus remained mostly unknown to the general public. For instance, the online consultation mechanism on the official NCA website launched in September 2012 - to allow citizens to submit suggestions on issues of importance in the Constitution - was not advertised beyond a short press conference. While the initiative itself was positive, the online consultation received only 217 online contributions.

132 Review this experience fully in The Constitution- Making Process in Tunisia - The final report - 2011- 2014 - The Carter Center - p. 84-85.

Third - What could be drawn upon in the Syrian reality:

Undoubtedly those familiar with the Syrian reality and the causes and ramifications of the conflict realise the importance, gravity and usefulness of community participation in the context of the Syrian constitutional process.

The conviction of many that they are marginalised is one of the reasons for the onset of the Syrian conflict and all legislation issued up to the constitution do not express their views, protect their interests and reflect their aspirations. In the absence of a culture of dialogue in society, and the despair and convictions of many that they would not be consulted, and even if asked, their suggestions would not be taken into account and if they, they would remain convinced that it was done for other reasons unrelated to the fulfillment of their proposals and their implementations. Whether that conviction is real or not, right or exaggerated, it should be acknowledged that it exists and reflects the Syrian reality and the views of a large segment of it.

After the exacerbation of the conflict and the resulting repercussions and effects of the war on both human and stone, the importance of this issue is accentuated in the face of a genuine and realistic exclusion, by force of arms and fatwas, for many at home and abroad alike. Also, in light of the changing priorities and demands, what would result from any dialogue or community participation in Syria after 2011 would undoubtedly be different than before 2011.

For all the above, this issue seems a priority for the present and the future of Syria.

Past international experiences and practices have revealed a disparity in how States benefit from such participation and how to comply with or circumvent them. We can draw, from all the previously referred to international experiences, the following observations that Syria could utilise in the context of its forthcoming constitutional process:

First- Commitment to public participation shall not be evaded under the pretext of circumstances or divisions: As past experiments have shown that states that had similar or sometimes worse conditions and divisions than Syria have adopted these principles and succeeded. And some of which succeeded without having a previous civic culture and no legal or political awareness.

Indeed, some states had suffered from high illiteracy rate; nevertheless, They overcame all those obstacles, these are what Syria should commit to and work to attain.

Second- It was clear that states started the public participation process before beginning the Constitutional process itself to determine the need for that process, its content and how to do it. Syria may be in need now of an early public participation process that sets out the path and priorities that the Syrian people with its diverse components and "multiple places of refuge and displacement" estimates it now needs, and that is a priority above everything else.

This process can alleviate the harsh exclusion and marginalisation of the people in the ongoing peace negotiations in the Geneva and Astana tracks as well as other agreements being made around Syria regardless of the presence or representation of Syrians.

This early process can also transcend the crisis of the loss of legitimacy and allegations of representation or not which arise in each round of the peace talks. Particularly under the false pretences of many that they

"represent the Syrian people", or that "the Syrian people are the ones to decide their fate". Despite the actual existence of the Syrian people and its massive and widespread presence, by asylum waves, in many parts of the world; nonetheless, these people have not yet been asked to determine their own destiny.

It may, therefore, be appropriate to think of an early process to determine the course of all subsequent, constitutional and unconstitutional, processes.

Third - It can be procured constitutionally from experience, that it shall be provided for, clearly and explicitly, the principle of public participation in the constitutional process in the heart of the interim constitutional document which will pave the way for the drafting of the Country's Permanent Constitution.

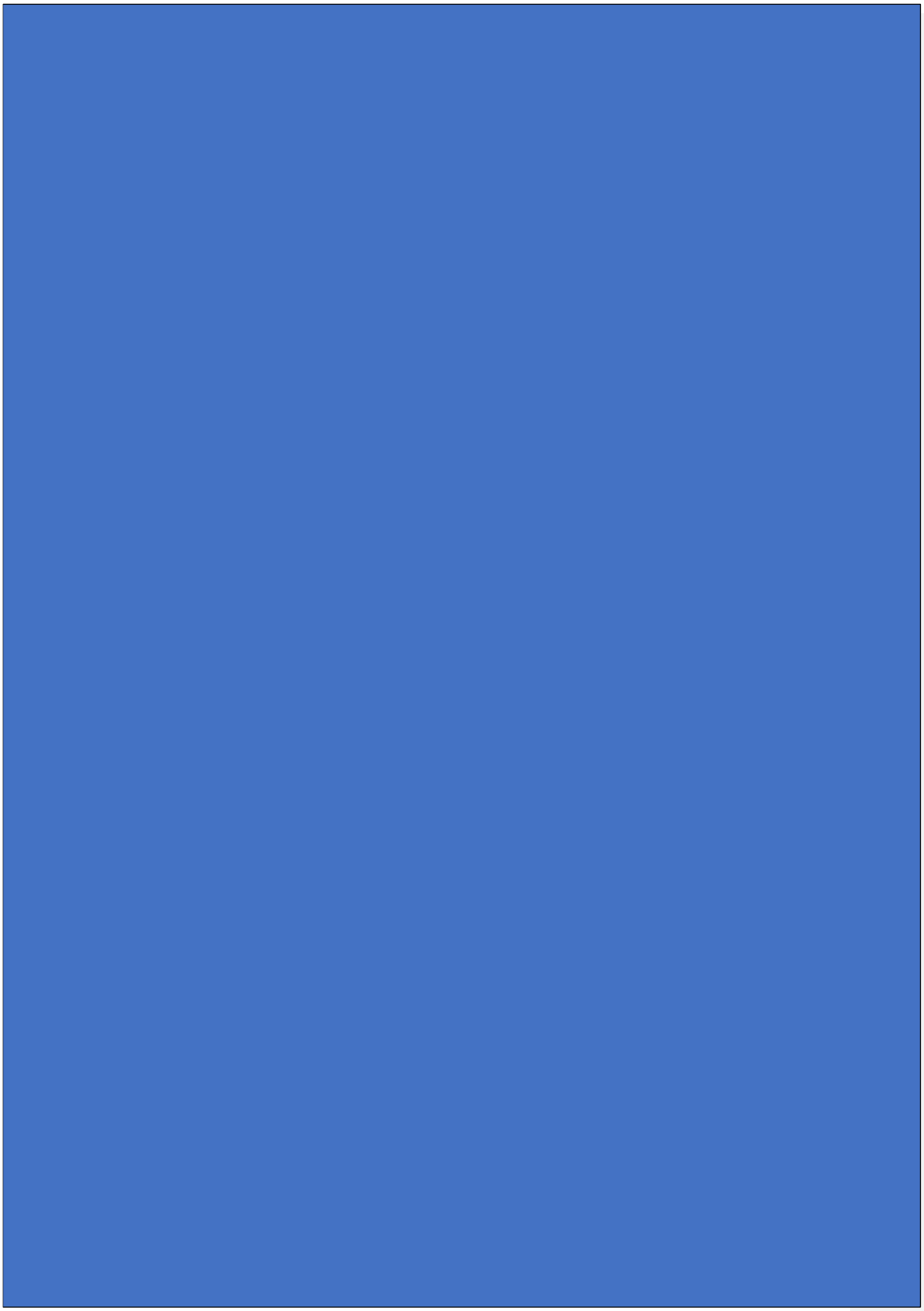
This text must be transparent in its formulation and purpose and must indicate that this process is binding. And not just a follow-up to the adoption of the draft Constitution but a precedent too. The participation of the people should be guaranteed to be cognizant of what they want to include in the draft constitution and not just to "inform" them only of what they have "decided" to put in the draft.

The importance of emphasising the inclusion of such provision in any transitional constitutional document is the possibility of challenging the unconstitutionality of any subsequent executive law that might disregard the considerations of the public participation in the constitutional process.

Fourth - States have usually resorted, following the adoption of this participation in their transitional or interim constitutions, to operationalise them through presidential decrees or established laws in the relevant bodies of the constitutional process. These include constituent assemblies or constitutional commissions and here the issues of public participation should be taken into consideration at this phase and in those texts with the emphasis always on:

- ✓ 1- Ensure effective and equitable participation of women in particular. and overcome obstacles that preventing access and communication with them.
- ✓ 2 - create mechanisms to ensure the community participation of refugees and internally displaced persons wherever they may be.
- ✓ 3 - Allocate ample time to conduct this process and analyse their data to utilise them.
- ✓ 4 - Pre-qualification of Syrian civil society both within and outside the country (due to the circumstances of the war) to work on this issue as a key partner as demonstrated by the experiences of many States.
- ✓ 5 - Mandate a specific body to carry out this process (Constitutional Commission, a committee competent in community outreach in the Constituent Assembly) and provide the necessary human, material and technical resources and not to leave this process to the activity and effectiveness of members of the constituent assemblies and their jurisprudence.

The participation of the community in this concept which acquires specificity with that of the Syrian reality is no longer just a "procedure that leads to the content" of the Constitution. But rather a "procedure that defines the content" which should honestly reflect the consensus of the people at a certain stage in its history and course. Note that this content will be the subject of the following pages.



Preface

Constitutions differ among them in terms of substance and content, although similar in harmonisation and format. Each Constitution reflects the orientation of its state at some point of its historic course, the priorities it seeks to highlight, the political philosophy, economic ideology and the social values that dominate them during its formulation.

Constitutions usually contain issues that are agreed upon by proprio motu and are not problematic when adopted. While other matters raise other major problems when discussed, in which consensus on constitutes a fundamental challenge, the failure of which might lead to the decimation of the peace process in the state and the return to the course of conflict and violence.

Those "divisive" issues are often the ones for which conflicts arose (such as governance and power-sharing, minority rights, political system change, the restructuring of the army and security forces), or those that instigate chronic social divisions such as religion and secularism, and even women's rights issues to a relative segment of society.

Divisive issues as a whole constitute substantial issues couched in emotional terms, based on historical claims, involving narratives of past discrimination or exploitation, or entitlements to human or group rights. The fundamental rule thereon is that it cannot be resolved as soon as it is voted on like all regular contentious issues when designing the content of the constitution because that could jeopardise its legitimacy and threaten the consensus around it and its acceptance.[133]

International experiences and practices indicate that some solutions and strategies can be pursued to overcome some of these divisive issues:

Of these solutions, for example, "**formal and symbolic recognition of the problem and the right**". As groups that have been marginalised or oppressed are in desperate need of recognition of their past sufferings and their place in the new political order, delicate negotiations may be required here to reach the appropriate formulation to achieve the right balance which may facilitate access to a solution of other issues geared more to substantive matters.

The "referendum" is also considered one of those options to resolve the fate of a dispute among the people, as Greece and Spain did to solve the highly contentious issue of the future of the monarchy, and as Canada is doing on the fate of the province of Quebec. Which also occurred in the Maldives on the choice between a parliamentary or a presidential system. Note that during the drafting of the Constitution of Uganda in 1995 and the Constitution of Kenya in 2005, legislation in the constitution-making process provided for the referral of contentious issues to the people, i.e., ones that could not be resolved by a two-thirds vote. It must be recognised that the referendum might deepen polarity in the country.

Some States resorted to the option of "a time limit right", i.e., acknowledging the introduction of a specific provision – such as protection of a special right – for a specified period. As was the case with the independence of Rhodesia-Zimbabwe, where the protection of the special rights granted to European settlers about land and

[133] See mainly the presentation of problematic problems and strategies to deal with divisive issues: The Constitution and Reform. Options for the Process - op.cit. - p 202-207.

political representation was limited to ten years. In Fiji, the 1990 Constitution was entirely accepted by the Indo-Fijian and other minorities only on the basis that it would be reviewed within seven years of its inception. Certainly, that review subsequently led to large-scale changes. The advantage of this option is that it provides additional time to forge confidence among the parties, thereby facilitating the ensuing negotiation and understanding process. Notwithstanding the fact that it is not valid concerning all rights and claims. A similar approach poses the strategy of **"postponing the issue for resolution in the future"** as per the resolution in Iraq to postpone the settlement of the issue of Kirkuk.

The constitution pen-holders may sometimes circumvent the texts by using **"constructive ambiguity"** to give each side "what it understands" as its right. A solution which does not resolve the dispute but postpones it until the moment the text is operationalised, or the right is claimed.

In other cases, certain contentious issues were referred to other processes such as getting **the help of experts or regulating it by subsequent legislation or the judiciary or getting third-parties**' help and mediation, whether international organisations or specific States. Such as the role played by Norway in connection with the conflict in Sri Lanka, the European Union and the United States role in Sudan; and the United Nations and the United States in Iraq, Afghanistan, Cambodia, Namibia, Timor-Leste. Note that the disadvantages of these interventions are that they marginalise local communities and waste the results of public participation by postponing the conflict, when imposed without conviction, but is not resolved.

The future Constitution of Syria
Questions that will force itself

What are the fundamental principles that constitutions can include? What is the importance of that?

How did the comparative constitutions express the form of the State, governance and issues of decentralization? What positive precedents can be used?

How could the successive Syrian constitutions avoid disregarding the principle of citizenship, the separation of powers, the hierarchy of the legal norms in the State?

How did the constitutions deal with religious matters and nationalism, what are the options and the challenges and what can be adopted in the future Constitution of Syria?

Some problematic issues are expected to arise upon arrival to discuss the content of the Permanent Constitution in Syria. Note that the Geneva Final communiqué of 2012 had "conveyed" the aspirations of a broad segment of Syrians about what would Syria's future be, which should be enshrined in the country's Permanent constitution: The document reads as follows:[134]

The aspirations of the people of the Syrian Arab Republic have been clearly expressed by the full range of Syrians consulted. There is an overwhelming wish for a State that:

(a) Is genuinely democratic and pluralistic, giving space to established and newly emerging political actors to compete fairly and equally in elections. This also means that the commitment to multiparty democracy must be a lasting one, going beyond an initial round of elections;

[134] [134] Paragraph 8 of the Geneva Communiqué. See United Nations document: A/66/865–S/2012 /522 - 6 July 2012

(b) Complies with international standards on human rights, the independence of the judiciary, accountability of those in Government and the rule of law. It is not enough to enunciate such a commitment. There must be mechanisms available to the people to ensure that those in authority keep these commitments;

(c) Offers equal opportunities and chances for all. There is no room for sectarianism or discrimination on ethnic, religious, linguistic or any other grounds. Numerically smaller communities must be assured that their rights will be respected.

It is quite clear that the aspirations of the "broad segment of Syrians consulted" reflect their hope for a democratic State expressed in a democratic constitution.

Understanding that the democratic constitution, at its simplest, is that democratically adopted constitution that ensures the establishment of a democratic system and maintains it. On 20 December 2004, the United Nations General Assembly had already adopted a resolution in which it identified the essential elements of democracy.[135] Under this resolution, the democratic Constitution should guarantee human rights and freedoms, include pluralistic political system, ensure transparency and accountability, safeguard the rule of law, separation of powers, and the independence of the judiciary, quite apart from the need to consider some key issues related to the constitutional document path and procedures already exposed in the previous chapter of this study.

The declared positions of the parties to the conflict in Syria reveal the existence of differences around the future of the Syrian State to be embedded in the future Constitution of the country. These differences affect the State and governance system, rights and freedoms, as far as the question of women's rights, and engendering the Constitution.

That's why we allocate the subsequent pages to review texts of various constitutions and diverse experiences on those issues with a view to benefiting from the successful experiences of some and avoiding other errors and pitfalls in the hope they will not be duplicated or replicated.

[135] A/RES/59/201.

First research - State system and governance

Constitutions usually include detailed identification of the state system and governance. This goes beyond the mere traditional reference to the form of the state (simple or complex), the system of governance (royal or republican), the form of the cabinet (presidential or parliamentary) and the extent of introducing the implementation decentralisation system or ignoring it. The State system and governance encompass all the details related to the identity of the state, its underlying principles, the legal system that governs it, the nature of the relationship between the authorities and the guarantees to preserve its system, the rights of its citizens and the implementation of the constitutional provisions it has adopted.

The first challenge that will face the drafters of the future Syrian Constitution is to agree on those issues.

We present in the following pages some of the core issues espoused by constitutions of many states on the primary regulations that define the state system and its existing governance and the options it has adapted to maintain that system.

First - Values on which the state is based

After long years of conflict in Syria and the millions of victims, the Constitution must define the principles and the values on that the country will have in the future. They are the principles that will determine the profile and foundations of the new social contract approved by the Syrians among themselves as individuals and groups, and the authority that will govern them.

Many constitutions included, in their first articles, a reference to the principles or values underpinning the State.[136] For example:

The Constitution of the French Republic:

Article 1: "France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organised on a decentralised basis.

Statutes shall promote equal access by women and men to elective offices and posts as well as to professional and social positions".

The Constitution of the Republic of South Africa:

Article 1: "The Republic of South Africa shall be one, sovereign State based on the following values:
a. Human dignity, the achievement of equality and the advancement of human rights and freedoms.
b. Non-racialism and non-sexism.
c. Supremacy of the constitution and the rule of law.
d. Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness".

[136] For more details. See: Constitution Options for Syria - National Agenda for the Future of Syria programme – ESCWA - 2016 - p 93.

The Constitution of Portugal:

Article 1: "Portugal shall be a sovereign Republic, based on the dignity of the human person and the will of the people and committed to building a free, just and solidary society."

Article 2: "The Portuguese Republic shall be a democratic state based on the rule of law, the sovereignty of the people, plural democratic expression and organisation, respect for and the guarantee of the effective implementation of fundamental rights and freedoms, and the separation and interdependence of powers. All with a view to achieving economic, social and cultural democracy and deepening participatory democracy".

Although these constitutions reaffirm, in their subsequent texts, these principles in greater detail, initially the purpose of citing them is to highlight their importance and distinguish them from the rest of the following texts being at heart and essence of the social contract reflected by this Constitution.

In fact, we find that the Brazilian Constitution as well devotes many of its articles to determine the values that govern it both internally and externally. Article I refers to the principles of the State allocates Article III to identify the fundamental objectives of the State and provides in Article IV the principles underpinning the country's international relations. As explained below:

The Constitution of Brazil:

Article 1:"The Federative Republic of Brazil, formed by the indissoluble union of States and Counties (municípios), as well as the Federal District, is a Democratic State of Law founded upon:

1. Sovereignty.
2. Citizenship.
3. Human dignity.
4. Social values of work and free initiative.
5. Political pluralism

Sole Paragraph: All power emanates from the people, who exercise it through elected representatives or directly, according to this Constitution".

Article 3: "The fundamental objectives of the Federative Republic of Brazil are:

1. to build a free, just and unified society.
2. to guarantee national development.
3. to eradicate poverty and substandard living conditions and to reduce social and regional inequalities.
4. to promote the well-being of all, without prejudice as to origin, race, sex, colour, age and any other forms of discrimination."

Article 4: "The international relations of the Federative Republic of Brazil are governed by the following principles:

1. National independence.
2. Prevalence of human rights.
3. Self-determination of peoples.
4. Non-intervention.
5. Equality among states.
6. Defending of peace.
7. Peaceful solution of conflicts.
8. Repudiation of terrorism and racism.

9. Cooperation among people for the progress of humanity.
10. Concession of political asylum."

In some previous texts, there might be **options that could be envisaged for the future of Syria.** Under contention and divisiveness on many issues and policies, both internal and external, it is possible to agree on a set of core principles and present them in the format espoused by the previous Constitutions. Note that the text of article 4 of the Brazilian Constitution setting out the grounds for the external relations of the State is also an important precedent. The manifestations of division in Syria are not only limited to domestic policies but also against foreign policies under existing regional and international divisions, and the involvement of many States directly or indirectly involved in the Syrian conflict which is feared to be reflected in the next Constitution writing process; inter alia, fortifying the Constitution with the principles provided for in the Brazilian Constitution, which may allay the concerns of many people about pushing the bill of war in the Constitution of peace and engage in alliances and axes strengthening separation and divisiveness rather than achieving the Agreement and peace.

Add on to the above principles; constitutions allocate separate provisions to highlight the importance of other fundamental principles such as identifying the source of sovereignty, reinforcing the principle of separation of powers, as well as the principle of citizenship.

The vast majority of constitutions in various countries of the world have tended to embrace the popular sovereignty theory and defined in the very content of the constitution the aspects of its practice, as did the French Constitution, while other Constitutions, like the Bolivian Constitution, protected this principle from being undermined or time-barred. The texts of these Constitutions regarding sovereignty state:

The Constitution of the French Republic
Article 3: "National sovereignty shall vest in the people, who shall exercise it through their representatives and by means of referendum".
The Constitution of Italy
Article 1: "Sovereignty belongs to the people, which exercises it in the forms and within the limits of the Constitution."
The Constitution of Portugal
Article 3: 1- Sovereignty shall be single and indivisible and shall lie with the people, who shall exercise it in the forms provided for in this Constitution".
The Constitution of Spain
Article 1: 2- "National sovereignty belongs to the Spanish people, from whom all state powers emanate".
The constitution of Bolivia
Article 7:"Sovereignty resides in the Bolivian people and is exercised directly and by delegation. The functions and attributes of the organs of public power emanate, by delegation, from sovereignty; it is inalienable and unlimited".

