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Views: The Syrian Constitutional Declaration between Requirements for Stability and Principles of Good Governance

Fadel Abdulghany

Keywords: Syria; Constitutional Declaration; Democratic Transition; Rights; Freedoms

A radical political transformation in Syria was set off by the Assad regime's collapse on 8 December 2024, which left the country in a thorny constitutional and institutional vacuum. Following the dissolution of the Baath Party, the dismantling of the security and military apparatus, and the repeal of the 2012 constitution, the country had no governing legal framework, raising genuine fears that liberation would slide into chaos. In response to this crisis, the new authorities issued a constitutional declaration on 13 March 2025,¹ in a necessary attempt to establish clear legal and administrative foundations for managing the transitional phase.

The issuance of the declaration was a matter of political and practical exigency. The lack of any constitutional or legal framework would have created political turmoil given the multiple decision-making centres within the emerging institutional structure. The Military Operations Command, which granted itself caretaker powers for a period of three months after the regime's fall, faced pressures to adopt clear legal and administrative arrangements. The declaration, which contains fifty-three articles and a preamble inspired by previous Syrian constitutions (particularly the constitution of 1950),² aims to establish a transitional framework with a pledge to strive for 'a citizenship-based state, freedom, dignity, and the rule of law.' While this step was important for preventing state institutional collapse, the content of the declaration and the way it was written stand, in many respects, in stark contrast to the principles of participatory governance promised by the transitional leadership in its early stages. Having been drafted pursuant to a presidential decree and by a legal committee whose members were appointed without broad social input, the declaration seemed to be more a technical project than a participatory, national political endeavour.

Nevertheless, there is an exceptional opportunity to address these shortcomings due to the temporary nature of the declaration and the possibility of amending it under Article 50. The coming months will demonstrate whether the new Syrian leadership possesses the political will necessary to rectify the flaws in the current constitutional declaration and make it a true pillar of a democratic transition.

Criterion of Legitimacy: Pluralistic, Participatory Constitutional Process

The legitimacy of any transitional constitutional document rests on it being the outcome of a genuinely pluralistic, participatory process,³ rather the product of a unilateral decree imposed by a victorious political or military actor. As such, the transition from revolutionary legitimacy to political legitimacy is a fundamental stage in any post-authoritarian democratic transition. While revolutionary legitimacy is important in initially bolstering the authority of the victorious forces, it is by nature short-term and ephemeral unless consolidated through politically and socially diverse participatory processes.⁴ Achieving institutional stability after the revolutionary zenith thus requires carefully considered procedural steps that establish a national consensus and ensure the continuation of the political transition.⁵

The essential condition for such a transition is the formation of an inclusive governing body established by national consensus rather than military diktat or individual decree. This body plays multiple, vital roles: it prevents the monopolisation of power by any one party, broadens the scope of participation to include political and social movements, and sets clear rules that protect the stability of the sensitive transitional period. It is therefore crucial that this body include representatives from civil society, trade unions, women's groups, and youth, while emphasising geographic, demographic, and ideological diversity to ensure that no group is marginalised or excluded from the transition process.

This consensual governing body must convene a genuine national dialogue conference, not merely a pro-forma assembly of pre-selected participants, which requires open deliberations on key issues related to the nature of the state, its identity, and its political and social structure. Participants must be chosen transparently, possess actual decision-making authority rather than serving in an advisory capacity, and devote adequate time for a nuanced discussion of complex constitutional issues. To ensure inclusiveness, the dialogue should involve the entire spectrum of Syrian society, including political parties, civil society organisations, traditional community leaders, and professional associations, in addition to representatives of minorities, ethnic and religious groups, and voices from within Syria and the diaspora. The national dialogue should also focus on important topics such as governance arrangements, the relationship between religion and the state, regional administrative structures, transitional justice mechanisms, minority rights, and cultural diversity.

After a true political consensus is reached through these inclusive procedures, a representative constitutional drafting committee can be formed to put this political consensus into a legal and constitutional form. This committee should bring together legal experts, representatives of the political forces participating in the dialogue, and experts in civil society, human rights, and transitional justice; assistance may also be sought from international consultants with expertise in constitution drafting.

This integrated participatory structure—a consensus-based governing body, an inclusive national dialogue, and a representative drafting committee—provides legitimacy in two dimensions: procedural, acquired through broad popular participation, and substantive, derived

from consensus-based outcomes. The process must be flexible and interactive, with draft constitutional declarations presented to larger bodies for review and revision while ensuring the transparency of deliberations and citizen engagement at all stages of the process. This participatory approach differs fundamentally from top-down transitions or those managed by experts without popular political support. Legitimacy stemming from broad public participation is the principal guarantee of long-term social acceptance and establishes a democratic political practice that can be sustained after the transition.