In addition to identifying the source of sovereignty, the principle of the separation of powers is one of the fundamental constitutional principles underpinning democratic regimes.[137] Note that the purpose of separation of powers is to avoid arbitrariness in the exercise of power by distributing it on various bodies and empowering each of these bodies if tended to use their influence. As such, the authority should be subject to control so as the abuse of power is less likely. Most constitutions adopt similar texts in highlighting and emphasising this principle as in the case of the constitutions of Ukraine and Portugal that therein concerning this principle:

The Constitution of Portugal

Article 2: "Portugal shall be a sovereign Republic based on ... the separation and interdependence of powers...".

Article 111: "separation of powers shall be separate and interdependent

1. Bodies that exercise sovereign power shall be separate and interdependent as laid down by this Constitution.

2. Nobody that exercises sovereign power and nobody that belongs to an autonomous region or local authority shall delegate its powers to other bodies, save in such cases and under such terms as are expressly laid down by this Constitution and the law".

The Constitution of Ukraine

Article 6: "State authority in Ukraine is carried out on bases of its division on legislative, executive and judicial".

Some constitutions have incorporated the principle of separation of powers into non-modifiable tenets, as in the case of the Constitution of Brazil

The Constitution of Brazil

Article 60: 4- "No proposed constitutional amendment shall be considered that is aimed at abolishing the following: 3- The separation of powers...".

The inclusion of those principles in the future Constitution of Syria is indisputably very imperative, and can later challenge the unconstitutionality of legislation, decisions and practices that go beyond the constitutional concept of sovereignty or violate the principle of separation of powers. Note that these issues have always been problematic in Syria, especially for the non-inclusion of the separation of powers principle, its disregard for decades in the Constitutional provision and its constant breach in practice.

The principle of **citizenship** is considered one of the central tenets that were not included in the successive Syrian Constitutions in spite of its importance, where various Constitutions have referred and entrenched it in several of its texts. For example:

The Constitution of Tunisia

Chapter 2: "Tunisia is a civil state based on citizenship, the will of the people, and the supremacy of law. This article might not be amended".

The Constitution of the Republic of South Africa:

[137] The principle of separation of powers aims to distribute key government functions on three main bodies, the legislative, executive and judiciary, each of which is in the exercise of its function. The legislative power enacts laws; while The executive branch takes charge of governance and administration and conducts the matters of the State within the limits of these laws; whereas the judiciary arbitrates disputes by enforcing the law, imposes respect for the latter by all, including political authorities and protects the rights and freedoms.

Article 3: citizenship: 1. " There is a common South African citizenship.
2. All citizens are equal:
   a. Equally entitled to the rights, privileges and benefits of citizenship;
   b. Equally subject to the duties and responsibilities of citizenship.

3. National legislation must provide for the acquisition, loss and restoration of citizenship. Credit is given here to the Tunisian Constitution for not only providing for this principle but further barricaded it from any subsequent amendment and upgraded it to the level of the fundamental tenets that cannot be compromised.

Former Syrian Constitutions lacked reference to this principle, although it is required especially in states characterised by ethnic and religious pluralism, as in the case of Syria, as well as the duly political pluralism, as succeeding agreements may require reference to religious or national identities. Necessitating to provision for the principle of citizenship to highlight any diversity or existing difference could not derogate from the equal rights that all citizens should enjoy without exception, exclusion or discrimination.

Second - Form of the State and the regime of governance:

Many debates are currently held on the form of the future Syrian State and the nature of its regime of governance, politically and administratively, which should not only be resolved by politicians in closed rooms and during negotiation rounds but should also be the subject of a general national dialogue and broad public participation to determine the choice of the Syrian people, the first and foremost primary stakeholder and decision maker in resolving this issue.

To return to the compared constitutions, the text of the Constitution of each state expresses its specificity and its decision for the present and the future.[138] As follows:

The Constitution of Tunisia:
Chapter 1: "Tunisia is a free... and its system is republican.
This article might not be amended".
The Constitution of Spain:
Article 1: 3-"The political form of the Spanish State is the Parliamentary Monarchy".
The Constitution of Portugal:
Article 6: 1." The state shall be unitary and shall be organised and function in such a way as to respect the autonomous island system of self-government and the principles of subsidiarity, the autonomy of local authorities and the democratic decentralisation of the Public Administration".
The Constitution of Indonesia:
Article 1: 1." The State of Indonesia shall be a unitary state which has the form of a republic".
The Constitution of the Bolivarian Republic of Venezuela:
Article 4: "The Bolivarian Republic of Venezuela is a decentralised Federal State on the terms outlined in this Constitution, governed by the principles of territorial integrity, cooperation, solidarity, attendance and shared responsibility".

[138] For more details. See: Non-paper about the Constitution - National Agenda for the Future of Syria programme – ESCWA - 2016 - p 94 Ss.

The Constitution of Paraguay:

Article 1: "The Republic of Paraguay is forever free and independent. It constitutes itself as a social State of law, unitary, indivisible, and decentralised in the form established by this Constitution and the laws.

The Republic of Paraguay adopts for its government the representative, participative and pluralistic democracy, founded on the recognition of human dignity".

The Constitution of Morocco:

Chapter 1: " The regime in Morocco is a constitutional, democratic, parliamentary and social Monarchy".

It is noticeable here that Tunisia has upgraded the Republican regime of the State to the level of the texts that do not accept prejudice or amendment, other texts in the same article also referred to the political and administrative decentralisation it has adopted.

Conversely, other States could resort to the provision of decentralisation under separate articles. For example:

The Constitution of Tunisia:

chapter 14: "The state commits to strengthen decentralisation and to apply it throughout the country, within the framework of the unity of the state".

Note that the majority of constitutions single out detailed articles specific to the decentralised system they espouse.

Given that the issues of political and administrative decentralisation are among the most deliberated and divisive issues in the Syrian reality. As in many countries of the world, these issues have sometimes caused war or led to its return. If the issue of administrative decentralisation does not pose, in principle, major divisions, its expansion and the overlapping of the political and the administrative up to autonomy is the contentious and divisive matter.

Of the remarkable models of Self-Government, the provisions of the Spanish must be mentioned Constitution, which emphasised in Article 2 at its outset on the "**unity of the Spanish Nation and the recognition of the autonomy of nationalities**" as stated in this article:

The Constitution of Spain:

Article 2: "The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards; it recognises and guarantees the right to self-government of the nationalities and regions of which it is composed and the solidarity among them all".

Then adopted the principle of autonomy under article 143 which states:

The Constitution of Spain:

Article 143: 1. "bordering provinces with common historic, cultural and economic characteristics, insular territories and provinces with a historic regional status may accede to self-government and form Self-governing Communities (Comunidades Autónomas) in conformity with the provisions contained in Article 2 of the Constitution, in the respective Statutes".

2. "The right to initiate the process towards self-government lies with all the Provincial Councils concerned or with the corresponding inter-island body and with two-thirds of the municipalities whose population

represents at least the majority of the electorate of each province or island. These requirements must be met within six months from the initial agreement reached in that regard by any of the local Corporations concerned.
3. If this initiative is not successful, it may be repeated only after five years have elapsed".
So as for the self-governance systems not to threaten the unity of the State or to be allied among them to establish a parallel entity of the Spanish State, Article 145 prohibited the union among them but allowed them to conclude agreements among them to administer and provide their specialised services. Also, Article 146 considered that their special regulations established by the Constitution are recognised by the State and part of its legal system. The text of the Constitution states:

The Constitution of Spain:

Article 145: 1. "Under no circumstances shall a federation of Self-governing Communities be allowed.
2. Statutes of Autonomy may provide for the circumstances, requirements and terms under which Self-governing Communities may reach agreements among themselves for the management and rendering of services in matters pertaining to them and could provide for how to notify Parliament and the effects. Requires cooperation agreements between autonomous communities in other cases parliamentary approval".
Article 147: 1. "Within the terms of the present Constitution, Statutes of Autonomy shall be the basic institutional rule of each Self-governing Community and the State shall recognise and protect them as an integral part of its legal system".

Subsequently, Article 148 of the Constitution shows the competencies may be assumed within the mandate of self-governance systems and are 22, and in Article 149 those the state has exclusive competencies over and are 32. Entrenching a general rule to avoid conflicts of jurisdiction or laws which are:

The Constitution of Spain:

Article 149: 3-"Matters not expressly assigned to the State by this Constitution may fall under the jurisdiction of the Self-governing Communities by virtue of their Statutes of Autonomy. Jurisdiction on matters not claimed by Statutes of Autonomy shall fall with the State, whose laws shall prevail, in case of conflict, over those of the Self-governing Communities regarding all matters in which exclusive jurisdiction has not been conferred upon the latter. State law shall, in any case, be suppletory of that of the Self-governing Communities".

Third - Legal hierarchy:

Constitutions must contain provisions that set out the arrangement of rules and legal sources, affirms the supremacy of the Constitution and defines the place and role of the international law in the national legal system

Taking into consideration that this topic is of a particular standing in the Syrian situation, due to the obscurity of the current legal hierarchy followed in the country, the absence of any reference to indicate the legal system in the successive Syrian constitutions and the role and place of international law in this regard. Which also continued in the Syrian Constitution currently in force and that was issued in 2012, where there is no reference to the arrangement of the legal rules, and the place of international law or international treaties ratified by the Government. Whereby the Constitution is committed to "full silence" about this matter.[139] An ambiguity that has often led the State to sign numerous international treaties without the possibility of being submitted and applied before the Syrian courts, as well as the enactment of several legislations that explicitly contravened the Syrian State obligations under the international treaties that it had ratified and abided by, as in the women-specific statutes inconsistent with the CEDAW Convention, whereby national legislations are at odds with international treaties and take precedence over. Nonetheless, some federal legislation was contrary to and superior to the provisions of the Constitution itself particularly those aimed at reducing and restricting human rights, contrary to the general principles set out in the Constitution.

Comparative constitutions provide many options on how to outline the arrangement of legal sources and confirm the supremacy of the constitution or determine the status of international law and the role of international treaties in that context.

About the arrangement of legal sources, these constitutional models could be pointed out:

The constitution of Bolivia

Article 410: Second - "The application of the statutory norms shall be governed by the following hierarchy, in accordance with the authority of the territorial entities:

1. Constitution of the State
2. International treaties
3. National laws, statutes of the autonomies, organic charters and the other departmental, municipal and indigenous legislation.
4. Decrees, regulations and other resolutions issued by the corresponding executive organs).

The Constitution of Tunisia

Chapter 20: "International agreements approved and ratified by the Assembly of the Representatives of the People have a status superior to that of laws and inferior to that of the Constitution".

The Constitution of Ecuador

[139] It should be noted that the identification of the status of the international law and the value of international treaties in Syria is found in the national legislation specifically in article 25 of the Syrian Civil Code and article 311 of the Code of Civil Procedure. It can be inferred from these articles that international treaties fall behind the Constitution and precede national laws. But without specifying any mechanisms on how it is invoked before the national judge, how it is applied and the extent to which the judge is committed to that.

Article 425: "The order of precedence for the application of the regulations shall be as follows: The Constitution; international treaties and conventions; organic laws; customary laws; regional regulations and district ordinances; decrees and regulations; ordinances; agreements and resolutions; and the other actions and decisions taken by public authorities.

In the event of any conflict between regulations from different hierarchical levels, the constitutional court, judges, administrative authorities and public servants, it shall be settled by the application of the standard of a higher order of precedence).

As for the supremacy of the constitution, the constitution should include an explicit provision affirming the principle of its supremacy. In other words, reiterating the policy of the superiority of the constitutional rules that it comprises over other legal principles applied by the State. Thus highlighting that the Constitution as the supreme law of the State that is non-derogable or amended by any other legal or administrative provisions under which all other laws shall presumably conform to it; if conflicted it should be voided according to procedures designated by the law.

Of the constitutions that have embraced these rules we refer to:

The Constitution of South Africa

Article 2: 2." Supremacy of Constitution: this Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled).

The Constitution of Portugal

Article 277: 1." Rules that contravene any of the provisions of this Constitution or the principles enshrined therein shall be unconstitutional".

The Constitution of Kenya

Article 2: "Supremacy of this constitution:

1- This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government.

3. The validity or legality of this Constitution is not subject to challenge by or before any court or anoother State organ.

4. Any law, including customary law that is inconsistent with this Constitution, is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.

As to the status of the international law, some constitutions have expressly provided for a point of reference to some international or regional human rights conventions to give them equal status with the constitution in the application and interpretation of the rights associated therewith. As in the case of the Constitution of Argentine and the Constitution of Benin.

The Constitution of Argentine

Article 75: 2- "The following [International Instruments] in the full force of their provisions have a constitution hierarchy, [however] do no repeal any section of the First Part of this Constitution and are to be understood as complementing the rights and guarantees recognised herein. The American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Pact on Economic, Social and Cultural Rights; the International Pact on Civil and Political Rights and its empowering

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Protocol; the [International] Convention on the Prevention and Punishment of Genocide; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of all Forms of Discrimination against Woman; the Convention against Torture and other Cruel, Inhuman or Degrading Treatments or Punishments; the Convention on the Rights of the Child; It may be repealed only, if this is the case, by the National Executive, after prior approval by two-thirds of the members of each Chamber".

The other treaties and conventions on human rights, after approval by the Congress, shall require the vote of two-thirds of all the total of the members of each House to attain constitutional hierarchy.

The Constitution of the Republic of Benin

Article 7: The rights and duties proclaimed and guaranteed by the African Charter on Human and Peoples' Rights adopted in 1981 by the Organization of African Unity and ratified by Benin on 20 January 1986, shall be an integral part of the present Constitution and of Beninese law".

Some other constitutions affirmed that the provisions associated with the rights and freedoms must be interpreted in conformity with the Universal Declaration of Human Rights and relevant treaties. It is what the Spanish and the Portuguese constitutions have provided for, and the Constitution of South Africa.

The Constitution of Spain

Article 102: 2. " Provisions relating to the fundamental rights and liberties recognised by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain".

The Constitution of South Africa

Article 233: "When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law".

The Constitution of Portugal

Article 16: 1- ". "The provisions of this Constitution and laws concerning fundamental rights shall be interpreted and construed in accordance with the Universal Declaration of Human Rights".

The introductory texts reveal **several good practices that can be utilised in the future Constitution of Syria**.

Fourth - Religion:

The question of the influence of religion has gained the interest of all political stakeholders in the drafting of the successive Syrian constitutions. As religion is considered essential in the composition of the identity of the Syrian state and its regime of governance, as well as its impact on the rights and freedoms of the different segments of society. Overall, the controversy emerges between two streams during the drafting of the Syrian and Arab constitutions. One is aimed at strengthening the values of the civil State based on the separation of

religion and politics, whereas the second stream seeks to strengthen the role of religion and its influence on constitutions[140]

Bearing in mind that the reference to the religion problematic is not only confined to the Syrian reality but is also one of the most sensitive, controversial, dividing and separating issue during the drafting process of constitutions both at time of stability or crises alike. Two important notes should always be recalled:

First- It should not be thought that any reference to religion impedes respect for human rights. The symbolic reference to God and the majority religion in the preamble of the constitution does not, per se, lead to negative implications if no other practical provisions were leading to discrimination in the rights and duties among citizens. Furthermore, religions do not necessarily have to conflict with human rights, the general spirit of religion may be a supportive reality for human rights in some cases. [141]

Second- Respectively it is not permissible to believe that secularism means rejection or prohibition of religion as a practice or a particular belief, but instead as a refusal to special religious privileges and inequality on the basis of religion, as well as the refusal of the influence of religion and clergymen on legislation and policy.

Returning to comparative constitutions, we find multiple patterns and various levels on how to deal with the religious issue.[142] Although it is difficult to draw general and unified conclusions for the specific relevance of this issue to the specificity of each society, it is possible to distinguish here among several approximate models:

First model: Constitutions based on secularism:

The French and the American Constitutions are examples of this model. The texts on religion were given as follows:

> **The Constitution of the French Republic:**
> " Article 1: the French Republic, secular, democratic and social ensures the equality of all citizens before the law, without distinction to origin, race or religion. and respects all beliefs. "
> **The Constitution of the United States of America:**
> Article XVI: ". no religious Test shall ever be required as a qualification to any office or public trust or public trust under the United".
> **First Amendment: "Congress shall make no law respecting the establishment of religion or prohibiting the free exercise...".**

We can draw a distinction in this model between dominant secularism posed by France and weak secularism posed by the United States of America. According to the French model, the State recognises the right to religious freedom and safeguards this right in personal and private life; however, it has a conservative stance towards public religiosity which is often considered a threat, potential or actual, to the powers of the authorities and the secularisation of the Republic. It also affirms its civil republican character that is promoted not imposed in the school system and civil rituals.

[140] d. Na'el Gerjes - Syria Between the Influence of Religious Legislation and Positivism - A study posted on Hermon Contemporary Studies - 6 December 2016 - http://harmoon. org/archives/3195
[141] The Relationship Between State and Religion- The International Foundation for Democracy and Elections - September. September 2014 - p. 8
[142] Refer in detail to the information in the subsequent pages: The Relationship between State and Religion - The International Foundation for Democracy and Elections op. cit.

According to the American model, the impartiality of the State stands out in matters related to religion. It neither endorses nor criticises religion, discriminates between values and religious beliefs, authorises public practice anywhere or finances it from a public authority. Conversely, authorities shall not prevent, restrict, promote or support religious beliefs or practices, and discriminate against or favour any religion. Therefore, the state's neutrality towards religions does not restrict the freedom of public figures from expressing their religion in the United States. Hence, we monitor, for example, the American Presidential inauguration ceremony is usually commenced by prayers, and State officials are sworn on a religious book when they hold office, although they perform that personally or customarily, not because the law requires it.

Second model: Constitutions based on pluralistic assimilation:

The constitutions of some States according to this model, such as Germany, India and South Africa, aim to protect the religious neutrality of the State not by withdrawing from any support or endorsement of religion (as is the order of secularism), but by promoting equal and non-discriminatory treatment of religions. Whereby the State attempts to accommodate "all" religions and cooperate with religious institutions at social functions. According to this model, the law recognises the plurality of religious groups that are equal to each other, and the state is further committed to avoiding preferential or discriminatory treatment inter se. It is recognised that all religions have an essential role in society and that religious institutions as a whole are partners with civilian authorities for the greater good.

Examples of these constitutional provisions:

The Constitution of South Africa

Article 15: 1. " Everyone shall have the right to freedom of belief religion, thought, belief and opinion.

check source/ article 14 **:Commented [A4]**

2. Religious observances may be conducted in State or State-aided institutions, provided:

a. follow observances under rules established by appropriate authorities;

b. be on an equitable basis;

c. attendance at them is free and voluntary".

Article 31: 1. " Persons belonging to a cultural, religious or linguistic community shall not be deprived of certain rights, with other members of that group, in:

a. Enjoy their own cultural life practice religion and use their own language; and

b. Establish cultural, religious and linguistic unions and other organs of civil society, and join

and maintain them.

2. Rights set out in subsection (1) should not be exercised in a manner inconsistent with any provision of the Bill of Rights.

The Constitution of India:

Article 25: 1. " subject to and strict adherence to public order, morality, health, other provisions of the section, all persons are equally entitled, to freedom of conscience and Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion".

Article 16: 2. shall not, solely on the basis of religion, race or... Any citizen is ineligible or discriminated against in respect of any employment or position under State or mandate".

The Constitution of Germany:

Article 33: 3. " Neither the enjoyment of civil and political rights, nor eligibility for public office, nor rights acquired in the public service shall be dependent upon religious affiliation to the person concerned. no person may be disadvantaged by reason of adherence or non-adherence to a particular religious denomination or philosophical creed".

Third model: Constitutions that recognise official religion for the State:

There exists a third group of States in which official State religion is addressed with different implications:

A. Constitutions provided for official religion without requiring the head of State to be one of its followers: For example, the Constitution of Argentine after eliminating the requirement that the head of State shall be a Catholic in the 1994 amendments.

The Constitution of Argentine:

Article 2: "The Federal Government supports the Roman Catholic Apostolic religion".

B. Constitutions provided for the official State religion with requiring the head of State to be one of its followers: For example, the Constitution of Norway states:

The Constitution of the Kingdom of Norway:

Article 16: "All inhabitants of the Realm shall have the right to free exercise of their religion. The Norwegian Church, an Evangelical Lutheran Church, shall remain the Norwegian National Church and as such the State approved church by detailed provisions of its law order. Shall supports all religious communities and philosophical convictions on an equal footing".

Article 2: "Our values remain intrinsic to our humanitarian Christian heritage. The Constitution ensures democracy and a State based on the rule of law and human rights".

Article 4: "The King shall at all times profess the Evangelical-Lutheran religion".

check source article 2 :Commented [A5]

C- Constitutions provided for an official religion of the State: This religion is a source of legislation or its principal cause. As in several other Arab States. For example:

The Constitution of Egypt

Article 2: "Islam is the religion of the state, and the Arabic language is its official language. The principles of Islamic law are the chief source of legislation".

The Constitution of Kuwait:

Article 2: "The religion of the State is Islam and Islamic Law shall be a main source of legislation".

The Constitution of the United Arab Emirates:

Article 7: "Islam shall be the official religion of the Union. The Islamic Shari'ah shall be a principal source or legislation in the Union".

D- The role of the religious institution is highlighted in certain other constitutions: Substantively and transparently and in the way that affects many of the democratic values and human rights.

It is clear from the preceding that there are various models of the relationship between state and religion, and what distinguishes the democratic constitution from others is not the mention of religion or not. There is no problem in referring to God or specific faiths as long as the rights of all citizens, believers or non-believers, are protected. Whereas the Brazilian Constitution of 1988 articulates the reference to God and refers to the history of the Catholic country, the Spanish Constitution proclaims that no religion shall have a state character.

The public authorities shall take into account the religious beliefs of the Spanish society and shall consequently maintain the appropriate collaborative relationships with the Catholic Church and other confessions". On the contrary, there is no reference to God in the Portuguese Constitution. In sum, the common denominator among all these constitutions is their guaranteed freedom of belief and religion, as well as the equality of the rights and duties of members of all religions.[143]

Posteriori, there exist multiple democratic options in this context, such as "recognition without enshrining", that is granting the majority religion a constitutional recognition to meet the demands of the people in recognizing the religious identity and simultaneously reach a compromise with the opponents of the consecration of religion by averting from giving special privileges to this religion. For example, the role of a certain religion can be noted in the country's culture, its identity, in the preamble to the Constitution, or in an expressive article but without mainstreaming the institutions or religious laws within the state. Or the adoption of "neutrality or inclusive recognition" option through the drafting of signals to religion in the constitution either in nominating a specific religion or in a manner that recognises God but abides by neutrality towards all religions.[144]

But whatever option is to be adopted, in Syria or elsewhere, it should be consistent with the commentary of the Human Rights Committee of the United Nations, which mentions in its general comment No. "22" "the fact that a religion is recognised as a state religion or the official or traditional religion or considering that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant... nor in any discrimination against adherents to other religions or non-believers".[145] If "a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it... or any other rights recognized under the Covenant.. nor in any discrimination against persons who do not accept the official ideology or who oppose it".[146]

Fifth - Nationalism:

Some voices are taken in Syria and other similar States to free the State from the sway of ideology, whatever it is, in favour of establishing a civilian state that equally serves all its citizens [feminine] and citizens [masculine] on an equitable basis, without exception, exclusion or discrimination.

Globally: the majority of constitutions are committed to impartiality towards nationalities, the only references to national affiliation were in the event of non-discrimination by nationality or the prohibition of hatred on the basis of nationality. That is why most non-Arab constitutions refer to nationalism except in a few instances, specifically in plurinational States, such as Bolivia, which Constitution contains several references to the national diversity of the Bolivian people, with an emphasis on the obligation of non-discrimination among nationalities or others. The Constitution of Brazil also includes a reference to complementarity with the

[143] Constitutional Reform in Times of Transition. Prioritising The Legitimacy of the Process - Editor: Alfaro Vasconcelos - Gerald Stang - Arab reform initiative - Paris 2014 p 12 – 13.
[144] The Relationship between State and Religion - the International Foundation for Democracy and Elections, op. cit. p 13-14.
[145] HRI/GEN/1/Rev.9 (Vol. I) page 209.
[146] HRI/GEN/1/Rev.9 p 210.

Peoples of Latin America and the pursuit of forming a South American community of nations. These texts are as follows:

The Constitution of Bolivia:

Article 1: "Bolivia is constituted as a Unitary Social State of Pluri-National Communitarian Law, that is free, independent, sovereign, democratic, inter-cultural, decentralised and with autonomies. Bolivia is founded on plurality and on political, economic, juridical, cultural and linguistic pluralism in the integration process of the country".

Article 3:"The Bolivian nation is formed by all Bolivians, the native indigenous nations and peoples, and the inter-cultural and Afro-Bolivian communities that, together, constitute the Bolivian people".

Article 14: Second- "The State prohibits and punishes all forms of discrimination based on sex, colour, age, sexual orientation, gender identity, origin, culture, nationality, citizenship... **"**

The Constitution of Brazil

Article 4 single paragraph: "The Federative Republic of Brazil shall seek the economic, political, social and cultural integration of the people of Latin America, with a view toward forming a Latin-American community of nations".

On the other hand, the constitutions of Arab States have several reference to national affiliation. It is mentioned by some, ignored by others, limited by the Tunisian Constitution to "Arab Maghreb", and expanded by the Egyptian Constitution throughout to the Arab nation and the Islamic world, the African continent and the Asian. As stated in these texts:

The Constitution of The Hashemite Kingdom of Jordan

" Article 1: The Hashemite Kingdom of Jordan is an independent sovereign Arab State. The people of Jordan form a part of the Arab Nation."

The Constitution of Kuwait:

Article 1: "Kuwait is an Arab, independent, fully sovereign State. There shall be no surrender of its sovereignty nor cession of any part of its territories. The people of Kuwait are part of the Arab Nation".

The Constitution of Tunisia

Article 5: "The Republic of Tunisia is part of the Arab Maghreb and works towards achieving its unity and takes all measures to ensure its realisation".

The Constitution of Egypt

Article 1: "The Arab Republic of Egypt is a state with a... Egypt is part of the Arab nation and enhances its integration and unity. It is part of the Muslim world, belongs to the African continent, is proud of its Asian dimension, and contributes to building human civilisation".

In return, the Iraqi Constitution of 2005 took into account the national diversity that exists in the country, it stated:

The Constitution of Iraq

> Article 3: "Iraq is a country of many nationalities, religions and creeds, a founding and active member of the League of the Arab States and adherence to its Charter and part of the Islamic world".
>
> Article 14: "Iraqis are equal before the law without discrimination based on gender, race, nationality or ethnicity... ".

What holds true for the reference to religion in the constitution may pertain here; that is, adhering to neutrality towards all nationalities or an abstract reference without enshrining any benefits or exclusion and recognising other nationalities on an equal footing within the concept of citizenship. In addition, whatever option should be adopted, it should conform to the principle that recognition of a particular nationality since its followers comprise the majority of the population, shall lead neither to the impairment of the enjoyment of any right nor to any discrimination against people who do not belong or oppose such nationality.

Therefore, all the foregoing entails the concept of "equal citizenship" first and foremost. So that national or other affiliation is not a condition for obtaining a right, a benefit, a position or an advantage. There is no barrier to its attainment.

The second research: Necessary rules for the preservation of the constitutional order

Along with the former fundamental rules, constitutions also include miscellaneous provisions with different titles intended to guarantee the application of the constitutional provisions and limit absolute authority, accorded to either the politicians or the military and security forces to ensure the preservation of public rights and freedoms and maintain the existing of the constitutional order in the country.

The future Constitution of Syria questions will impose themselves

- How to include what ensures the limitation of absolute powers in the Constitution? And how to ensure the prevention of the monopolization of power?
How did the comparative constitutions limit the number of the mandates of the head of State? And what advisory boards were included to work with the President?
How did constitutions deal with issues of subordination of the military and security to civilian authorities? How were irregular armed actors organized? And the illegal weapons? And the state of emergency?
- How did constitutions deal with parties' issues, political pluralism and the regulation of electoral process issues? And the opposition rights?

Some of these rules are linked to the head of state, others to the electoral system, the adoption of political pluralism, the rights of the opposition ensuring circulation of powers, as well as other rules related to the limitation of absolute power in a state of emergency, or the substantial powers granted to the military and security forces.

First - Restricting absolute powers:

One of the substantive issues facing the drafters of the constitutions, particularly in states experiencing major shifts, or seeking to recover from wars and crises that have struck them, or has already suffered from the hegemony of one authority, is how to overcome these problems constitutionally and limit the absolute powers accorded to any party.

Of course, the thinking here mainly revolves around the head of State, the army and security forces. In addition to the state of emergency in which the powers of the governing executive authorities are expanded.

1 - Head of State:

As for the head of State, the principle of separation of powers, already indicated highlighted. It is supposed to set limits and restrictions to limit its interference with the work of other authorities. In addition, constitutions usually stipulate specific powers to the head of state which varies according to the nature of the political system that prevails in the country. But the problem in some states was associated with unlimited presidential tenure on the one hand and his unilateral decision-making in major issues on the other hand.

The term of office: Some constitutions have resorted to limiting the presidential terms the president is permitted to hold when addressing the problem associated with his tenure,[147] in which some constitutions limited the President's mandate to only one non-renewable and non-repeatable term. For example:

The Constitution of the Republic of Chile

[147] For more details. See: Non-paper about the Constitution - National Agenda for the Future of Syria programme – ESCWA - 2016 - p 150 Ss.

Article 25: " The President of the Republic shall remain in the exercise of his functions for a term of four years and may not be re-eligible for the following period".

The Constitution of Paraguay

Article 229: "The President of the Republic and the Vice President will remain five non-extendable years. They may not be reelected in any case".

Note that the Paraguayan Constitution provided a paragraph for the Vice-President preventing him from being immediately nominated in article 229 itself:

".. The Vice President may only be elected President for the next period if he had ceased in his office six months before the general elections".

To prevent political manipulation of the exchange of positions and roles in the same article also stipulates:

".. whoever had exercised the presidency for more than twelve months may not be elected Vice President of the Republic".

Whereas the majority of the constitutions permitted two successive or separate terms, for example:

The Constitution of Tunisia

Chapter 75: " The President of the Republic is elected for a five-year term... The office of the presidency cannot be occupied by the same person for more than two full terms, whether consecutive or separate. In the case of resignation, the term counts as a full term".

The Constitution of the French Republic

Article 6: "The President of the Republic shall be elected for a term of five years by direct universal suffrage. No one may carry out more than two consecutive terms of office".

The Constitution of the Russian Federation

Article 81: 3. " The same person may not serve as President of the Russian Federation for more than two consecutive terms".

The Constitution of Ukraine

Article 103: "The president of Ukraine is elected by the citizens of Ukraine on the basis of common, even and direct electoral law by the secret vote for a term of five years. The same face cannot be President of Ukraine more than two terms successively".

Noted here that the Constitution of Tunisia has uniquely upgraded and singled out, in the paragraph specific to the tenure of the President of the republic, substantive provisions that do not accept any amendment of increase. Chapter 75 states the following:

"The constitution may not be amended to increase the number or the length of presidential terms".

The Constitution of Portugal has been notable for establishing a general rule prohibiting any political office in the State for life. Article 118, paragraph 1, stipulates that:

"No one shall hold any national, regional or local political office for life".

In article 128, the term of the president was defined as:

> 1." The term of office of President of the Republic shall be five years and shall end upon installation of the new President-elect".

It is observed in the Constitution of Portugal that though it did not provide for the possible number of presidential mandates, it restricted this mandate by two provisions. The first of which is the prohibition of holding any office for life by the text of article 118 referenced previously and second the statement in paragraph 1 of Article 123, which provides that:

> **"Re-election to a third consecutive term of office, or during the five years immediately following the end of a second consecutive term of office, shall not be permitted". Note that in the second paragraph of the same article, the resigning President ... he shall not stand again in the next elections, or in any that take place in the five years immediately following his resignation".**

B- Advisory boards: Another challenge linked to the head of State is to limit themselves from making major unilateral decisions. Of course, this problem arises in states undergoing democratic transition and usually lack strong and effective institutions, supposed to play this role generally without the need for constitutional provision.

There are creative solutions provided for in some constitutions through establishing advisory boards for the president of the republic with a range of current and former officials, loyalists and opponents, as well as some councils also include appointed or elected ordinary citizens.

The Brazilian Constitution included - the establishment of two types of Assemblies: first, the Council of the Republic, which is **"the higher consultative body for the President of the Republic",** and in which the following participate: **the Vice President; the President of the Chamber of Deputies; the President of the Federal Senate; the majority and the minority leaders of the Chamber of Deputies; the majority and minority leaders of the Federal Senate; and the Minister of Justice).**[148] It is remarkable that it is not solely limited to officials but also includes citizens who do not hold official positions and take part in its meetings **(six Brazilians who are citizens by birth and over the age of thirty-five, two of whom are appointed by the President of the Republic, two elected by the Federal Senate, and two elected by the Chamber of Deputies, all for a non-renewable three-year term).**

Article 89 of this Constitution provided for its that:

check source, article 90 **:Commented [A6]**

> "The Council of the Republic has the authority to give its opinion on:
> 1. federal intervention, state of defence and state of siege;
> 2. issues relevant to the stability of the democratic institutions".

Regarding military matters, the **Brazilian Constitution** also established National Defense Council which is **"the consultative body of the President of the Republic on matters related to national sovereignty and defence of the democratic State.** In which the following participate as original members; **(the Vice-President of the Republic; the President of the Chamber of Deputies; the President of the Federal Senate; the Minister of**

[148] The Constitution of Brazil- Article 89.

Justice; the Minister of the State of Defense; the Minister of Foreign Affairs; the Minister of Planning; the Commanders of the Navy, the Army and the Air Force).[149] The National Defense Council has the authority to:

> 1. Opine in the event of a declaration of war and making of peace, in accordance with this Constitution.
> 2. Opine on decreeing a state of defence, state of siege and federal intervention
> 3. propose the criteria and conditions for utilisation of areas indispensable to the security of national territory and to opine on their effective use, especially for the frontier strip and those related to preservation and exploitation of natural resources of any kind
> 4. Study, propose and monitor the development of initiatives required to guarantee national independence and defence of the democratic State.

The Portuguese Constitution has also adopted the very idea. It provided for the establishment of the Council of State, which **"shall be the political body that advises the President of the Republic"** It compromises along with the President (**the President of the Assembly of the Republic; the Prime Minister; the President of the Constitutional Court; the Ombudsman; the presidents of the regional governments; former Presidents of the Republic as were elected under this Constitution and were not removed from office; Five citizens whom the President of the Republic shall appoint for the period of his term of office; Five citizens whom the Assembly of the Republic shall elect in accordance with the principle of proportional representation for the period of the legislature)** and with respect to the following:[150][151]

> a. Giving its opinion on dissolutions of the Assembly of the Republic and the Legislative Assemblies of the autonomous regions
> b. Giving its opinion on the removal of the Government in the case provided for in Article 195 paragraph 2.
> c. Giving its opinion on declarations of war and the making of peace.
> d. Giving its opinion on the acts of acting Presidents of the Republic referred to in Article 139.
> h. Giving its opinion on other cases provided for by this Constitution, and in general and when asked to do so by the President of the Republic, advising him in the exercise of his office."[152]

The **importance of these councils**, despite their advisory role, seems to allow multiple views be heard before important decisions are taken on matters within their mandate, in addition to their diversity preserves the continuity of state institutions, in regard the presence of current and former officials. They also allow for various views, including the opposition, to be heard, given the proximity of the majority and the opposition in the Parliamentary councils as in Brazilian experience. Most importantly is to give an opportunity to citizens not holding official positions a place in the composition of such councils which bring out major decisions from its closed elitist's framework and allow an acceptable level of widespread participation in the decision-making process.

[149] The Constitution of Brazil- Article 91.
[150] The Constitution of Portugal -Article 141.
[151] The Constitution of Portugal- Article 142.
[152] The Constitution of Portugal - Article 145

Consequently, some of these ideas may constitute appropriate options for the penholders of the future Constitution of Syria to cause an unfamiliar "democratic shock" to bolster transparency and participation in decision-making, and not assume or personalise power. This is what the country needs in the future.

2 - Role of the security and the military:

Undoubtedly Syria will face, after the war, significant challenges in this subject. In all States that have witnessed wars and conflicts, the country suffers despite the ending of the war, from its various ramifications. Those include issues related to the encroachment of the role and influence of those weapons bearers, as well as the existence of illegal armed groups and parties and the massive numbers of illegal weapons in the country. This will force the drafters of the Constitution to confront these repercussions and allocate constitutional provisions to deal with them.[153]

The positions adopted by various constitutions have varied regarding the military and security issues, ranging from totally disregarding and failing to address problems such as a first model or addressing them in very general terms, by referring everything related to their organization to subsequent domestic legislation as a second model, or get in the depth of the problems and challenges posed by those bodies and identify appropriate mechanisms and alternatives to deal with them as a third model.

The positions of some constitutions that followed the first and second models can be interpreted and justified by the States' particular circumstances:

In some States, the military and security sectors did not constitute a challenge that must be constitutionally regulated, thereby obviating the need to provide for this.

In other States, these issues could not be addressed by virtue of control, interference, and influence of the military and security sectors and in the overall political life of the State including the constitution writing.

Conversely, other constitutions, courageously and frankly faced the challenges associated with the military and security sectors, and perhaps most of those salient challenges are related to the multiplicity of such organs, their non-compliance with the laws and regulations, their interference in political and partisan life, as well as the spread of weapon anarchy, the lack of respect for the existing diversity existing in the country while setting up those organs and during the exercise of their work.

We can draw from experiences and practices of many constitutions of the world some useful practices and provisions to address those challenges associated with the military and security sectors.

1 - Assert the State's monopoly of the authority to the establishment of military and security forces:

To confront the chaos of multiple security or military bodies, the presence of formal or quasi-formal troops, secret, not provided for and is known only to a few, constitutions of some countries of the world turned to reaffirm the state's monopoly of power to establish those forces. It has adopted this position in following one of two methods: either to provide, as a general rule, for the state's sole monopoly of this task, or accurately

[153] For more details. See: Non-paper about the Constitution - National Agenda for the Future of Syria programme – ESCWA - 2016 - p 135 Ss.

identify the security and military agencies and prohibit the establishment of any organ existing outside this restriction.

Among the States that have adopted the style of the public text on the principle of the State's monopoly of this task, we refer here, for example, to the following constitutions:

The Constitution of Tunisia.

Chapter 17: "Only the state may establish armed forces and internal security forces, in conformity with the law and the service of the public interest".

The Constitution of Kenya

Article 239: 4. " A person shall not establish a military, paramilitary, or similar organisation that purports to promote and guarantee national security, except as provided for by this Constitution or an Act of Parliament".

The Constitution of Ghana

Article 85. Establishment of security services: "No agency, establishment or other organisation concerned with national security shall be established except as provided for under this Constitution".

Article 200: police service: 2. " No person or authority shall raise any police service except by or under the authority of an Act of Parliament".

Article 210: 2." No person shall raise an armed force except by or under the authority of an Act of Parliament."

Among the states that have adopted the system of enumerating the existing census bodies and denying the legitimacy of any other bodies beyond that limitation, we refer to the following examples:

The Constitution of Brazil

Article 144: Public security, the duty of the State and the right and responsibility of all, is exercised for preservation of public order and security of persons and property, by means of the following agencies:

1. Federal police.
2. Federal highway police.
3. Federal railway police.
4. Civilian police.
5. Military police and military fire brigades.

The Constitution of Kenya

Article 39. 1. National security organs: National security organs are:

a. The Kenya Defence Forces.
b. The National Intelligence Service.

The Constitution of South Africa

Article 199: " Establishment, structuring and conduct of security services:

1. The security services of the Republic consist of a single defence force, a single police service and any intelligence services established in terms of the Constitution.
2. The defence force is the only lawful military force in the Republic.
3. Other than the security services established in terms of the Constitution, armed organisations or services may be established only in terms of national legislation.

2 - Reiterate the constitutionality of the right of the State to free seizure of all illegal arms:

Some States have resorted to face the chaos of the existence of weapons outside the possession of official security or military agencies to confer on state authorities the right to seize and confiscate these weapons without compensation and the need for any further legal proceedings. Examples of the constitutions of these states:

The Constitution of Peru:

Article 175: "only the Armed Forces and the National Police may possess and use weapons of war.

The weapons existing in the country, as well as those manufactured in or introduce into the country, become State property without any legal process or indemnification".

Constitution of the Bolivarian Republic of Venezuela:

Article 324: "Only the State shall be permitted to possess and use weapons of war; any such weapons which now exist or are manufactured in or imported into the country shall become the property of the Republic, without compensation or proceedings".

3 - Reaffirm the subordination of the security and military organs to the provisions of the Constitution and the rules of national and international law:

The extent to which the work of the security and military organs are subject to the legal provisions while exercising its work is one of the leading challenges addressed here. In many States and for long decades, those agencies were granted absolute power, given exemption and exception from undergoing any national or international legal rule. In some States, this exemption was consolidated under explicit legal decrees took out, by the text of the law, the work of those organs from oversight and accountability.

To address this problem, several constitutions resorted to expressly stipulate that security and military organs, in the conduct of its work, must be governed by the provisions of the constitution, the rules of procedure, international law, customary standards, including those related to democracy and human rights and fundamental freedoms. Of these constitutions for example:

The Constitution of South Africa

Article 198: C. " National security must be pursued in compliance with the law, including international law".

Article 199: 5. " The security services must act, and must teach and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic".

Constitution of the Bolivarian Republic of Venezuela:

Article 329: " ... The National Armed Forces shall carry out activities of administrative policing and criminal investigation activities as provided for by law".

The Constitution of Kenya

Article 238 paragraph 2: a. " national security is subject to the authority of this Constitution and Parliament

b. National security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms...".

The more clear, commendable and recognised text is contained in article 199, paragraph 6, of **the Constitution of South Africa** which reads:

"No member of any security service may obey a manifestly illegal order".

This constitutional provision gives legal protection to any member of a security apparatus, in the failure to execute any order which "had no clear legitimation", contrary to many decades of invoking "the military order" and "obeying the President", to carry out and justify numerous violations in the name of the law and its protection as well. The significance and value of this provision lie in the possibility of challenging the unconstitutionality of any legal provision, or administrative or regulatory instruction contravenes it thereto.