In its practical implementation, there is a significant gap between the criteria outlined above and the procedural and structural reality of the Syrian constitutional declaration of 2025. In clear contradiction to the participatory principles required in transitional phases, the provisions of the declaration and the way it was drafted reveal a tendency to concentrate power in the executive branch⁶ and marginalise the effective roles of legislative, judicial, and civil society institutions. The drafting committee did not emanate from an inclusive national dialogue that ensured a minimum level of political and social consensus. On the contrary, it was formed pursuant to a decree issued by the transitional president on 2 March 2025.⁷ Moreover, it was tasked with writing the declaration within predetermined terms of reference absent any prior public debate or political consultation. At the same time, the committee's composition and mandate underscore the structural flaws of its approach. Its members were selected on legal and technical considerations only, without the slightest regard for the principle of balanced political and community representation. As a result, a process that should have been an inclusive national project was treated as a mere technocratic task, which ignored the fact that constitution drafting is, at its core, a political act requiring the broadest possible participation of all social actors. These procedural failures are clearly reflected in the institutional structure imposed by the declaration, which grants the executive authority broad prerogatives at the expense of the independence of other branches of government.

The provisions of Article 47, for example, clearly serve to subordinate the judiciary and undermine judicial independence. The article gives the president unilateral authority to appoint all Supreme Constitutional Court justices, without requiring legislative approval or involving judicial bodies themselves in the selection process. This transforms the court from an independent body tasked with protecting the constitution and guaranteeing its enforcement into a tool of the executive branch. This provision conspicuously breaches international standards for judicial independence, which emphasise the need to involve multiple institutions in the appointment of judges to ensure their independence and integrity. The declaration further perpetuates judicial subordination by retaining Ordinance 98/1961, which grants the Ministry of Justice—an executive body—broad powers to appoint, promote, transfer, and discipline judges.⁸

In addition, the declaration defangs the legislature, turning parliament into a token body without real powers. Under Article 24, the president has the right to directly appoint one-third of the members of the People's Assembly, as well the members of the committee that selects the remaining two-thirds, which in practical terms subordinates the assembly to the executive. The People's Assembly itself lacks the basic oversight powers typically found in democratic systems:

it is not empowered to form parliamentary committees of inquiry, withdraw confidence from ministers, impeach executive officials, or seriously monitor the implementation of the budget after its approval. Article 30 of the declaration limits the assembly's role to 'posing questions to ministers,'⁹ reducing it to a mere façade by rendering it unable to exercise true legislative and oversight powers.

In contrast, the constitutional declaration grants the executive authorities broad, unchecked powers. Under Article 50, the executive has the sole right to propose constitutional amendments, while the legislature is not permitted to initiate or even propose amendments. Article 41 grants the president the authority to declare war and states of emergency after obtaining the approval of the National Security Council, all of whose members are appointed by the president. The declaration also grants the president final authority to ratify international treaties, even after their approval by the People's Assembly (Article 37), which constitutes an additional executive veto over the legislature in setting foreign policy.

On a positive note, international human rights treaties are incorporated into the constitutional declaration by Article 12,¹⁰ but the practical implications of this commitment are severely compromised by the restrictions set forth in Article 23. The article allows for broad restrictions to be imposed on fundamental rights and liberties on the basis of nebulous grounds, such as 'national security, territorial integrity, public safety, the protection of public order and the prevention of crime, or the protection of public health or morals,' while neither clearly defining the criteria of necessity and proportionality nor establishing clear mechanisms for judicial review.

The expansive, vague wording of the article directly contravenes the principles of international human rights law, which requires any restrictions on rights to be precisely defined in law and strictly necessary and proportionate in a democratic society. This shortcoming is all the more serious given the Assad regime's history of arbitrarily exploiting national security pretexts to suppress rights and freedoms. The absence of any independent judicial authority capable of reviewing and limiting the executive's use of this article further exacerbates the risk that these restrictions will be arbitrarily deployed.

At the same time, the constitutional declaration contains no explicit reference to fundamental concepts and principles that one would expect in a document intended to guide democratic transition. Most notably, it does not mention popular sovereignty, a principle that formed the cornerstone of previous Syrian constitutions and is a key foundation of modern democratic theory.¹¹ In fact, its absence constitutes a deferral of popular sovereignty. In addition, the word 'democracy' is found nowhere in the declaration's text, raising questions about the genuineness of the commitment to democratic principles.¹² This linguistic omission is coupled with a clear disregard for many basic democratic rights, such as the right to assemble and demonstrate peacefully, the right to strike and form independent labour unions, the right to access government information, and the right to effective political participation through genuine elections. Absent these rights, a truly democratic system cannot exist. The declaration further ignores the need to establish participatory mechanisms that ensure real popular participation in drafting the country's

permanent constitution, whether civic education programmes, broad popular consultations, or public referendums.