4 - Compelling security and military organs to be impartial and prohibit their interference in the and partisan and political matter:

The intervention of security and military apparatus, in many countries of the world 's continents, in the political and partisan life has raised many problems, crises, triggered major conflicts and had, at times, led to bloody wars and acts of violence often ending with the elimination of political and partisan life altogether.

To meet this challenge, many of the world constitutions allocated provisions to emphasise that those organs and their members must adhere to political and partisan neutrality and refrain from interfering in any way or form in the interest of any party, or individual. From these constitutions, for example:

The Constitution of Brazil

Article 142:

4. " military servicemen are prohibited from forming unions and striking"

5. while in active service, military servicemen may not be affiliated with political parties"

The Constitution of Tunisia

Article 18: The national army is a republican army... It is required to remain completely impartial".

Article 19: "The national security forces are republican; they are responsible for maintaining security and public order ... with complete impartiality".

The Constitution of South Africa

Article 199: 7. " Neither the security services nor any of their members, may, in the performance of their functions:

a. prejudice a political party interest that is legitimate in terms of the Constitution; or

b. further, in a partisan manner, any interest of a political party."

The Constitution of Kenya

Article 239:

3. In performing their functions and exercising their powers the national security organ and every member of the national security organs shall not:

a. act in a partisan manner.

b. further any interest of a political party or cause; or

c. prejudice a political interest or political cause that is legitimate under this Constitution."

The Constitution of Paraguay
Article 173: "The military [personnel] on active service will conform their actions to the laws and regulations, and they may not join any political party or movement or realize any type of political activity".
Article 175: "... The police personnel on active service may not join any political party or movement or realize any type of political activity".
Constitution of the Bolivarian Republic of Venezuela:
Article 328: "The National Armed Forces constitute an essentially professional institution, with no political orientation... In performing their functions, they are at the exclusive service of the Nation, and in no case at the service of any person or political partisanship..."

5 - Place security and military organs under civilian authority control:

Many constitutions stipulated to place the security agencies under civilian authority control specifically. For example:

The Constitution of Kenya
Article 239: 5. " "The national security organs are subordinate to civilian authority".
The Constitution of South Africa
Article 198: c. " National security is subject to the authority of Parliament and the national executive:
Article 199: 8. " To give effect to the principles of transparency and accountability, multi-party parliamentary committees must have oversight of all security services in a manner determined by national legislation or the rules and orders of Parliament".

The **Portuguese Constitution** allocated a specified article to state that the Supreme National Defence Council shall be the **specific consultative body for matters concerning national defence and the organisation, operation and discipline ...."**[154] Then exhibited in article 274 paragraph 1 that:

1." **The Supreme National Defence Council shall be chaired by the President of the Republic and shall be composed as laid down by law. The said composition shall include members elected by the Assembly of the Republic".**

What is most revealing in forming this High Council for National Defence is that it comprises "elected members of the National Assembly of the Republic", further reinforcing the elected civilian control over the whole military system in the Statehood.

6 - Respect for the cultural and national diversity in labour and employment:

Some components of the nation in some countries feel marginalization and exclusion when their specificity is not taken into account and their size is not assessed in the formation of the system of security and military forces in the state. Which pushes them into isolation and a sense of non-belongingness and take a passive, somewhat belligerent stance towards those organs that might lead the country to more severe consequences that are neither predicted nor restrained.

For tackling this particular situation of each state and its specificity, Constitutions of States, such as Kenya, have resorted to allot more than a Constitutional provision to reaffirm the commitment of taking into account

[154] Portuguese Constitution article 274, paragraph 2

the cultural, national and regional diversity in equitable proportions either during recruitment or during the exercise of the authority granted to it.

Article 238, paragraph 2 of the Constitution of Kenya referred to that commitment and stipulated:

> **c. "in performing their functions and exercising their powers, national security organs shall respect the diverse culture of the communities within Kenya.**
>
> **d. recruitment by the national security organs shall reflect the diversity of the Kenyan people in equitable proportions.**

It reiterated the same commitment regarding the defence forces on the text in the fourth paragraph of article 241 of the Code:

> 4."**The composition of the command of the Defence Forces shall reflect the regional and ethnic diversity of the people of Kenya".**

3 - Build down of absolute authorities in case of emergency:

An emergency situation is a case of executive governance during which an upset in the constitutional balance of powers in the democratic order takes place. Although this stalemate provides the executives with the means to lift their country from the crisis it does not restrict the use of such means or methods or define the circumstances where they are used permit the abuse of cases of emergency in intensifying the powers for long periods of time.

This situation has been exploited for decades as a conventional means of justifying the undemocratic strength of the authorities in many states. Accordingly, national constitutions should embody clear, substantive and procedural constraints regarding the limitation of imposing a state of emergency and its controls, so as not to permit the appropriation of authorities and the violation and infringement of rights.

Imposing a continuous state of emergency in Syria since 1963 is one of the leading demands of the protest movements that have occurred in the country since the beginning of 2011, which led to the issuance of a decree terminating that situation "exceptionalism" after 48 years of its imposition. One of the challenges for the drafters of the permanent Constitution in the country would later be to find reasonable disciplines not to allow the repetition of the past, abuse of the state of emergency, and to extend it to make it the norm and original rather than merely an exception.

The constitutions of many states have imposed restrictions and controls on the authority declaring a state of emergency to prevent its powers in this situation to shift into absolute capabilities that can be misused and irreversible. These restrictions generally include restricting the justifications for imposing a state of emergency and the competent authority to enforce it, the extent it can possibly last, as well as the entrenchment of rights that can be adversely affected under the pretext of emergency, as well as subject this situation to the control and authority of the judiciary.[155]

[155] For more details. See: Non-paper about the Constitution - National Agenda for the Future of Syria programme – ESCWA - 2016 - p 151 Ss.

A - Restricting the recourse to a state of emergency:

Imposing restrictions on the authority that possesses the possibility of imposing this situation, the procedures to be followed, as well as the justifications for forcing this situation and the duration it can last. We refer here, for example, to the following constitutions:

The Constitution of South Africa

Article 37:

1. " A state of emergency may be declared only in terms of an Act of Parliament, and only when:

a. the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or another public emergency; and

b. the declaration is necessary to restore peace and order.

2. A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration may be effective only:

a. prospectively; and

b. for no more than (21) days from the date of the declaration, unless the National Assembly resolves to extend the declaration. The Assembly may extend a declaration of a state of emergency for no more than three months at a time. The first extension of the state of emergency must be by a resolution adopted with a supporting vote of a majority of the members of the Assembly. Any subsequent extension must be by a resolution adopted with a supporting vote of at least 60 percent of the members of the Assembly. A resolution in terms of this paragraph may be adopted only following a public debate in the Assembly".

The Constitution of Portugal

Article 19: 2. A state of siege or a state of emergency may only be declared in part or all of Portuguese territory in cases of actual or imminent aggression by foreign forces, a serious threat to or disturbance of democratic constitutional order, or public disaster.

3. A state of emergency shall be declared when the preconditions referred to in the previous paragraph are less serious and shall only cause the suspension of the some of the rights, freedoms and guarantees that are capable of being suspended.

Article 138: 1. " Declaration of a state of siege or a state of emergency shall require prior consultation of the Government and authorisation by the Assembly of the Republic, or, if the Assembly is not sitting and it is not possible to arrange for it to sit immediately, by its Standing Committee.

2. In the event that a declaration of a state of siege or a state of emergency is authorised by the Assembly of the Republic's Standing Committee, such declaration shall require confirmation by the Plenary as soon as it is possible to arrange for it to sit ".

The Constitution of Kenya

Article 58:

1- A state of emergency may be declared only when:

(A). the State is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency.

(b) The declaration is necessary to meet the circumstances for which the emergency is declared.

2- A declaration of a State of Emergency, and any Legislation enacted or other action taken in consequence of the declaration, shall be effective only:

(A). in the period following Declaration.
(B). period not exceeding 14 days from the date of the Declaration, unless the National Assembly extended Declaration.

3. The National Assembly may extend a declaration of a state of emergency:
(a) by resolution adopted:
1. following a public debate in the National Assembly.
2. by the majorities specified in clause (4).
(B). for not longer than two months at a time.

4 - The first extension of the declaration of a state of emergency requires a supporting vote of at least two-thirds of all the members of the National Assembly, and any subsequent extension requires a supporting vote of at least three-quarters of all the members of the National Assembly.

B - limitations on the powers and authorities during the state of emergency:

This means that the state of emergency does not intend to give free rein to the Executive authorities in doing what they want and waste all the rights and freedoms. Some rights remain immune even during a state of emergency, and the governing body must commit to and abide by some of the enforced restrictions. We refer here, for example, to the following constitutions:

The Constitution of Portugal
Article 19:
6. " Under no circumstances, shall a declaration of a state of siege or a state of emergency affect the rights to life, personal integrity, personal identity, civil capacity and citizenship, the non-retroactivity of the criminal law, defendants' right to a defence, or freedom of conscience and religion.
7. Declarations of a state of siege or a state of emergency may only alter constitutional normality in the manner provided for in this Constitution and the law. In particular, they shall not affect the application of the constitutional rules concerning the responsibilities and functioning of the bodies that exercise sovereign power or of the self-government bodies of the autonomous regions, or the rights and immunities of the holders of such offices".
Article 172: 1." The Assembly of the Republic shall not be dissolved... During... a state of emergency"
Article 289: "No act involving the revision of this Constitution shall be undertaken during a state of siege or a. State of Emergency ".
The Constitution of South Africa
Article 37:
4. Any legislation enacted in consequence of a declaration of a state of emergency may derogate from the Bill of Rights only to the extent that:
a. the derogation is strictly required by the emergency;
b. the legislation
1. is consistent with the Republic's obligations under international law applicable to states of emergency;
2. conforms to subsection (5); and
3. is published in the national Government Gazette as soon as reasonably possible after being enacted.
5. No Act of Parliament that authorises a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration, may permit or authorise:

a. indemnifying the state, or any person, in respect of any unlawful act.
b. any derogation from this section.

The Constitution of Kenya
Article 58:
6. Any legislation enacted in consequence of a declaration of a state of emergency—
a. may limit a right or fundamental freedom in the Bill of Rights only to the extent:
1. the limitation is strictly required by the emergency.
2. If the legislation is consistent with the Republic's obligations under international law applicable to a state of emergency.
b. shall not take effect until it is published in the Gazette.

C - Subject the state of emergency and its practices to judicial scrutiny:

Many constitutions sought to provide an additional guarantee so as not to misuse power under the pretext of an emergency. The judiciary was granted oversight authority that includes the extent to which the justifications for the enactment and extension of this situation, on one hand, and on the other, the scope of the legality of what is issued during this state of legislation or any other proceedings in conflict with the restrictions and controls of this stage. We refer here, for example, to the following constitutions:

The Constitution of South Africa
Article 37:
3. Any competent court may decide on the validity of:
a. a declaration of a state of emergency
b. any extension of a declaration of a state of emergency; or
c. any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.

The Constitution of Kenya
Article 58:
5. The Supreme Court may decide on the validity of:
a. a declaration of a state of emergency
b. any extension of a declaration of a state of emergency.
c. any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.

Consequently, previous constitutional options provide multiple alternatives and solutions to the makers of the country's future Constitution on how to reconcile the considerations and justifications that require the imposition of a state of emergency on the one hand and the requirements of preserving the fundamental rights and freedoms on the other.

Second - Reduce the monopolisation of power:

One of the substantive challenges facing the drafters of the future Constitution of Syria is how to formulate provisions and mechanisms to ensure a genuine and orderly democratic system, and prevent the monopoly and non-circulation of power, enhance the confidence of the rulers and the governed alike in the electoral process as a legitimate and transparent means to express the will of the people and succumb to it.

Some States have an inherently political and constitutional heritage in which democratic practices have been entrenched, and the rules of the political process have been systematised and no longer need to organise these issues under detailed constitutional provisions. Therefore, they usually make limited references in their

constitutions to those principles and rules aimed at recalling them and not with a purpose of establishing them. Contrary to what is prevalent in states that has embarked on a new phase that necessitates the consolidation of political pluralism and not the monopoly of power to organize the work of parties rather than prohibit and criminalize them, to accept the principle of dissent and not denounce and criminalize it and restore confidence in the electoral process after it has been rendered devoid of its the value and legitimacy.

The experiences of many countries of the world reveal the inclusion of special provisions in the constitution to deal with and overcome these challenges. The following sound practices could be concluded from these constitutions:

1 - Recognition of political pluralism and the right to establish political parties:

It should be recalled that the calls for political pluralism in Syria and the recognition of the right to form and belong to political parties were one of the key demands of the widespread protests movement the country witnessed in 2011. Thereon many constitutions resorted to allocating clear articles to emphasise the adoption of the political pluralism option and "right" to establish political parties. Of these constitutions reference could be made to the following modules:

The Constitution of Ukraine
Article 15: " Public life in Ukraine is based on bases of political, economic and ideological".
The Constitution of Spain
Article 6: Political parties are the expression of political pluralism, they contribute to the formation and expression of the will of the people and are an essential instrument for political participation".
The Constitution of Germany:
Article 21: 1. " Political parties shall participate in the formation of the political will of the people. They may be freely established"
The constitution of the Swiss Confederation
Article 137: "The political parties shall contribute to the forming of the opinion and the will of the People."
The Constitution of Tunisia
chapter 35: "the freedom to form political parties, unions and associations is guaranteed".
The constitution of South Africa
"Article 1: The Republic of South Africa is one, sovereign, democratic state founded on the following values:
d. A democratic governance system based on a multi-party system of democratic government, to ensure accountability, responsiveness and openness".
Article 9: 1. " Every citizen is free to make political choices, which includes the right:
a. to form a political party.
b. to participate in the activities of, or recruit members for, a political party.
c. to campaign for a political party or cause."
The Constitution of Ghana
Article 55: 1. " The right to form political parties is hereby guaranteed".

It is noted here that certain constitutions provided in the texts of the constitution itself for controls the work of those parties, such as in the Kenyan Constitution that defined in article 91 the underlying conditions for political parties and stipulated:

1. " Every political party shall:

a. have a national character as prescribed by an Act of Parliament.

b. have a democratically elected governing body.

c. promote and uphold national unity.

d. abide by the democratic principles of good governance, promote and practise democracy through regular, fair and free elections within the party.

e. respect the right of all persons **to participate in the political the process, including minorities and marginalised groups**

f. respect and promote human rights and fundamental freedoms, and gender equality and equity.

g. promote the objects and principles of this Constitution and the rule of law.

h. subscribe to and observe the code of conduct for political parties".

Numerous constitutions went to identify principles and practices that prohibit any party from embracing or exercising it under penalty of prohibition in order to prevent the abuse of the political and partisan system. Of these constitutions reference could be made to the following modules:

The Constitution of Germany

Article 21: 2." Parties that, by reason of their aims or the behaviour of their adherents, seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall rule on the question of unconstitutionality".

The Constitution of Kenya

Article 91: 2. " A political party shall not:

a. be founded on a religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred on any such basis.

b.engage in or encourage violence by, or intimidation of, its members, supporters, opponents or any other person or engage in or support terrorism.

c. establish or maintain a paramilitary force, militia or similar organisation

d. **engage in bribery or other forms of corruption. or**

e. accept or use public resources to promote its interests or its candidates in elections. except as is provided under this Chapter or by an Act of Parliament.

The Constitution of Ghana

Article 55: 4. " Every political party shall have a national character, and membership shall not be based on ethnic, religious, regional or other sectional divisions.

5. The internal organisation of a political party shall conform to democratic principles and its actions and purposes shall not contravene or be inconsistent with this Constitution or any other law".

The Constitution of Ukraine

Article 37: " prohibits the establishment and activity of political parties and public associations if programmes or actions is directed on liquidation of independence of Ukraine, change of constitutional line-up by a violent way, violation of sovereignty and territorial integrity of the state, injury of its safety, illegal fascination of state authority, propaganda of war, violence, on exasperation, racial, religious enmity, encroachments on rights and freedoms of man, health of population.

Political parties and public organizations cannot have the militarised formings.

Creation and activity of organisational structures of political parties in the organs of executive and judicial power and executive branches of local self-government, soldiery formings is shut out, and also on state enterprises, in educational establishments and other state establishments and organisations".

The Constitution of the Republic of Paraguay

Article 126: "The political parties and movements, in their functioning, may not:

1. receive economic aid, directions or instructions from foreign organisations or States.

2. establish structures which, directly or indirectly, imply the use of, or a call for, violence as a methodology of the political activity.

3. constitute themselves with the goals of substituting by force the regime of freedom and democracy, or of endangering the existence of the Republic.

Undoubtedly earlier texts contain very important options regarding the Syrian reality especially since the phase of creating new parties may witness many indications of the flaws ensuing from the intolerance that prevailed during the war, or due to a lack of understanding arising from the absence of previous experience in view of the reality that was prevailing in the country. This entails, particularly in the phase of construction and establishment, to get into the details of many of those issues and embed them in explicit constitutional provisions as did the Constitutions of many of the countries previously exposed.

2 - Recognizing constitutional rights for the opposition:

Some constitutions have made advanced strides in referencing the rights of the opposition parties and allocating seats and positions for them to strengthen their role and effectiveness.[156] Of these constitutions, we could refer, for example, to:

The Constitution of Tunisia

Article 60: "The opposition is an essential component of the Assembly of the Representatives of the People. It shall enjoy the rights that enable it to undertake its parliamentary duties and is guaranteed an adequate and effective representation in all bodies of the Assembly, as well as in its internal and external activities. The opposition is assigned the chair of the Finance Committee, and rapporteur of the External Relations Committee. The opposition's duties include active and constructive participation in parliamentary work".

The Constitution of Portugal

Article 114: 1. " Political parties hold seats in entities and organs that are based on universal, direct suffrage in accordance with their proportion of election results.

2. Minorities are accorded the right of democratic opposition, as laid down in the Constitution and the law.

3. Political parties that hold seats in the Assembly of the Republic and do not form part of the government particularly have the right to be regularly and directly informed by the Government about the situation and progress of the main matters of public interest. Political parties that hold seats in Legislative Assemblies of the autonomous regions or in any other directly elected

[156] For more details. See: Non-paper about the Constitution - National Agenda for the Future of Syria programme – ESCWA - 2016 - p 138 Ss.

assemblies have the same right in relation to the corresponding executive, in the event that they do not form part thereof".

The Constitution of Morocco:

Article 10

The Constitution guarantees to the parliamentary opposition a status conferring on it the rights that will permit it to appropriately accomplish the missions that accrue to it in the parliamentary work and political life.

The Constitution guarantees, notably, to the opposition the following rights:

- **freedom of opinion, expression and assembly.**
- **air time at the level of the official media, proportional to its representation.**
- **the benefit of public finance, conforming to the provisions of the law.**
- **the effective participation in the legislative procedure, notably by inclusion of proposals of law in the agenda of both Chambers of the Parliament.**
- **the effective participation in the control of the governmental work, notably by way of the motions of censure and the interpellation of the Government, the oral questions addressed to the Government and the parliamentary commissions of inquiry.**
- **the contribution to the proposing of candidates and to the election of members of the Constitutional Court.**
- **an appropriate representation in the internal activities of both Chambers of the Parliament.**
- **the presidency of the commission in charge of the legislation in the Chamber of Representatives.**
- **disposal of means appropriate to assume its institutional functions.**
- **the active participation in parliamentary diplomacy with a view to the defence of just causes of the Nation and of its vital interests.**
- **the contribution to the structuring and the representation of the citizens [feminine] and citizens [masculine] in the work of the political parties which it forms and this, in accordance with the provisions of Article 7 of this Constitution.**
- **the exercise of power in the local, regional and national plans, by way of democratic alternation, and within the framework of the provisions of this Constitution.**
- **the groups of the opposition are held to provide an active and constructive contribution to the parliamentary work.**
- **the modalities of exercise, by the groups of the opposition, of the rights provided for above are established, as is the case, by the organic laws, by the laws or additionally, by the internal regulations of each Chamber of the Parliament.**

It is observed here that some constitutions have spared certain seats for the opposition as the Constitution of South Africa which provided in Article 178 for the establishment of the "Judicial Services Commission" and identified the persons and entities that formed this Commission. Included:

f. "six persons designated by the National Assembly from among its members, at least three of whom must be members of opposition parties represented in the Assembly".

While other constitutions afforded media presence for the opposition as **Ghana's Constitution**, which stated in article 163 that:

"All state-owned media shall afford fair opportunities and facilities for the presentation of divergent views and dissenting opinions".

3 - Organizing the Electoral process

The democratic deliberation of the Authority can only be attained if there is a transparent and documented electoral process that enjoys the confidence of the people and increase the effectiveness of the political parties; we thus find that many constitutions had allocated some articles to provide for the creation of particular bodies to manage the electoral process and the rules and principles that should be adhered to.[157] From these constitutions for example:

The constitution of Bolivia

Article 205: "First - The Pluri-National Electoral Organ shall be composed of:

1. The Supreme Electoral Court.

2. The Departmental Electoral Courts.

3. The Electoral Judges.

4. The Juries of the polling places.

5. The Electoral Notaries

The Constitution of Tunisia

Article 126: "The elections commission, named the Supreme Independent Elections Commission, is responsible for the management and organisation 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".

The Constitution of South Africa

Article 190: 1. The Electoral Commission must:

a. manage elections of national, provincial and municipal legislative bodies in accordance with national legislation.

b. ensure that those elections are free and fair. f.

c. declare the results of those elections within a period that must be prescribed by national legislation and that is as short as reasonably possible.

2. The Electoral Commission has the additional powers and functions prescribed by national legislation.

Article 191: The Electoral Commission must be composed of at least three persons. The number of members and their terms of office must be prescribed by national legislation".

The Constitution of Kenya

Article 81: General principles for the electoral system.

The electoral system shall comply with the following principles:

[157] see detailed: Election provisions in the Constitution - a guidance paper issued by the International Organization about the report on democracy- April. April 2014.

a. freedom of citizens to exercise their political rights under Article 38

b. not more than two-thirds of the members of elective public bodies shall be of the same gender.

d. universal suffrage based on the aspiration for fair representation and equality of vote.

e. Free and fair elections:

1. by secret ballot

2. free from violence, intimidation, improper influence or corruption.

3. conducted by an independent body.

4. transparent. f

5. administered in an impartial, neutral, efficient, accurate and accountable manner".

Article 88: 1." establish the Independent Electoral and Boundaries Commission.

2. A person is not eligible for appointment as a member of the Commission if the person

a. has, at any time within the preceding five years, held office, or stood for election.

1. as a member of the Parliament or of a country assembly. or

2. a member of the governing body of a political party. or

B. **hold any State office**

3. A member of the Commission shall not hold another public office.

Past experiences provide significant models, especially that Syria will face many electoral challenges, successfully managing it might constitute an essential step in consolidating the country's transition to recovery and stability. This requires granting utmost importance to the management of this operation by first creating bodies involved in that process and constitutionally strengthen their powers, rights and immunities as previous constitutional models did.

Third Research- Guarantees of the rights and the judiciary:

Undoubtedly, the rights and freedoms are among the most prominent topics that occupy a central place in the core of the constitutional document. The constitution is not merely a document to illustrate the form of the state, its system of government and to govern the relationship between its authorities; rather it is, above all, a document to guarantee rights and freedoms.[158] For this purpose modern constitutions, notably constitutions of states undergoing the process of democratic transformation, tend to make the rights and freedoms document presented in the body of their new constitution more extensive and detailed than what was the case in the old constitution. A desire, on their part, to rid themselves of the heritage and practices of the past.

The future Constitution of Syria
Questions that will force itself

What are rights that should be included in the Constitution? Are traditional rights satisfactory? Or should we address the new generation of rights? Is the permissible to restrict the exercise of certain rights? what are the controls?

How have constitutions guaranteed the observance of rights and freedoms? What are the means of litigation that can be resorted to? How have some constitutions created rights-specific claims and constitutional institutions?

To this end, the constitutional document should clearly provide in detailed and precise terminology, for other civil, political, economic, social and cultural rights to what became known as the third-generation rights which, for example, include the right to a healthy environment and sustainable development.

As well as the text of the constitution shall provide assurances to the full enjoyment of these rights either by imposing restrictions on the State when there are justifications for restricting some of these rights, or by empowering those impacted by resorting to ordinary or exclusive means of litigation until the establishment of relevant bodies to follow up on the constitutional rights to ensure their implementation. Besides the independence of the judiciary is the most prominent guarantee not only to protect the rights and freedoms but also to ensure respect for the constitution as a whole and to regulate the function of its other authorities and institutions.

First - Rights and freedoms

Constitutions should embody a presentation of the rights and freedoms it guarantees on the one hand and a restriction on the potential of restricting these rights and freedoms or derogating or circumventing them on the other.[159]

The most notable observation the authors of the Constitution of Syria should be reminded of concerning the bill of rights and freedoms is the need for caution against repeating the errors of the past constitutions by suspending the enforcement of the constitutional rights over issuing subsequent legislation that may never be promulgated or published containing rules that rid the constitutional rights of its substance. This situation is described as "what one hand gives the other retrieves" which would mean that the Constitution recognises a right but soon adds the words "by the law" or "as stipulated by the law". This often makes it often difficult

[158] Guidelines for Human Rights and Constitution-Making - op. cit. p. 8 Ss
[159] See: Non-paper about the Constitution - National Agenda for the Future of Syria programme – ESCWA - 2016 - p 151 Ss.

to utilise the right if there is no valid law. In Nepal, the right to access information was provided in the 1990 Constitution, but the required law in such a situation was not introduced until after seventeen years. Therefore, such a provision should be used only in cases of extreme necessity and may not be compulsory if some details are contained in the constitution itself or some international treaties. The constitution must include transitional provisions giving the legislative body a biennium, for example, for a new enactment. Thereafter, courts have the liberty of autonomous application of that right while it remains possible for the legislature to pass laws identifying the right more explicitly.[160]

A - What can the constitutional rights document contain:

As already indicated, states should draw on the experiences and errors of the past, and that is why constitutions addressed themselves and intervened with either controlling rights and freedoms into the constitutional document, or by placing restrictions on the legislator when organising the rights and freedoms referred to by the Constitution.[161]

Among constitutions that followed this approach was the Constitution of Brazil, promulgated in 1988, which included 78 articles concerning the rights and freedoms, as is the case with the Constitution of Colombia adopted in 1991, which contained 76 articles on rights and freedoms. Additionally, the Constitution of South Africa, promulgated in 1996 and which dedicated chapter II, as a whole, to provide for the rights and freedoms under the title "Bill of Rights" included a breakdown of the following rights.

9 equality – 10 human dignity – 11 life – 12 Freedom and security of person – 13 Prohibition of slavery, servitude and forced labour – 14 privacy – 15 freedom of religion and belief and opinion – 16 – Freedom of expression – 17 right of assembly, demonstration, strike and complaint – 18 freedom of association – 19 political rights – 20 citizenship – 21 Freedom of movement and housing – 22 freedom of trade, occupation and profession – 23 labour relations – 24 environment – 25 property – 26 housing – 27 health care, food, water and social security – 28 children's rights – 29 education – 30 language and culture – 31 The rights of cultural, religious and linguistic communities – 32 access to information – 33 just administrative action– 34 access to courts – 35 rights of arrested, detained and accused persons.

However, the optimal Constitution which should be considered with great appreciation, specifically regarding the rights and freedoms, is the Portuguese Constitution promulgated in 1976. It underwent more than a subsequent amendment until 2005 and contained full details of the most precise rights and diverse freedoms. It included all the following rights:

> **First-** personal rights, freedoms and guarantees: including (Article 24: the right to life Article 25: Right to personal integrity. Article 26: Other personal rights Article 27: the right to freedom and security. Article 28: Remand in custody Article 29: application of criminal law. Article 30: limits of sentences and security measures. Article 31: [right of] habeas corpus. Article 32: safeguards in criminal procedure. Article 33: deportation, extradition and the right of asylum. Article 34: the inviolability of home and correspondence. Article 35: use of information technology. Article 36: family, marriage, filiation. Article 37: freedom of expression and information. Article 38: freedom of the press and the media Article 39:

[160] Millennium Declaration, rights and constitutions op. p. 103.

[161] The Egyptian Situation (Question-and-Session in the Light of Comparative Constitutions) - D. Imad Al Fakhi - Publisher: Arab Organization for Human Rights, Cairo, 2012, p. 45 Ss.

regulation of media. Article 40: the right to broadcasting time, of reply and of political response. article 41: freedom of belief and religion and worship Article 42: freedom of cultural creation. Article 43: liberty of learn and teach Article 44: the right to travel and emigrate Article 4the 5: the right to meet and to demonstrate. Article 46: Freedom of association Article 47: Freedom to choose a profession and of access to the public service.

Second- Rights, freedoms and guarantees concerning participation in politics: including (Article 48: participation in public life. Article 49: Right to vote Article 50: Right to run for public office Article 51: Participation in political associations and parties Article 52: the right to petition and the right of actio popularis (popular initiative).

Third - workers' rights and freedoms guarantee: including (Article 53: job security. Article 54: Workers' committees. Article 55: freedoms concerning trade unions. Article 56: Trade union rights and collective agreements Article 57: Right to strike and prohibition of lock-outs).

Fourth - Economic, rights and duties (article 58: the right to work. Article 59: Worker's rights Article 60: Consumer rights Article 61: Private enterprise, cooperatives and worker management. Article 62: Right to private property.

Fifth - social rights and duties, including (Article 63: Social security and solidarity. Article 64: Health Article 65: housing and urbanism Article 66: Environment and quality of life. Article 67: family. Article 68: Fatherhood and motherhood Article 69: childhood Article 70: youth Article 71: disabled citizens Article 72: The elderly)

Sixth - Cultural rights and duties, which include: Article 73: Education, culture and science. Article 74: Education Article 75: Public, private and cooperative education. Article 76: University and access to higher education Article 77: Democratic participation in education Article 78: Cultural enjoyment and creation. Article 79: physical education and sport)

Access to the most successful experiences of comparative constitutions in many countries of the world in its various continents leads us to draw the following results regarding the content of constitutional rights and what could be envisaged for the future Constitution of Syria: The Constitution

1 – should contain full details of rights, avoid reference to domestic statutes or suspend its implementation over the promulgation of domestic legislation. When having to do so, the transitional provisions of the Constitution must provide for clear mechanisms to ensure the immediate and direct enjoyment of those rights until the issuance of domestic legislation and just as well provide for a specified period for issuing the necessary law.

2 – should emerge from the limited circle of traditional rights and transition to a broader space that includes the third-generation rights and other up-to-date ones.

3 – Should take into account international and regional treaties that are related to human rights and to which the State has committed to and incorporate, what it had adhered to under these treaties, in its national constitution pursuant to the principle of legislative harmonization, which obliges states to amend and harmonize national legislation, including the constitution, to ensure the implementation of the international treaties.

4 – During the process of drafting constitutional rights, the penholders of the constitution should be free from the unjust reservations made by their Governments upon ratification or accession to some human rights treaties taking into account that such reservations are not restricted, especially if they are unjustified and inconsistent with several constitutional provisions they have adopted in their constitution. As in the case of the reservations of few States on some of the provisions of the CEDAW Convention which are incompatible with equality and citizenship and are among the most prominent rights enshrined in other national constitutions.

B - Limitation of rights disciplines

One should realize the fact that the mere drafting of constitutional rights does not guarantee their quality and ensure their application, as it should be cautioned that the best rights enshrined in constitutions can risk subsequent restriction. Given that some rights may be misused and as there are circumstances where the public interest requires restricting certain rights, It would then be necessary to strike a balance between the abuse of rights by the owners of rights, and the restrictions on those rights by Government.[162] This requires an early action, during the constitution-drafting process, to meet this challenge through the imposition of constitutional controls on the possibility of restricting rights.[163]

This problem will face the authors of the future Syrian Constitution, and they could avail themselves of various constitutional practices and how they could deal with this issue.

Comparative constitutions reveal that three constitutional options can restrict the rights and reconcile between the different and legal interests and rights in this situation:[164]

The first option - The constitution does not impose limitations so that the responsibility for defining permissible limitations falls on the judiciary: as seen in the United States of America. Note that this process is dangerous and worrying as it would throw a heavy burden on the judiciary, on the one hand, and, on the other hand, if the judiciary is not competent and independent at the same time, there is danger it would tend to favour the government, particularly in cases that have political flavour.

The second option - specify the permissible grounds for limiting the targeted right: This was the conventional approach until recently. One of its advantages is that the restrictions could be tied to the particular right. As there may be further restrictions or different limits on the freedom of expression, for example, it may be more acceptable to have that on the right to life. An example is when the Ukrainian Constitution resorted to stipulate under separate articles the right that may be restricted and the disciplines for the restriction process. As it established in article 34 on the freedom of opinion, thought and conscience and stipulated that:

> **To each, a right to freedom is guaranteed thoughts and words, on free expression of the looks and persuasions.**

[162] Millennium Declaration, rights and constitutions op. p. 107.
[163] For more details.
Human Rights - A Handbook for Parliamentarians - UN Office of the High Commissioner for Human Rights - Inter-Parliamentary Union - No. 8 - 2005 p. 21 ff.
[164] Millennium Declaration, Rights and Constitutions op. p. 107- 110.

Everybody has a right to freely collect, keep, use and diffuse information orally, in writing or in another way - on the choice.
Realization of these rights can be limited by a law in the interests of national safety, territorial integrity or public peace with the purpose of prevention of disturbances or crimes, for the health protection population, for defence of reputation or rights for other people, for prevention of disclosure of the information got confidentially, or for support of authority and impartiality of justice).

The problem with this method is that the number of words addressing restrictions go beyond those relating to rights. That may give the impression that those rights are irrelevant and could lead to mental fragmentation away from the priority of rights. In addition to the difficulty and complexity of the drafting process, it might be difficult as well to anticipate all the reasons for the legal limitation of rights. There would either be an exhaustive list or be limited to state "other legitimate reasons", in such a case, including a fixed list of reasons to restrict a right would be of little significance.

The third option - involves having a general provision on restrictions, ideally, as the First Article in the Bill of Rights, so that the reader is immediately aware of the possible limitations and qualifications on rights option. This approach was adopted by various constitutions, such as the Canadian Constitution o and the of South African Constitution also. As stated, in Article 36, in the **Constitution of South Africa** under the heading "limitation of rights":

1. The rights in the Bill of Rights may be limited only in terms of a law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including:

a. the nature of the right.

b. the importance of the purpose of the limitation the nature and extent of the limitation

c. nature and the extent of the limitation.

d. the relation between the limitation and its purpose

e. less restrictive means to achieve the purpose

2. Except as provided in subsection (1) or in any other provision of the Constitution, doesn't limit any right entrenched in the Bill of Rights.

From the latter paragraph, we can conclude that the South African Constitution provided two approaches to limit constitutional rights: A bill that takes into account the procedures and controls under the first paragraph of the article (36), and the second, that this limitation should be provided for in the constitution itself.

For example, as provided in Article (16), freedom of expression and limits the on that:

1.) Everyone has the right to freedom of expression, which includes: "

a. freedom of the press and other media.

b. freedom to receive or impart information or ideas.

c. academic freedom and freedom of scientific research.

2. The right in subsection (1) does not extend to:

a. propaganda for war

b. inciting of imminent violence

c. advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm).

Apart from these two cases, the law prohibits the provision of any law restricting any right of the constitutional rights.

The **German Constitution** is one of the constitutions that has intervened, constitutionally, to impose limitations on the law when regulating the rights and freedoms established in it in providing in article 19 for:

> **1.) Insofar as, under this Basic Law, a basic right may be restricted by or pursuant to a law, such law must generally apply and not merely to a single case. In addition, the law must specify the basic right affected and the Article in which it appears.**
> **2.** In no case may the **essence of a basic right** be affected).

Note that some constitutions devoted special paragraphs to fundamental rights and freedoms that cannot be restricted as **the Portuguese Constitution** that had allocated article 42 to emphasise the non-restriction of the freedom of cultural ingenuity by stating:

> **1.** Intellectual, artistic and scientific creation shall not be restricted.
>
> **2.** This freedom shall comprise **the right to invent, produce and publicise scientific, literary and artistic works and shall include the protection of copyright by law.**

Based on the foregoing, it is clear that there is a multiplicity of grounds for governments to restrict certain rights and establish controls for its practices and organization, which usually ranges among the obligation to respect the rights of others, the requirements for the maintenance of public order, national security, or health and public morality. In any event, it would be appropriate for the authors of the future Constitution of Syria to consider the following controls during the formulation of the specific paragraph on restricting rights:

1–The limitation clause should include adequate reasons under which a right can be curtailed, the substance of the right that could be restricted and to what extent. Whether it is a total or a partial restriction, the procedures to be followed to restrict the right, as well as enable those affected by this limitation to recourse to litigation means to find redress and ensure that the authorities respect the objective and the procedural restriction of the limitation process.

2 – Restrictions on human rights must not be unfettered; otherwise, nothing would remain of the human right. International human rights law has hence created several controls governing the regulation or restriction of rights, such as the principle of the "essence of the human rights" may not be affected by these limitations, i.e. these imposed restrictions ought not to render this right empty of its content and substance. Also, the principle of proportionality where governments should not impose obligations or restrictions beyond the extent to which these obligations are necessary to attain the desired social objective of that measure. In addition to the democratic necessity principle, the International Covenant on Civil and Political Rights (ICCPR) provides that restrictions against any right must be necessary to maintain a "democratic standard oriented along the basic democratic values of pluralism, tolerance, broadmindedness, and peoples' sovereignty,"[165]

[165] Lawful Restrictions on Civil and Political Rights – Democracy Reporting International – Briefing Paper - October 2012, p. 4 ff.

It must be borne in mind that there are fundamental rights that shall never be restricted because they represent the essence of the fundamental right to consider the human dignity as these rights encompass (the right to life, prohibition of torture and slavery, inhuman and degrading treatment, and the non-retroactivity of criminal laws).

Second - Safeguards of commitment to rights and freedoms

In addition to all of the above, constitutional rights charters should include clear texts and precise mechanisms to ensure the operationalisation of these rights if they are neglected or violated.

The reality of international practices reveals that many constitutional rights remain dead letters and are then frozen or disabled by restrictive texts. Worse still, the ability to advocate rights is often disrupted by either the complexity of the legal system or by the fact that access to the constitutional court, the supreme judicial authority, is restricted by detailed texts and conditions that constrain access to this court.

Conversely, many of the compared constitutions reveal the existence of creative ideas with distinctive texts that provide maximum guarantees to enable everyone to enjoy the rights enshrined in the Constitution. While some constitutions are sufficed by general words and imprecise expressions that must respect and operationalize these constitutional rights, other distinctive constitutions enter into precise details and address all possibilities whereas others rule on all types of proceedings that are constitutionally defined in case of infringement of rights or oblige governments to simplify litigation procedures to safeguard the enforcement of constitutional rights, , down to provide for the repeal of all texts contrary to the charters of constitutional rights and the accountability of its violators, as well as the empowerment of individuals to resort to the Supreme Constitutional Court.

Several models and good practices from different constitutions of the world could be highlighted here.

1 - Annulment of the offending conduct and entailment of responsibility on the perpetrator.

Some constitutions have resorted to raising the level of protection of rights guaranteed by the constitution. Any act by a public authority that would violate these rights is annulled as well as liability arrangements are held on the perpetrator. As the Constitution of Venezuela stipulated under article 25 thereof, which states:

> **(Any act on the part of the Public Power that violates or encroaches upon the rights guaranteed by this Constitution and by law is null and void. And the public employees ordering or implementing the same shall incur criminal, civil and administrative liability, as applicable in each case, with no defence on the grounds of having followed the orders of a superior).**

2 - Enabling access to justice including the Supreme Constitutional Court

The Constitution of Venezuela constitutes a good example in this respect as it devoted several definite articles for the judicial protection of constitutional rights; here we refer primarily to articles (26/27/31), given the important norms they have laid, notably by:

The right to access the organs comprising the justice system to enforce his or her rights, including those of a collective nature and the State guarantees justice that is free of charge:

As provided for in article 26 of the **Constitution of Venezuela**, which states:

> **(Everyone has the right to access the organs comprising the justice system for the purpose of enforcing his or her rights and interests, including those of a collective or diffuse nature to the effective protection of the aforementioned and to obtain the corresponding prompt decision. The State guarantees justice that is free of charge, accessible, impartial, suitable, transparent, autonomous, independent, responsible, equitable and expeditious, without undue delays, superfluous formalities or useless reinstating.**

Such protection is considered significantly progressive as it does not limit the protection to individual rights, but cuts across collective ones, besides it provides access to all litigation organs without losing sight of the material and temporal burden of litigation, and therefore stipulated, constitutionally, towards the mitigation of this burden.

The **Constitution of Ecuador** is marked by the establishment of the Office of the People's Ombudsman with a view to providing free access to justice for those unable to access it due to economic, social or cultural situations. Article 191 of the Constitution of Ecuador stipulated on the establishment of this Office:

> **The Office of the Attorney for the Defense of the People is an autonomous body of the Judicial Branch, aimed at guaranteeing full and equal access to justice by persons who, because of their situation of defenselessness or economic, social, or cultural status, cannot hire legal defense services for the protection of their rights.**
> **The Office of the Attorney for the Defense of the People shall provide technical, timely, efficient, effective and free-of-charge legal services to support and legally advise the rights of persons in all matters and institutions.**
> **This office is indivisible and shall function as a decentralised entity with administrative, economic, and financial autonomy. It shall be represented by the Attorney for the Defense of the People and shall benefit from human and material resources and labour conditions that are equivalent to those of the Attorney-General's Office).**

Prioritizing rights-related constitutional actions while simplifying their procedures:

As provided for in article 27 of **the Constitution of Venezuela**, which states:

> **(Everyone has the right to be protected by the courts in the enjoyment and exercise of constitutional rights and guarantees, including even those inherent individual rights not expressly mentioned in this Constitution or in international instruments concerning human rights. Proceedings on a claim for constitutional protection shall be oral, public, brief, free of charge and unencumbered by formalities. and the competent judge shall have the power to restore immediately the legal situation infringed upon or the closest possible equivalent thereto. All-time shall be available for the holding of such proceedings, and the court shall give constitutional claims priority over any other matters).**

Constitutional provision on the right of individuals to appeal to international and regional human rights bodies and compel the State to implement its resolutions:

As provided for in article 31 of the **Constitution of Venezuela**, which states:

> **(Everyone has the right, on the terms established by the human rights treaties, pacts and conventions ratified by the Republic, to address petitions and complaints to the intentional organs created for such purpose, in order to ask for protection of his or her human rights.**
>
> **The State shall adopt, in accordance with the procedures established under this Constitution and by the law, such measures as may be necessary to enforce the decisions emanating from international organs as provided for under this article).**

3 - Establishment of special protection claims of human rights violations

The **Constitution of Ecuador** is characterised by the provision of special protection claims in cases of violations of human rights and freedoms enshrined in the Constitution and has established two types of cases to enhance protection:

First – protection proceedings, which could be resorted to in the event of an infringement of any of the constitutional rights by any non-judicial public authority and has referred to such cases in two articles within its provisions:

> **Article 88:**
> **(Protection proceedings shall be aimed at ensuring the direct and efficient safeguard of the rights enshrined in the Constitution and can be filed whenever there is a breach of constitutional rights as a result of deeds or omissions by any non-judiciary public authority against public policies when they involve removing the enjoyment or exercise of constitutional rights; and when the violation proceeds from a particular person, if the violation of the right causes severe damage, if it provides improper public services, if it acts by delegation or concession, or if the affected person is in a status of subordination, defenselessness or discrimination).**
> **Article 94:**
> **(The special proceedings for protection shall be admissible against those rulings or definitive judgments where there has been a violation, by deed or omission, of the rights enshrined in the Constitution, this appeal shall be admissible when regular and special appeals have been exhausted within the legal framework, unless the failure to file these resources was not attributable to the negligence of the person bearing the constitutional right that was infringed).**

Second – Cases of non-compliance which are intended to ensure the application of rules and regulations constituting the legal system, as well as the commitment to the decisions or reports of the international human rights organisations. **These cases were provided for in article 93 of the Constitution, which states:**

> **(Proceedings for failure to comply shall be aimed at guaranteeing the application of rules and regulations comprising the legal system, as well as compliance with the rulings or reports of international human rights organisations when the regulation or decision whose enforcement is being pursued contains an**

obligation to make it clear, express and enforceable. The petition shall be filed with the Constitutional Court).

4 - Establishment of bodies involved with constitutional rights issues

Many constitutions of the world contained provisions specific to the establishment of bodies concerned with ensuring the operationalisation of human rights enshrined in constitutions. With the loss of confidence, at times, in the integrity of some politicians, or some judges, or some administrators, it has been quite common to establish independent institutions to execute some responsibilities and tasks. These include the accountability of state institutions or the dealing of complaints lodged against them for human rights violations or mismanagement and unfair discrimination.

These bodies are referred to by multiple terms (Ombudsman – Human Rights Commission – Human Rights Ombudsman). Irrespective of their label such bodies should enjoy real powers away from the authorities of "supervision", "consultation", "proposition" and "expression of opinion". Note that, despite the varied characteristics and organisational structure of those institutions, they share particular features, most notably, impartiality and probity, independence and expertise.[166]

The establishment of such bodies should undoubtedly be of specific constitutional importance in the future of Syria, given the challenges a state usually faces in the post-conflict phase, particularly about human rights issues. The following are constitutional models of these bodies and the prerogatives they enjoy.

The Constitution of Ecuador:

Article 214: The Office of the Human Rights Ombudsman shall be a body governed by public law with national jurisdiction, legal status and administrative and financial autonomy. Its structure shall be deconcentrated and it shall have delegates in each province and abroad).

Article 215: The Office of the Human Rights Ombudsman shall have as its duties the protection and guardianship of the rights of the inhabitants of Ecuador and the defence of the rights of Ecuadorian nationals living abroad. It shall have the following attributions, **in addition to those provided for by law:**

1. To support, by virtue of its office or at the request of a party, the actions of protection, habeas corpus, access to public information, habeas data, noncompliance, citizen action and complaints about poor quality or improper provision of public or private services.

2. To issue measures of mandatory and immediate compliance for the protection of rights and to request trial and punishment from the competent authority for their violations.

3. To investigate and rule, in the framework of its attributions, on the deeds or omissions of natural persons or legal entities that provide public services.

4. To exercise and promote surveillance of due process of law and to immediately prevent and stop all forms of cruel, inhumane and degrading treatment.

The Constitution of the Republic of South Africa:

Article 181: 1.) The following state institutions strengthen constitutional democracy in the Republic:

[166] Millennium Declaration, rights and constitutions op. cit., p. 182 - Ss

a. The Public Protector.
b. The South African Human Rights Commission.
c. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.
d. The Commission for Gender Equality
e. The Auditor-General.
f. The Electoral Commission.

2 -These institutions are independent and subject only to the Constitution and the law and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.

3 - Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions.

4 - Person or organ of state may interfere with the functioning of these institutions.

5 - These institutions are accountable to the National Assembly and must report on their activities and the performance of their functions to the Assembly at least once a year).

Article 184: The South African Human Rights Commission must:

a. promote respect for human rights and a culture of human rights.
b. promote the protection, development and attainment of human rights; and
c. monitor and assess the observance of human rights in the Republic

2. The South African Human Rights Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power:

a. to investigate and to report on the observance of human rights.
b. to take steps to secure appropriate redress where human rights have been violated.
c. to carry out research
d. to educate.

3. **Each year, the South African Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment.**

4. **The South African Human Rights Commission has the additional powers and functions prescribed by national legislation.**

Third - Judicial independence

The independence of the judiciary is considered a sine qua non for the respect of the Constitution and its permanence, regularity of the work of the authorities and the stability of any democratic system. There is no value to the Constitution, nor to the declaration of the rights and freedoms of the individual, the principle of

separation of powers without an independent judiciary able to impose its oversight on the work of the legislative and executive branches.[167]

The majority of constitutions have allocated numerous chapters and texts to ensure the independence of the judiciary as well as to strengthen and operationalise the role of the constitutional court. The following elements can be reclaimed as the most salient pillars that should be included in any constitutional text on the entrenchment of the independence of the judiciary and the operationalisation of the role of the constitutional court.[168]

1 - Emphasis on the independence of the judiciary and the prohibition of interference in its affairs:

The judiciary has long suffered in many states from the loss of its independence and the failure to respect the principle of separation of powers which assures protection against any meddling with its decisions or any politicisation of its provisions that might be requested from or urged to take. That's why constitutions were intended to allocate clear-cut texts confirming the independence of the judiciary and prohibiting any interference with their affairs and provisions. For example:

The constitution of South Africa

Article 165:

(1) The judicial authority of the Republic is vested in the courts.

(2) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.

(3) 4- No person or organ of state may interfere with the functioning of the courts...

The Constitution of Tunisia

Article 102:

The judiciary is independent. It ensures the administration of justice, the supremacy of the Constitution, the sovereignty of the law, and the protection of rights and freedoms.

Judges are independent with the law being the sole authority over them in discharging their functions.

Article 109: "All kinds of interference in the functioning of the judicial system are prohibited.".

The Constitution of Morocco:

Article 109:

[167] This is particularly due: International Standards on the Independence of the Judiciary and a Briefing Paper issued in September 2013 by the centre for Constitutional Transitions in at NYU Law. This Briefing Paper was written by Richard Stacey and Sujit Choudhry from the Center for Constitutional Transitions at NYU Law. It was edited by Michael Meyer-Resende, Evelyn Maib-Chatré, Geoffrey Weichselbaum and Mehdi Foudhaili of Democracy Reporting International.) p. 2 ff.

[168] For more details, see: Non-paper about the Constitution - National Agenda for the Future of Syria programme – ESCWA - 2016 - p 118 Ss.

"Any intervention in the matters submitted to justice is forbidden. In his judicial function, the judge may not receive injunction or instruction, nor be submitted to any pressure whatever. Each time that he considers that his independence is threatened, the judge must refer [the matter] to the Superior Council of the Judicial Power. Any breach on the part of the judge of his duties of independence and impartiality, constitutes a grave professional fault, without prejudice to eventual judicial consequences.

The law sanctions any person who attempts to influence the judge in an illicit manner".

It is noteworthy to mention that constitutions of many states realised that to preserve the independence of the judiciary and respect the principle of separation of powers requires the judiciary to be headed by a judge who belongs to that category and not the chief executive or one of his representatives. For this, we find these constitutions clearly define that mechanism as follows:

The Constitution of Tunisia

Article 112

The Supreme Judicial Council is composed of four bodies, which are the Judiciary Council, the Administrative Judicial Council, the Financial Judicial Council, and the General Assembly of the three judicial councils.

Two-thirds of each of these structures is composed of judges, the majority of whom are elected, in addition to judges appointed on merit, while the remaining third shall be composed of independent, specialised persons who are not judges. The majority of the members of these bodies shall be elected.

Elected members exercise their functions for a single six-year term.

The Supreme Judicial Council shall elect its president from amongst its most senior judges

The law establishes the mandate of each of the four bodies, and their composition, organisation, and procedures

The Constitution of Portugal:

Article 218: Supreme Judicial Council

1. The Supreme Judicial Council shall be chaired by the President of the Supreme Court of Justice and shall also be composed of the following members:

a. Two to be appointed by the President of the Republic.

b. Seven to be elected by the Assembly of the Republic.

c. Seven judges to be elected by their peers in accordance with the principle of proportional representation.

2 - A Precise organisation of the judiciary

Constitutions of some states have realised the perils of judicial deference to regulate many of the judiciary affairs, circumstances capsized, and it intervened to control plenty, leaving the ineffective few to the law. Examples of these constitutions are the Brazilian Constitution and the Constitution of South Africa.

For example, with respect to the Constitution of South Africa, Articles 166 -173 dealt with the identification and core competencies of South African courts and their composition. i.e., it was not left up to the law to

identify the judicial bodies. Not only this, Article 174 stipulated the conditions for appointing judicial officers; Article 176 defined the length of term of the judicial position and controls of the salary of judges, whereas Article 177 spoke of the reasons and conditions for the dismissal of the judge and the competent authority to issue this decision.

3 - Ensure the independence of the constitutional court and enable access to it.

The constitutional court enjoys a special and distinctive place in the legal and judicial hierarchy in the state, as it is the supreme judicial authority capable of vetoing laws and legislation, ensuring respect for the constitution and guaranteeing that all issued in the state is compatible with its provisions and principles.

The most sensitive and controversial issues concerning this court are how to appoint its judges, which shall affect its independence, its accessibility and impact its effectiveness.

For the appointment of the judges of the court, it is noted here that a powerful authority or political institutions appoint the vast bulk of the constitutional judges. Which may appear surprising prima facie, given its inconsistency with the requirements of independence and neutrality that must be provided for the exercise of any judicial action.[169] This matter represents in reality, unlike what is perceived to be one of the elements that contribute to the bolstering of the legitimacy of the constitutional jurisdiction since the participation of the "controlled authority" in the appointment of constitutional judges would urge them to accept the work of the "oversight authority". And in according to the states concerned, the appointing authority is either the executive power of the President of the Republic, government or parliamentary authorities, heads of parliamentary councils, deputies, senators, or both to share appointing authority. We even find examples of states in which constitutional judges are elected by parliamentary assemblies, as in Germany.[170] We could offer here some constitutional provisions e.g.[171]

The Constitution of Tunisia

Article 118:

The Constitutional Court is an independent judicial body, composed of 12 competent members, three-quarters of whom are legal experts with at least 20 years of experience.

The President of the Republic, the Assembly of the Representatives of the People, and the Supreme Judicial Council shall each appoint four members, three-quarters of whom must be legal specialists. The nomination is for a single nine-year term.

[169] see: Constitutional courts after the Arab Spring Appointment Mechanisms and Relative Judicial Independence - A Study issued by the Center for Constitutional Transitions at NYU Law - International Institute for Democracy and Electoral Assistance op. cit. p. 34 et seq.

[170] New Constitutional School: The New Form of the Constituent -Path- Memorandum issued by Democracy Reporting International - Berlin. Germany. Germany. p. 9

Constitutional Review in New Democracies - Briefing paper issued in September 2013 of the Centre for Constitutional Transitions at NYU Law (This Briefing Paper was written by Katherine Glenn Bass and Sujit Choudhry from the Center for Constitutional Transitions at NYU Law. It was edited by Michael Meyer-Resende, and Duncan Picard of Democracy Reporting International) - p. 5

[171] For more details, see: Non-paper about the Constitution - National Agenda for the Future of Syria programme – ESCWA - 2016 - p 122 Ss.

One-third of the members of the Constitutional Court shall be renewed every three years. Any vacancies in the Court shall be filled according to the same procedure followed upon the establishment of the court, taking into account the appointing party and the relevant areas of specialisation.

Members of the Court elect a President and a Vice President of the Court from amongst its members who are specialists in law.

The Spanish constitution

Article 159:

1. The Constitutional Court shall consist of twelve members appointed by the King. Of these, four shall be nominated by the Congress by a majority of three-fifths of its members, four shall be nominated by the Senate with the same majority, two shall be nominated by the Government, and two by the General Council of the Judicial Power.

2. Members of the Constitutional Court shall be appointed among magistrates and prosecutors, university professors, public officials and lawyers, all of whom must have a recognised standing with at least fifteen years' practice in their profession.

5. Members of the Constitutional Court shall be independent and enjoy fixity of tenure during their term of office.

The Constitution of Portugal:

Article 222:

1. The Constitutional Court shall be composed of thirteen judges, ten of whom shall be appointed by the Assembly of the Republic and three co-opted by those ten.

2. Six of the judges who are appointed by the Assembly of the Republic or are co-opted shall obligatorily be chosen from among the judges of the remaining courts, and the others from among jurists.

4. The judges of the Constitutional Court shall elect its President

5. Constitutional Court judges shall enjoy the same guarantees of independence, security of tenure, impartiality and absence of personal liability and shall be subject to the same incompatibilities as the judges of the other courts.

As for accessibility of the court, there should be a search for a means that does not always lead to dumping the court with enormous amounts of proceedings and returns, thereby crippling its ability to operate, but at the same time, however, does not lead to close its doors in the face of those affected by the unconstitutionality of laws or decisions that touch their interests and rights as individuals or groups.

From the options and the constitutional, we point to the experiences of Spain and South Africa:

The Spanish constitution

Article 162:

1. Lodge an appeal of unconstitutionality:

a. The President of the Government, the Defender of the People, fifty Members of Congress, fifty Senators, the Executive body of a Self-governing Community and, where applicable, its Assembly.

b. any individual or body corporate with a legitimate interest, as well as the Defender of the People and the Public Prosecutor's Office.

2. In all other cases, the organic act shall determine which persons and bodies shall have right of appeal to the Court.

The constitution of South Africa

Article 167:

6. National legislation or the rules of the Constitutional Court must allow a person when it is in the interests of justice and with leave of the Constitutional Court

a. to bring a matter directly to the Constitutional Court. Or

b. to appeal directly to the Constitutional Court from any other court.

As for the makers of the future Constitution of Syria and based on international practices and precedents, this Constitution should, at a minimum, guarantee the independence of the judiciary in a way to prevent politicization of the resolutions of this authority, as well as its assertion on the right of litigation as a constitutional right for everyone. The Constitution shall facilitate this right at minimal cost, simply make it possible and accessible to all and the State's obligation to provide legal aid to indigent persons, as well as to stress the right of everyone to have access to a normal rather than an exceptional judge. Add to that the Constitution in its articles offers clear assurances for the right to litigation, during all the stages of the judicial process, without any hindrance or condition to disrupt access to justice.

It is also required that the Constitution would provide for the division of the courts of the State and its rules of jurisdiction, with the purpose to distinctly clarify the principles underlying the powers of each court so as the Constitutional Court is the body which is keen to implement these principles. In order to grant the judiciary a role in monitoring the electoral processes on their diversity and share this oversight with the civil-society actors and organisations to reach maximum standards of integrity and transparency,and ensure the prompt resolution of cases of violations and de-politicisation in the interest of any party.

Fourth Research - Engendering the Constitution

Syrian women have suffered, constitutionally, from chronic marginalisation and exclusion over successive decades and consecutive constitutions that have reiterated the same terms and texts, with slight changes in form but not in substance. In essence, it would subject her to the values and provisions of multiple religious and sectarian systems and disseminate against her conservative constitutional and social practices. Besides providing a protective umbrella for some patriarchal, violent practices, religiously justified and constitutionally enshrined, committed against them. Add on these successive constitutions have emptied women's constitutional rights of their content by assigning their exercise to other legislation that contradicts and limits them.

The future Constitution of Syria
Questions will impose itself

- **What are the options and alternatives to engender the language of the constitution during the writing process? How have other constitutions dealt with this issue?**

- **What are the fundamental rights a gender-sensitive constitution highlights? And how could these rights be expressed in constitutional provisions?**

- **How did the constitutions adopt the quota issue? What are the constitutional institutions that could be established to achieve gender equality?**

The current Syrian constitution of 2012 did not come out of this context, especially since women's rights and gender equality were not present as a priority during its drafting sessions since the political issues were overwhelming due to the circumstances and the accelerated developments on the ground in the country.

It appears that the predominant and the overriding patriarchal mentality, during the drafting process, has already led to disregard many of the necessary provisions to ensure the rights of women. Besides the formulation of other texts have been subjected to a lot of gender criticism because that Constitution and when it comes to women's rights, fell into a pothole of listing generic terms without a precise mechanism for their implementation and operationalisation and without even the use of expressions which indicate the meaning of commitment and obligation. This is evident in the text of Article 23 of this Constitution, which states:

> **(The state shall provide women with all opportunities enabling them to effectively and fully contribute to the political, economic, social and cultural life, and the state shall work on removing the restrictions that prevent their development and participation in building society).**

Since it is assumed that this article is allocated to talk about the "duties" of the State toward women, the commitment is floating and vague rather than clear and specific. The text, for example, features words such as "do, work on" instead of “committed”, “pledge” or “guarantee”, which limits the binding character of this article.[172]

In addition to the 2012 Constitution disregarding the designation of provisions that have been necessary to ensure women's rights and promote gender equality. For example, the absence of an explicit article in the

[172] Gendered constitution building process for Syria. Report on Gender Entry Points to a democratic constitution in Syria and lessons learned from constitution-making processes in the Middle East and North Africa- This report was produced by the Coalition of Syrian Women for Democracy with the support of the European Feminist Initiative IFE-EFI November 2014- Authors: Sawsan Zakzak, Fayek Hjeieh, Maya Al Rahabi- Editors: Maya Al Rahabi, Lilian Halls-French- p. 20.

Constitution defining and prohibiting discrimination against women and ignoring any " affirmative action measures/quota" enhancing women's participation in the public and political life.[173] Besides the constitution also ignored providing for the protection of women against gender-based violence, in line with the constitutions of many countries of the world, including constitutions of some regional States.

Despite that the current Syrian Constitution expresses civil, political, social, economic and cultural rights, and the right to live without violence, maternity protection , decent housing, the State's assistance the welfare of minors, older persons and dependants, but lacks specific provisions that address the significant gender gap in enabling women to exercise and enjoy these rights, rendering the unequal relations within the family structure a major factor in depriving women of "their" theoretical rights.[174]

The Geneva Communique' of 2012, which initiated the Syrian peace process settlement, refers in paragraph VIII to "the broad tranche of Syrians consulted have an overwhelming wish for a State that offers equal opportunities and chances for all.

Establishing this promised State will achieve for the Syrian women their right to access "equal opportunities and chances" only if the new Constitution is in line with the gender perspective. In view of a gender-sensitive constitution is the one that ensures the "establishment of the rule of law, equality between women and men and respect for the human rights and dignity of both women and men alike. And adopts a gender perspective, pays attention to how issues of gender are addressed and how constitution provisions impact gender. It also assumes a gender-sensitive language and specific gender equality provisions.

Although social, political and cultural contexts are different, a gender-sensitive constitution is framed by norms and standards that are grounded in the universality and indivisibility of the human rights of women and men".[175]

According to such concept, engendering the new Syrian constitution process should similarly affect the language and content of the constitutional text, and on an equal footing too.

[173] The principle of gender equality states that women and men shall enjoy the same opportunities, rights and responsibilities in all areas of life. Every person, irrespective of sex, have the right to work and support themselves, in balancing family and professional life, participate in political and public life on an equal basis and live without fear of abuse or violence.
Gender equality also means that women and men are of equal value and enjoy equal protection before the law, in law and in practice. see ABC for a Gender Sensitive Constitution- Handbook for engendering constitution- making- writers: Silvia Suteu - Editors: Borina Jonson and Maya Alrahabi- Euromed Feminist Initiative 2016- p 10.
[174] Gendered Constitution Building Process for Syria. op. cit. p. 21.
[175] ABC for a Gender Sensitive Constitution- Handbook for engendering constitution- making op. cit p. 11.

First - Engender the constitutional language:

The choice of words is undoubtedly biased and could reflect stereotypical gender stances, which are then perpetuated by the constitutional text. Feminists have long advocated for laws to be drafted in a "gender-neutral", "gender-inclusive" or "non- sexist" language. They have also advocated for the recognition of the so-called “masculine rule”—the assumption that the masculine pronoun (he) subsumed the feminine (she)—has not come about as an accident but has served to perpetuate the invisibility and inferiority of women and therefore should be renounced especially in constitutions and legislation where “the masculine voice usually frames speech, thus making women absent” from both the texts and the protection of the law.[176]

A presidential election precedent in 2014

Amid controversy and division over whether Syrian women are entitled to run for President of the Republic due to the requirement of the Syrian Constitution that the candidate [masculine] "should not be married to a non-Syrian". On 26/4/2014, the engineer, Sawsan Omar Haddad, ran for the presidency of the Republic in 2014 elections. The Constitutional Court declared that her application was recorded into its register under No. 8 and then referred it to the People's Council without examining the legality of the application and deciding on it in accordance with the law of the Court, which refers in article 23 that the court shall handle "legal study of the applications" upon receipt of endorsements of the members of the House of the People. Where the application shall not be receivable unless the candidate has obtained a written endorsement for his nomination of at least 35 members of the House of the People.

What actually happened was that the court merely received the woman's request and forwarded it, legally and procedurally, to the House of the People where she failed to obtain the support of the 35 House members and the nomination process ended at this point without reaching the stage of "legal study of the candidacy application" by the Constitutional Court. This stage is when the court is supposed to examine the applicability of the terms of the nomination, its compatibility with the provisions of the Constitution and to resolve whether Syrian women are entitled to the candidacy of the presidency of the Republic or not.

It seems clear that gender language completely lost on all the vocabulary under the Syrian Constitution of 2012 similar to the rest of the former Syrian Constitutions which date back to earlier decades as nothing has changed relating to the “Constitutional gender language” since the first Royal draft Constitution for Syria in 1919 until the last Constitution in 2012

This result seems to be very clear through the return to all articles of the Constitution that address the people and always speak in the masculine voice only, for example, "the State shall provide for every citizen and his family", "citizens are equal", "the State guarantees the freedom of citizens", "all citizens are equal in rights and duties", "every citizen shall have the right "," duty of every citizen "," citizen may not be expelled "," citizens may not be extradited "," every citizen has the right to liberty of movement "," work is the right for every citizen "," every worker fair remuneration "," voters are citizens "," A candidate for the post of the President of the Republic is required to".

[176] Review in detail: ABC for a Gender Sensitive Constitution- Handbook for engendering constitution- making op. cit. p. 76 Ss.

The Constitution did not contain any indication that such terms as "citizen, voter, candidate" include both women and men.

Not only the use of "masculine" terminology but also the disregard of engendering the language of the Constitution during the drafting process of the Syrian Constitution of 2012 has led to a considerable uncertainty on women's enjoyment of some of the rights contained in this Constitution where the use of vague expressions facilitates its interpretation in malicious intent to exclude women and deprive them of their practice.

This controversy was raised on the occasion of article 84, paragraph 4, of the Constitution, which sets out the conditions for nomination to the presidency of the Republic, having provided in advance that "the candidate to serve as President of the Republic is required". That paragraph considered that from the conditions for nomination "not to be married to a non-Syria", which was understood to mean to a large cross-section of Syrian women and Syrians alike, that the presidential candidate "should" be a male, not a female. The requirement of not being " married to non-Syrian" implies the exclusion of women from the right to stand for election to this position and deprive them therefore of citizenship rights and equality that is provided for in this Constitution.

It is clear from the above that the gender language theme during the constitution-drafting process is a very crucial and severe issue and goes beyond the subject of drafting, proving presence and attendance where it cannot be relied upon to think the obvious that the "masculine" voice would unequivocally include both men and women. That is because this" lack "or" ambiguity" coupled with the supremacy of the patriarchal concept in the formulation, interpretation and application, in addition to the consolidation of religious authorities, would undoubtedly lead to the exclusion of women and their denial of many rights, as is currently the case, which is an issue that needs to be rectified in any subsequent constitutional process.

Many constitutions and international practices reveal that several techniques can be utilised to engender the language of the constitution including, avoiding gender-specific terms, inserting both female and male pronouns, where pronouns are unavoidable, along with correcting gendered historical assumptions.[177] Through the review of several constitutional provisions, the following solutions adopted by these Constitutions can be presented to engender the language of the constitution.

1-Avoiding gender-specific terms, which can be achieved by:

A- Using specific gender-neutral terms: such as person or individual thereby used by the Constitution of South Africa of 1996 in article 47, paragraph 3, when referring to the loss of national membership, it states explicitly that:

(**A person loses membership** of the National Assembly if that person...)

The **Constitution of Uganda** also resorted to this option in article X, when referring to citizenship by birth It states:

(The following persons shall be citizens of Uganda by birth:

[177] Refer in detail: ABC for a Gender Sensitive Constitution- Handbook for engendering constitution- making op. cit. chapter IV p. 76 Ss.

a- every person born in Uganda one of whose parents... b- every person born in or outside Uganda one of whose parents ....

B- Repeating certain nouns to avoid pronouns: Repeating certain nouns, such as referring to "the President" throughout articles which address the office of the presidency, instead of using pronouns, would ensure that the articles could be read as gender neutral. For example, article 79 of the **Constitution of South Africa** for 1996:

(Assent to Bills:

1. **The President must either assent to and sign a Bill passed in terms of this Chapter or, if the President has reservations about the constitutionality of the Bill, refer it back to the National Assembly for reconsideration.**
2. **The National Council of Provinces must participate in the reconsideration of a Bill that the President has referred back to the National Assembly if**
    a. **the President's reservations about the constitutionality of the Bill relate to a procedural matter that involves the Council or**
3. **If, after reconsideration, a Bill fully accommodates the President's reservations, the President must assent to and sign the Bill. if not, the President must either—**

C. Using the passive voice: This technique is especially suitable for provisions declaring individual rights that can thus be announced in a "disembodied" language which embraces everyone and does not refer to a particular person as the rights-holder. Example: Article 80 of the Australian constitution, on "Trial by jury":

D. Using gender-neutral alternatives for masculine-based nouns, such as chairperson instead of Chairman: There are words which incorporate gender assumptions into their very structure, such as the use of the suffix –man in English: "chairman", "businessman" etc. These should be replaced with gender-sensitive alternatives such as "chair" or "chairperson", "businesspeople" etc. For example, the South African constitution, Article 64 "Chairperson and deputy chairpersons" of the National Council of Provinces: as well as the Nepali constitution, Article 86 the "Constitution of National Assembly and terms of members":

E. Using the plural (they) instead of singular pronouns: That's because recasting a sentence in the plural can help avoid gendered pronouns, for example, the South African constitution, Article 10 on "Human dignity" states:

Everyone has inherent dignity and the right to have their dignity respected and protected).

2- Where pronouns are unavoidable, inserting both female and male pronouns should be used by either alternating between the masculine he/his and the feminine she/her or putting them together in all provisions, preferably giving precedence to the feminine pronoun as a clear indicator to its gender commitments of the text. For example, Article 169, paragraph 1, of the **Bolivian Constitution** of 2009, which states:

(In the event of an impediment or definitive absence of the President, he or she shall be replaced by the Vice President and, in the absence of the latter, by the President of the Senate, and in his or her absence by the President of the Chamber of Deputies.

In this last case, new elections shall be called within a maximum period of ninety days).[178]

Also, Article 89 of the **Constitution of Nepal** of 2015 concerning the vacancy of one of the members of parliament seat stating:

The seat of a Member of Parliament shall be vacant in the following circumstances:
A -if he or she resigns in writing to the Speaker or Chairperson,

B - if he or she does not meet the requirements under Article 87.)[179]

3- Correcting gendered assumptions: knowing that these assumptions include holders of political office, and some institutions and practices:

a. Correcting gendered assumptions about holders of political office: The danger in opting for neutral constitutional language is that as it eliminates the "masculine rule", it again erases women from the text. Thus, to combat "stereotypical assumption that the actors in politics must be men", the text can make explicit references to women and use the female pronouns in relation to appointments to official positions typically assumed to be held by men. As the examples below depict, this can be done in one item or each item dealing with those appointments; this latter involves sending a stronger message in that regard.

For example the French constitution, Article 1: which states:

(.. **Statutes shall promote equal access by women and men to elective offices and posts the as well as to position of professional and social responsibility).**

As well as the **Tunisian Constitution** of 2014, Chapter 74 on candidacy for the position of President where it is stated:

Candidacy for the position of President is right to every male and female voter who holds Tunisian nationality since birth, whose religion is Islam…)

b. Correcting Single-gender assumptions about certain institutions and practices: Certain institutions or practices carry gendered meanings, such as "family" or "marriage". Drafters should be aware of the impact of constitutionalising such institutions. They should then decide whether it is better to avoid explicit textual references or else to draft it in a gender-inclusive manner. Of course, much will depend on how to interpret such provisions in practice. However, clear constitutional language that states the equality in marriage and the family between women and men, for example, will help guide such interpretation. Furthermore, given that the individual constitutes the basic unit of society, the constitution should focus on the individual rights of all genders, which is also applicable to family or marriage. Thus, "with regard

[178] Article 169
In the event of an impediment or definitive absence of the President, **he or she** shall be replaced by the Vice President and, in the absence of the latter, by the President of the Senate, and in **his or her** absence by the President of the Chamber of Deputies. In this last case, new elections shall be called within a maximum period of ninety days.
[179] Vacation of seat: the seat of a member of the Federal Parliament shall become vacant in any of the following circumstances:
(a) if **he or she** tenders resignation in writing before the Speaker or Chairperson,
(b) if **he or she** is no longer qualified or ceases to possess the qualification under Article 87

to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws [should] be enacted from the standpoint of individual dignity and the essential equality between women and men".

For example, Article 48 on "The family" of the **Romanian Constitution**, which states

> **(The family is based on a freely consented marriage by the spouses, their full equality, and the right and duty of the parents to raise, educate, and instruct their children).**

Second - Engendering the Constitutional content.

The penholders of the future Syrian constitution should consider that the process of engendering the constitution is an integral process and can not to limited to the language without content or vice versa. The constitution that is compatible with the gender perspective must include certain fundamental rights and substantive issues to attain its purpose and goal and transform it from a mere "political and media marketing" to a legal document that does justice to women and guarantees their enjoyment of all of their rights without exclusion or exception.

We expose in the subsequent pages the most salient vital issues that have affected constitutions in seeking compatibility with the gender perspective:

1 - Recognizing citizenship for both men and women alike :

The constitutions should include a clear text endorsing in explicit terms the full enjoyment by women and men of equal citizenship rights which institutes full equality between them in subsequent legal rights and status. This paragraph would be a necessary legal entry for women to enjoy all the subsequent especially if the text does not expressly comply with those rights. It also ensures non-discrimination between women and men on the grounds of sex and among women themselves on any other affiliation (religious – national...)

For example, the Constitution of Ecuador, which entitled a specific chapter "citizens [females] and citizens[males]" provided under article 6 of Chapter 2 that:

> "All female and male Ecuadorians are citizens and shall enjoy the rights outlined in the Constitution".

2 - Clear provisions on equality between women and men:

National constitutions adopt the principle of equality in many formulations. This principle is a central and necessary right to enjoy all other rights. From the good practices in this regard:

(a) Emphasising equality between women and men, in particular: Such constitutions adopt a more obvious style in emphasizing the right of equality and entrenching it by explicitly highlighting the idea of equality between women and men in clear, unequivocal terms, which was adopted, for example, by the Russian Constitution that stated in section I of chapter 2 in article 19 - 2 :

3.) Men and women enjoy equal rights and freedoms and equal opportunities for exercising such rights).

As well as the Belgian Constitution includes in section II, Article 10, that "

"Equality between women and men is guaranteed".

As well as the **Constitution of Benin** under Article 26 – Part II that provided

(men and women are equal before the law).

The Tunisian Constitution in section II, chapter 21, which included an assurance that

"All citizens, male and female, have equal rights and duties and are equal before the law without any discrimination".

(b) Integrating equality with affirmative action measures: other constitutions not only explicitly enunciate the equality between women and men but also acknowledge that the theoretical constitutional equality alone is not enough unless accompanied by affirmative steps that must be taken by the State in order to activate this right of equality and empower women to overcome decades of inequality and discriminatory practices against them. This obliges the State to take the necessary measures to ensure this equality and implement it in practice.

Canadian Charter of Rights and Freedoms, Article 15 on "Equality Rights":

"(1) Every individual is equal before and under the law and has the right to the equal protection and an equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(1) Subsection (2) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

3 - Explicit provision on non-discrimination between women and men:

Non-discrimination is associated with the right of equality and is thought to be one of the most serious violations humans are exposed to in general and women in particular. National constitutions have resorted to multiple methods in dealing with non-discrimination. We refer to some good practices here:

A- Prohibit all forms of discrimination whether exercised by the state or individuals and commit to issue legislation to combat it

The **Constitution South of Africa** adopted a more detailed approach to the issue of non-discrimination and provided in article 9 of Chapter 2:

3.) "The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social

origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth, or a group of these reasons.

4. **No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.**

5. Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair).

This text is credited for providing for numerous detailed issues of discrimination and brought them together smoothly:

It embodied a comprehensive list of the most common grounds of discrimination, including discrimination by sex, but without a closed or limited list, which would authorise the prohibition of any subsequent discriminatory practices.

Also distinguished between direct and indirect discrimination and discrimination by the state, individuals and prohibited all of those practices.

As well as it also obliged the state in clear terms to issue legislation specialised in banning and preventing unfair discrimination.

Finally, it distinguished between prohibited unjust discrimination and justified discrimination aimed at "empowering" and supporting the capacities of the affected groups that were targeted by unjust discrimination. It described justified discrimination as "fair" cautioning against its abuse and considered that any discrimination is identified as unjust unless proven fair. Given that this paragraph enables the state to adopt necessary "affirmative action measures" to empower women outlined in the CEDAW Convention.

B – Emphasise the prohibition of discrimination about the most infringed rights.

Other constitutions adopted another option in shedding light on the most common practices of discrimination against women and expressly prohibiting them in the text. They were not satisfied to an explicit general prohibition instead allocated it regarding specific practices as well. As with the case of the **Portuguese constitution**, which concentrates on discrimination against women in the field of “access to political office” and provided in Article 109:

"The direct and active participation in political life by men and women is a condition for and a fundamental instrument in the consolidation of the democratic system, and the law must promote both equality in the exercise of civic and political rights and the absence of gender-based discrimination in access to political office".

Whereas the **Constitution of Ecuador** focused on discrimination against pregnant and breastfeeding women in “education, social, and labour sectors” it provided in chapter 3, Part 4, Article 43

(The State shall guarantee the rights of pregnant and breastfeeding women to:

1. **Not be discriminated for their pregnancy in education, social, and labour sectors).**

Naturally, until the required protection achieves its objective in these Constitutions, it should be undertaken in conjunction with a general provision to prohibit discrimination between women and men in general and in all sectors. So as the articles are not misinterpreted and then is believe that the banned perception is only in sectors that have been expressly stated, a fact which the constitution penholders must be alerted to and avoided.

This is precisely why and until the prohibition of discrimination against women achieves its intended purpose in national constitutions and ensures due protection, the authors of the national constitution ought to take into account the following matters:

1 – Clearly and specifically endorse the prohibition of discrimination between men and women either by the use of the expression "women and men" or discrimination on the grounds of sex.

2 – Where the grounds for prohibited discrimination are enumerated in a provision, the list should not be exhaustive so as not to understand that discrimination is not permitted only on the occasion of the said practices and is permissible in other cases and to avoid the possibility of other grounds of discrimination being identified in the future, therefore emphasis should always be on the use of illustrative lists, marked by any other forms of discrimination, for example, (such as /for example)

3 – It would be appropriate for the drafters of national constitutions, and according to the national specificity of each State, and besides the explicit text to prohibit direct discrimination between women and men also reaffirm in clear terms to prevent discrimination in specific areas affecting women in local communities and violating their rights to equality and specifically (for example, non-discriminatory in positions or in access to education and health...)

C - Use of expressions that indicate the explicit right of women to exercise the rights in which they traditionally suffer from marginalisation and exclusion.

Women suffer, traditionally and historically, from exclusion from the enjoyment of certain rights and holding some posts (the right to hold political and judicial positions.) or violation of their rights of equality regarding other rights (such as labour-related rights). Therefore, some constitutions despite emphasising that "every citizen" benefit from "all rights" reaffirm in clear terms that women enjoy this right, specifically, on an equal basis with men.

For example:

The right to work:

The **Venezuelan Constitution** stipulates in article 88 that:

> **(The State guarantees the equality and equitable treatment of men and women in the exercise of the right to work. The state recognises work at home as an economic activity that creates added value and produces social welfare and wealth. Housewives are entitled to Social Security in accordance with law)**.

What is remarkable here is that the **Constitution of Venezuela** has already proceeded to a more revolutionary and progressive step beyond the endorsement of the right of women to work, access to equal remuneration as men and the prohibition of discrimination. It considers that domestic work done by women

is usually an economic activity that generates wealth and wellbeing. According to that permitted housewives participation in the social security system. It is a crucial step and leads women through this right to unprecedented and overdue areas.

The **Constitution of Switzerland** focused on the parity of women's and men's equal rights in "family, education and Work". And constitutionally safeguarded women's rights to equality with men to get equal pay for equal work, provided for in section II of Chapter 1, Section 3 – 8 of the constitution, indicating that:

> 3.) **Men and women have equal rights. Legislation shall ensure equality in law and in fact, particularly in family, education, and work. Men and women shall have the right to equal pay for work of equal value).**

Equally, the **Constitution of Ecuador** highlighted women's rights at "pre-employment" and "at the job" stages, guaranteeing them, as a constitutional right, pre-employment access to "vocational and professional training and development" enabling them to qualify for a good job later. As for "at the job", it also ensured her protection against "discrimination, harassment and violence" whether "direct or indirect" as stipulated in the Constitution of Ecuador, article 331:

> **(The State shall guarantee to women equal access to employment, vocational and professional training and advancement, equitable pay, and the option to self-employment.**
> **All necessary measures shall be taken to eliminate inequality.**
> **Any form of discrimination, harassment or violent action, of any nature, whether direct or indirect, affecting women at work is forbidden).**

Property right:

The **Constitution of Ecuador** stipulates in article 324 that:

> **(The State shall guarantee equal rights and equal opportunity to men and women in access to property and decision-making in the management of their common marital estate).**

Judicial posts:

On this right, the **Constitution of Ecuador** indicated in article 434 that:

> **"The members of the Constitutional Court shall be designated by a qualification commission comprised of two persons appointed by each one of the following branches of government: the legislative, the executive, and transparency and social monitoring. Members shall be elected from among the candidates submitted by the above-mentioned branches of government, through a public examination process, with citizen oversight and option for challenging the process. In the membership of the Court, efforts shall be made to ensure parity between men and women".**

Family rights and marriage:

The **Brazilian Constitution** under article 226 paragraph 5 stated that:

(The rights and duties of the conjugal society shall be exercised equally by men and women).

While the **Spanish Constitution** asserted in chapter II division 2 section 321:

1.) Man and woman have the right to marry with full legal equality).

4 - Highlights women's right to protection against gender-based violence specifically:

Gender-based violence is one of the most significant risks facing women, and one of the main challenges to hinder their ability from exercising many rights, and one of the notable violations of their rights to life, physical integrity and human dignity. It would be therefore necessary for the drafters of future constitutions to heed the issue and provide it with clear and precise language.

For example, the Tunisian Constitution obliged the state to face this violation and provided in chapter 46:

(The state shall take all necessary measures in order to eradicate violence against women).

Whereby the **Constitution of Ecuador** considered that addressing violence against women is a fundamental right recognised under article 66 that states:

The following rights are recognised and guaranteed:

3- Right to personal well-being, which includes:

a. Bodily, psychological, moral and sexual safety.

b. A life without violence in the public and private sectors. The State shall adopt the measures needed to prevent, eliminate, and punish all forms of violence, especially violence against women, against persons at a disadvantage or in a vulnerable situation. Identical measures shall be taken against violence, slavery, and sexual exploitation".

Throughout the drafting of constitutional provisions on this right the penholders of the constitution should take into account the following:

1 – This right must be provided for in clear terms under a separate article and not simply assimilate it with other rights such as the right to life and physical integrity and not merely render it in the text or wording of other articles since it would be useful to highlight it with a clear, precise and separate article. As the Tunisian Constitution has done for example.

2 – The expressions in the text of the proposed article should include a clear indication of two matters linked to right and duty: the right of women to be free of such violence and the responsibility of the state to take all necessary measures to guarantee and confront it and protect its victims.

5 - Impose a distinct constitutional obligation not to allow violations of the rights of women and restrict them under the pretext of religion or customary law:

The infringement of the rights of women on the pretence of religion or custom is also one of the main perils targeting women and impeding the enjoyment of their other rights. Note that the menace befalling women of such practices appears to be much greater than that posed by gender-based violence since the latter is rejected, at least theoretically, and prohibited under other provisions, if not the constitutional then the legislative.

Contrary to the violation of women's rights on the pretence of religion or custom, as this "act" may be justified, legitimate and comprehensible to many who see no infringement in as much as a submission or subordination to religious or customary law. Consequently, the gravity lies here in legalising the breach and legitimising it rather than banning it, bearing in mind that the right is not in committing but in confronting it.

Indeed, some national constitutions, in addressing women's rights, restrict them so as not to contravene with religion or custom or make religion and customs the reference for the enjoyment of those rights and not the constitution.

At the same time, constitutions should not take here a hostile attitude of religions or social norms in which plenty of good practices lie therein. What is rather needed here is the explicit provision that makes the application of religion and custom contingent to their conformity with the Constitution and not the other way around.

For example, having recognised the role and rights of religious, cultural and linguistic communities, the Constitution of South Africa stressed that the exercise of their rights ought not to be at variance with the bill of rights enshrined in the Constitution highlighted in article 31, which states:

> **Article 31: The Cultural, Religious and Linguistic Communities.**
> **1- Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community, in:**
> **a. to enjoy their culture, practise their religion and use their language; and**
> **b. to form, join and maintain cultural, religious and linguistic associations and other organs of civil society**.
> **2- The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.**

The urgency of this subject is emphasised in communities still suffering from religious or customary dominance which makes the interpreters of the religious texts, not the texts themselves, the reference since their interpretations outperform any constitutional provision.

The significance of highlighting this provision is not only to protect women from violations of their rights on the pretence of religion or custom, but also to ensure against the promulgation of any ensuing legislation based on and emanates from religion and tradition irrespective of their incompatibility with all the constitutional rights of women which is the case specifically in family codes, civil and personal status laws.

6 - Quota for women:

A quota for women is the allotment of a minimum of seats for women in elected bodies or administrative and executive bodies, aimed at increasing their representation in political affairs and their participation in decision-making. It is in this sense that the quota is in line with the Beijing plan of the Fourth World Conference on Women, 1995 which called upon the Governments of the world to promote greater participation of women in decision-making positions to a minimum 30 percent target set by the Economic and Social Council. For that

reason, constitutions of some States that have adopted the quota system have provided for the guarantee of 20 and 30 percent of the total seats for women on those boards.[180]

States' constitutions have varied in adopting or ignoring the topic of quota (either due to a lack of necessity or a lack of conviction), while constitutions generally enunciated the State's obligation to ensure women are represented on elected boards (Constitution of Tunisia- Section II, chapter 34) or appropriately represented in parliaments as is the case in the Constitution of Egypt pursuant to section II, chapter I, article 11. Other constitutions have explicitly, in detail and in different terms provided for the quota as the following examples reveal:

1- provide for a quota for women "as a minimum":

What is meant here is that the Constitution provides for a minimum percentage of representation for the presence of women in the elected council as is the case with the Iraqi Constitution that stipulated in part III, chapter I, section I article 49 Fourth to be:

> **(The elections law shall aim to achieve a percentage of representation for women of not less than one-quarter of the members of the Council of Representatives).**

The **Constitution of Kenya** resorted to a different perspective in providing for a one-third percent required quota for both men and women when it pointed out that not more than two-thirds of the members of elective public bodies shall be of the same gender ensuring that a third of the "other gender" is at least present in the Council. The Constitution of Kenya required the State to take all legislative and other measures to ensure the fulfilment of this obligation. As explicitly provided for in chapter IV, part two 27 – 8:

> **a.) …the state shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender).**

which is reaffirmed in chapter VII Section I article 81, which states:

The electoral system shall comply with the following principles:

b.) not more than two-thirds of the members of elective public bodies shall be of the same gender).

2 – Reserve a specific number of seats for women

Some constitutions resorted to a different scheme by providing exclusively on the number of seats to be filled by women in elected assemblies as is the case with the Constitution of Pakistan, which allocated 60 seats for women out of the original 342 seats in the National Council as stipulated in part III Section 2, article 151.

Here, we observe that the proportion of female presence in the National Assembly under the manner espoused by the Pakistani constitution will be less than 18%, which represents the maximum inalienable for an increase because the Constitution has limited the number of seats and divided them exclusively between women and men. A method that is criticised due to the fact that the specific proportion of women is far less

[180] For more details.
Dr Maya Al Rahbi - Feminism. Concepts and Issues - Dar Al Rahbeh for publication and distribution- Damascus - first edition - 2014 - p 289 ff

than the what is hoped-for 30 percent initially at least to reach parity. Besides this does not allow women to compete for seats allocated for men, which could never allow for an increase in the number of these seats.

The **Constitution of Kenya** also provides the same principle by identifying the number of women in the National Assembly and the Senate on the members of the National Council, as Article 97 stipulates:

> **97) Membership of the National Assembly:**
> **1- The National Assembly consists of:**
> **a. two hundred and ninety members, each elected by the registered voters of single-member constituencies.**
> **b. forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency).**
> **98) Membership of the Senate:**
> **1. The Senate consists of:**
> **a. forty-seven members, each elected by the registered voters of the counties, each county constituting a single member constituency.**
> **b. sixteen women members who shall be nominated by political parties according to their proportion of members of the Senate.**
> **c. two members, being one man and one woman, representing the youth.**
> **d. two members, being one man and one woman, representing persons with disabilities...)**

It is noteworthy that the mere stipulation of women's quotas in constitutions alone is not enough, but should be accompanied by other actions to achieve the real purpose and aim of the quota and focus on the "content" and not just the number. Of these procedures for example, choosing the best electoral system for women, ensuring an efficient electoral administration to clarify the electoral system for political parties and applying the temporary special measures for the participation of women in the electoral process (such as exemption fees for running, access to official media, access to public resources, and imposition of sanctions on political parties that do not comply). Add to that, determining the extent of centralised or decentralised nomination procedures as well as the need for a real and effective presence of women in the Voter Registration Commission and the committee overseeing the electoral process.[181][182]

Therefore, the drafters of the Constitution must consider the following issues:

1. The quota outlined in the Constitution is the best guarantee to achieve the purpose of the quota system, and accordingly, it is essential to explicitly provide for and not simply be satisfied by general and vague terms leaving it subject to the will and interpretation of the executive power.

[181] For more details about the impact of the electoral system. See:
See detailed: Election provisions in the Constitution - a guidance paper issued by the International Democracy Report- April - 2014.

[182] Designing for Equality. Best-Fit, Medium-Fit & Non-Favourable Combinations of Electoral Systems & Gender Quotas - by Stina Larserud. Rita Taphorn - A report issued by the International Institute for Democracy and Electoral Assistance. Sweden – p 19 – 20

2. Unless parity is stipulated, the quota should not be less than 30 percent with an emphasis on the word "minimum" allowing women to compete with other seats outside the quota lists in the hope of improving and increasing its ratio.

3. Other issues relevant to the topic of quotas should be well-thought-out in the Constitution specifically, the (nature of the political system in the State — electoral system — Parties and media law — committees supervising voter registration and the conduct of the electoral process — judicial committees supervising the electoral process). Also, ensure that women are adequately and equitably present in all the process and the formulation of its laws in line with the success of the principle of quota and not emptied of its content and purpose.

7 - Establishment of constitutional bodies to ensure equality between women and men:

Along with all the foregoing, in a way to ensure genuine operationalization of the theoretical texts that have been confirmed by constitutions in favour of women, some constitutions have resorted to establishing independent constitutional bodies, relevant only to women's rights, not all human rights, their issues of equality with men, and the elimination of all manifestations of discrimination.

Thi represents a significant step that distinguishes democratic constitutions, compatible with the gender perspective; given the importance of having an entity that has the precise and exclusive competence to pursue these issues, provided, of course, it has the powers and the means to achieve the purpose for which it was established.

An example of such bodies is the creation of a special commission specialising in "gender equality" issues that were provided for in the Constitution of South Africa and its functions defined in article 187 as follows:

> **1. The Commission for Gender Equality must promote respect for gender equality and the protection, development and attainment of gender equality.**
> **2. The Commission for Gender Equality has the power, as regulated by national legislation, necessary to perform its functions, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality.**
> **3. The Electoral Commission has the additional powers and functions prescribed by national legislation.**

As the **Constitution of Ecuador** also provided for the establishment of the so-called "National Equality Councils" in Article 156 which included:

> **Article 156: The National Equality Councils are bodies responsible for ensuring the full observance and exercise of the rights enshrined in the Constitution and international human rights instruments. The Councils shall exercise their attributions for the drafting, cross-cutting application, observance, follow-up and evaluation of public policies involving the issues of gender, ethnic groups, generations, interculturalism, and disabilities and human mobility, in accordance with the law. To achieve their objectives, they shall coordinate with leading and executive entities and with specialised organisations for the protection of rights at all levels of government).**

Article 157: (The National Equality Councils shall be comprised, on the basis of a parity approach, of representatives of civil society and the State, and they shall be chaired by those who represent the Executive Branch. The structure, functioning and form of membership of their members shall be governed by the principles of rotation of power, democratic participation, inclusion and pluralism).

It must be emphasized that these bodies are not an end in themselves, but rather a means to a higher end

Conclusion

This study has reviewed interim constitutional options and alternatives that have resorted to by many States that have undergone crises, wars or divisions and resorted to the interim constitutional option pending the preparation of the country's permanent constitution, which requires an atmosphere of stability and consensus that cannot usually be achieved under conflicts and crises. It concluded the following factors: the following factors :

First – The inevitability of an interim constitutional document:

Pending the adoption of a new constitution of the country, as stipulated in the Security Council resolution 2254 of 2015, the option of adopting an Interim Constitution to govern the next phase of Syria seems to be the most plausible and realistic option. Both parties to the conflict and some experts and independents are always talking about the possibility of introducing amendments to the Constitution presently in force, the 2012 Constitution, to be adopted during the Transitional Period. Or adopting the 1950 Constitution with possible modifications also to govern Transitional Period in Syria. That's something that we find neither suitable nor appropriate for the requirements of the next phase in Syria for several reasons including:

Both Constitutions are incompatible, neither in form nor in substance, to govern any future Transition in Syria. The 2012 Constitution was designed to accommodate an "absolute Presidential" system, and the 1950 Constitution was drafted to accommodate a Parliamentary system that existed at the time. Both systems, Presidential and Parliamentary, are objectively inept to govern any transitional stage.

Both constitutions also need to delete so many articles, and further add a lot of new ones resulting in a "patched" constitution that does not as well guarantee harmony and compatibility among its diverse old, amended and new articles.

Bearing in mind that theTransitional Period will be founded on bodies, authorities and powers that none of the two considered Constitutions includes, neither 2012 nor 1950. These require constitutional temporary and interim provisions to address the repercussions of the Syrian war, and all of these issues are unforeseen in either of the two constitutional options proposed (2012, 1950) and would be futile to drag them in those constitutions.

It is noteworthy that among the "other constitutional options " being talked about is adopting an (Interim Constitutional Declaration, supra-constitutional principles or an interim Constitution). I believe the option of **amalgamating the formulation of an Interim Constitution incorporating "supra-constitutional principles" to govern the Transitional Period** is the most practical constitutional option in Syria. Since the "Interim Constitutional Declaration" option does not seem appropriate for several considerations, inter alia, the problematic term itself, and the controversy over its concept, content and legal power. If negotiators are actually able to formulate and adopt a "Constitutional Declaration", it would be more appropriate to formulate and adopt an Interim Constitution and avoid all the ambiguity and controversy accompanying the rest of the Constitutional documents.

As for "supra-constitutional" principles, far from the debate about the power and value of such principles, the fact remains they are inappropriate for a Transitional Period by themselves. These principles highlight and entrench the general constitutional principles of "due process and respect" in permanent and subsequent

constitutions or those which must not be amended or infringed under clear constitutional texts. But in return, it cannot contain all the detailed rules bound by a consensus during the Transitional phase. They establish general rather than detailed principles and do not provide clear answers to many of the questions and problems that will emerge during the Transitional Period.

Correspondingly, the Interim Constitution spares us the task of cutting, deleting and amending allowing us to adopt explicit constitutional texts providing precise answers to questions and challenges of the Transitional Period. We can also adopt texts only needed during the Transitional Period supposed to expire by its finalisation, according to the aforementioned. (interim authorities bodies and their prerogatives. return of refugees and internally displaced persons – the problem of nationality and personal documents – recovery of property and compensation – issues of citizenship and the rights of all the components of the Syrian people – national reconciliation – transitional justice).

Second Research- Content of the Interim Constitutional document:

Accordingly, and as to the presented international practices referenced in this paper, the Syrian reality requires addressing fundamental issues at the heart of the Interim Constitutional document and avoid tackling additional problems that had led to negative repercussions as revealed by some previous international practices.

What should be included in the Interim Syrian Constitutional Document:

This document should address the following essential issues (managing the transition and its emerging authorities and the period necessary for the basic general principles in the separation of powers and rights and freedoms. The achievement trajectory statement of the Permanent Constitution of the country, both substantively and temporally, include the supra-constitutional fundamental principles which will be agreed upon and which the Country's Permanent Constitution must them into account, address the humanitarian and legal effects of the conflict to ensure the return of refugees and displaced persons. They include lifting the obstacles to return, special provisions for reconciliation and justice, and address the security and military consequences of the war including illegal armament issues and irregular armed groups).

Having due regard not to invoke the existing reality of the war to ignore all possible forms of public participation as efforts should be made to have the broadest public participation possible either in identifying the issues the Country's Interim Constitution must include or in its adoption mode and mechanisms. Which could be possible through multiple options, such as expanding and activating the role of the Syrian civil society in the ongoing negotiating process, as well as contemplating possibilities of convening a Syrian national conference that includes the broadest range of actors possible representative of all the components of the Syrian people inside and outside the country.

What should be avoided in the Interim Syrian Constitutional Document:

Equally, no Interim Constitutional document shall affect the unity of the country and its regional security, restrict its sovereignty, alter the form of the State, political or administrative, or establish a quota system in managing the country. Since each of these core issues should be subject to a societal dialogue involving "all Syrians". No one should confiscate the will of this people, purport to represent

or speak on its behalf under the circumstances of the current war. The Permanent Constitution of the country should be the place for discussing and resolving all of these core issues, in which the Interim Constitution should work on securing the environment and the requirements for its formulation in an atmosphere that ensures maximum democracy and community participation in its drafting and approval.

Finally, it is deemed essential not to assume that the mere establishment of the Constitution will cease, by definition, conflicts and immediately lead to the end of wars and disputes. We should have a realistic knowledge of the role and influence the content of the Constitution plays or its mode of establishment in suppressing or igniting community-based conflict. Since its role, most probably, is complementary and reflective of a range of other matters. This role is acquiring significance in states experiencing sharp societal divide, as evidenced by the fact that the constitution-making process and governance issues in East Timor were not ideal at all, but that did not contribute to fuelling conflict there because of societal consensus on the independence from Indonesia. Consistently asserting, given that the very essence of democracy lays in the exercise, the constitution-making mode is the optimal way to embody the values of democracy because they encompass the peaceful solution to societal differences, accept diverging opinions and sit-in with political opponents.

As to the procedural course of the post-conflict Constitution. The study clearly showed that there should always be recourse to the democratic process in its completion and adoption starting with the procedural course, in which it illustrates the choice of the Constituent Assembly as the most democratic and deliberative constitutional option. With the existence of various models for the mandate of these associations and how to establish them.

This study revealed the importance and gravity of the "timing of conducting the electoral process" given that the haste to conduct any elections before establishing security and providing the security requirements of the electoral process would be fraught with pitfalls and may have negative repercussions on the overall political and Constitutional process.

It also concluded that successful recourse to public consultation is considered a prerequisite, among other requirements, for the legitimacy and acceptance of the new constitutional system.

On the Syrian situation, this study warns that there is no clear common vision so far regarding the path of the next Constitutional document, or which is supposed to follow the phase of the cessation of war. It recalls that while the election is undoubtedly the best democratic way to express the will of the people but this requires the availability of its fundamental political, legal, security and logistical merits. Including an atmosphere of calm, freedom, security and stability, fair and equitable election laws for all and an environment permitting dissemination of awareness and all of the preceding will not be directly accessible immediately after the cessation of the Syrian war.

This study provides two options for the Syrian situation: Firstly: Constitutional Constituent Assembly elections shall not be held until at least two years of the start-up phase of peace and recovery whereby the drafting process of the country's final Constitution commences in the third year. Once its merits have been partially achieved through the return of refugees and internally displaced persons, and the enactment of new laws for elections, media, civil society, reorganisation of the judiciary, and the creation of new institutions mandated

by the Interim Constitution. Secondly: reducing the "disadvantages" of speeding up the country's final Constitution path by creating a special commission for the constitutional process.

This study confirmed that, regardless of the option to be adopted for the preparation of the Constitutional document, the final draft Constitution must be presented to the people for a referendum, provided that the rules of public participation are duly observed in that process. With the obligation to ensure effective and equitable participation of women in all stages of the constitutional process. Similarly with the creation of mechanisms to ensure public participation of refugees and internally displaced persons wherever they may be.

The study also proposes the founding of a Ministry of Constitutional Affairs in the first Government to be agreed upon after the cessation of the conflict.

This study has reviewed constitutional solutions to address some of the constitutional matters and challenges, whether the Drafting Committee or the content of the Constitutional text.

About divisive issues, which are expected to arise upon arrival to discuss the content of the Permanent Constitution in Syria. The solutions adopted by some States have been presented, ad hoc the official and symbolic recognition of the problem and the right, holding a referendum, the option of the limited right i.e. the recognition of a particular text for a limited period of time, the strategy to defer the issue for the future or to adopt the principle of constructive ambiguity to give each party what is understood to be their right. Note that in certain situations, contentious cases have been referred to other processes, such as consulting experts or regulating them by subsequent legislation, the judiciary, or obtaining assistance and mediation of third parties, whether international organisations or specific States.

In connection with the Syrian situation, the study presented options for the values of the State and indicated that after many years of conflict in Syria and millions of victims, the Constitution must define the principles and values that will determine the principles and foundations of the new social contract the Syrians will agree upon among themselves as individuals and groups, and between themselves and the governing authority. Various constitutional options around which consensus could be including some essential fundamental principles such as identifying sovereignty origin, and the entrenching of the principle of separation of powers, as well as the principle of citizenship.

It also addressed the form of the future Syrian State and the nature of its regime of governance, politically and administratively, which should not only be resolved by politicians in closed rooms and during negotiation rounds, but should also be the subject of a general national dialogue and broad public participation to determine the choice of the Syrian people, the first and foremost primary stakeholder and decision maker in resolving this issue.

Regarding the legal hierarchy, it was pointed out that the future Constitution of Syria should include provisions that indicate the arrangement of rules and legal sources, asserts the supremacy of the Constitution, determines the place and role of the international law in the national legal system. This topic is of particular standing in the Syrian situation, due to the obscurity prevailing over the legal hierarchy followed in the country, the absence of any reference to indicate the legal system in the successive Syrian Constitutions and the role and place of international law in this regard.

The study touched upon the issue of the status of religion in the Constitution and indicated that the issue of the impact of religion in the drafting of the successive Syrian constitutions had gained the attention of all political stakeholders. knowing that this problem is not only confined to the Syrian reality but is also one of the most sensitive, controversial, dividing and separating issues during the drafting process of the Constitution both at time of stability and crises alike. It exposed that t should not be believed that every reference to religion impedes respect for human rights, as the spirit of public religion could be a supportive reality for human rights in some cases. Respectively it is not permissible to believe that secularism means rejection or prevention of religion as a practice or a particular belief, but rather as a rejection to special religious privileges and inequality on the basis of religion, as well as the refusal of the influence of religion and clergymen on legislation and policy. Also discussed numerous models of the State's relationship with religion in the comparative constitutions. It also addressed another challenge linked to nationalism and the necessary norms to maintain the constitutional system.

As to the rights and freedoms, it concluded that the future Constitution of Syria should contain full details of those rights, avoiding reference to domestic legislation or suspending its implementation over the promulgation of internal legislation. Also needed to emerge from the limited circle of traditional rights and transition to a broader space that includes the third-generation rights and other up-to-date ones. With due regard to the international and regional treaties relating to human rights to which the State has committed to and to the inclusion of its commitments under these treaties in its national Constitution under the principle of legislative harmonisation as well as liberalisation from unjustified reservations made upon ratification or accession to some human rights treaties.

Where the reality of international practices reveal that many constitutional rights remain dead letters and are frozen or disabled by restrictive texts, conversely, it also shows the existence of creative ideas with distinctive texts that provide maximum guarantees to enable every person to enjoy the rights enshrined in the Constitution. Including the establishment of special protection claims of human rights violations or organs on constitutional rights (Ombudsman – Human Rights Commission – Human Rights Ombudsman.

Regarding the independence of the judiciary in the future Constitution of Syria, the study presented that this Constitution should, at a minimum, guarantee the independence of the judiciary in such a way to prevent politicization of the authority's resolutions, besides its assertion on the right of litigation as a constitutional right for everyone, and that the Constitution shall facilitate that right at minimal cost, merely make it possible and accessible to all and on the State's obligation to provide legal aid to indigent persons,. As well as the emphasis to stress the right of everyone’s access to a normal rather than an exceptional judge, and that the Constitution provides in its articles clear guarantees of the right to litigation, during all the stages of the judicial process, without any hindrance or condition to disrupt access to justice.

There study concluded that there are multiple solutions and options available to engender the language of the constitution including avoiding gender-specific terms, inserting both female and male pronouns, where pronouns are unavoidable, as well as correcting gendered historical assumptions.

With regard to the contents of the Constitution, this study indicated that the authors of the future Constitution of Syria must benefit from distinctive gender experiences which recognize citizenship for both women and men on equal footing, the explicit provision for equality and non-discrimination, and make

clear the right of women to protection against gender-based violence in particular, besides the imposition of specific clear constitutional obligation not to allow violations of the rights of women or restrict them under the pretext of religion or social norm as well as women's quota allocation and the establishment of constitutional bodies to ensure equality between women and men.

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