Towards Incremental Constitutional Reform

Despite the many shortcomings of the constitutional declaration in its current form, it is not a fixed, static document. Article 50 lays out a clear mechanism for amendments based on a proposal from the head of state and the approval of two-thirds of the members of the People's Assembly. With the necessary political will, this mechanism can be used to transform the declaration into a more effective transitional framework that responds to the requirements for stability while establishing a sustainable democratic process. Accordingly, this essay proposes a set of carefully considered amendments.

The priority is to restore balance to the constitutional system by limiting the dominance of the executive and strengthening the system of checks and balances between the branches of government. The separation of powers should not be understood as a merely functional distribution, but rather as a mechanism that enables each branch to monitor and hold the others accountable within a clear institutional framework. This principle is vital during the transitional phase, when there is a heightened need for safeguards to prevent unilateral decision-making and to establish mechanisms for transparency and accountability. Accordingly, it is abundantly clear that Article 47 of the declaration, which grants the president sole authority to appoint members of the Supreme Constitutional Court, is a structural flaw that renders the judiciary an instrument of the executive branch rather than an independent oversight body.

To rectify this flaw, a model should be adopted that strengthens the independence of the court. Namely, an independent nominations committee should be created that comprises representatives from the Supreme Judicial Council, the People's Assembly, the Bar Association, law schools, and civil society organisations. This committee would select candidates in a transparent manner, including by holding public hearings, while prioritising qualifications and integrity. The justices would then be elected from the approved list of nominees by a two-thirds majority of the People's Assembly, thereby ensuring that no single political party dominates the court. The declaration should also provide for staggered, nine-year terms for justices. Making the tenure of the justices longer than parliamentary terms of office ensures that the justices are free from the pressures brought to bear by changes in government and parliamentary majorities. At the same time, it is not an overly long term that would insulate the institution from social dynamics or preclude the periodic introduction of new blood. Balancing the need for institutional continuity with the imperative of democratic flexibility, this term of office is drawn from constitutional arrangements in other countries that have proven effective in strengthening the independence of the constitutional judiciary and consolidating its position as an impartial oversight body. France and Italy, for example, have adopted a nine-year term to ensure periodic renewal without compromising stability, while Germany extended judicial terms to twelve years to enhance long-term independence. In contrast, the American model grants justices a lifetime term, which provides

for their absolute independence but raises questions about the narrow mechanisms for institutional renewal.

In addition to reforming the constitutional court, there is a need to restructure the legislative branch so that the People's Assembly better reflects the political and social diversity of Syrian society. This can be achieved by adopting a balanced representation mechanism that combines geographic representation through provincial councils, functional representation through professional syndicates and federations, and representation from civil society organisations. This model requires setting clear eligibility criteria for candidates, focusing on competence, integrity, and commitment to the principles of the democratic transition rather than party or factional loyalties. This mechanism should be temporary—confined to the transitional phase—and culminate in general elections under fixed democratic principles. Its duration should be determined to strike a balance between the need to allow adequate time to rebuild institutions and consolidate the rules of political participation, and the need to avoid a prolonged transition, which could entrench temporary structures or facilitate their exploitation. The legislature should also be granted broader oversight powers, including the ability to form parliamentary inquiry committees by a simple majority, approve the appointment of senior officials, and withdraw confidence from ministers based on clearly defined procedures. Parliament should also be given effective oversight over the declaration of states of emergency, thus bolstering its ability to hold the executive accountable.

Regarding rights and freedoms, Article 23 of the constitutional declaration in its current form lacks necessary safeguards, using vague terms such as 'national security,' 'public order,' and 'public morals,' which allows for arbitrary interpretations that could be used to curtail fundamental freedoms. Any amendment of this article must be based on internationally recognised standards, particularly the Siracusa Principles, a set of legal principles adopted in 1984 to interpret how restrictions on the rights set forth in the International Covenant on Civil and Political Rights should be applied. These principles underscore that any restriction must be clearly provided for by law, necessary in a democratic society, proportionate to the objectives it seeks to achieve, and subject to judicial review. Moreover, the government must be accountable and bears the burden of proving necessity, and the restrictions must be temporary and subject to periodic review.

Accordingly, Article 23 could be amended to read: 'No restrictions may be imposed on the rights and freedoms set forth in this declaration except in accordance with the law and as are strictly necessary in a democratic society to protect national security against genuine threats of violence or force, or to protect public safety in situations of clear and imminent danger, or to ensure respect for the rights and freedoms of others. Such restrictions must be proportionate to the objective pursued, non-discriminatory, and always subject to judicial review, and they must not infringe the core of the right or freedom.'

In addition, the declaration as written is sorely lacking an affirmative commitment to fundamental democratic rights, which renders the commitment to human rights devoid of any practical meaning. To address this deficiency, the following provisions should be added:

Article 23(b) (freedom of assembly and peaceful protest): ‘Citizens have the right to assemble and demonstrate peacefully without prior authorisation. Prior notification requirements may be imposed only when assembling in public places, provided that such requirements do not become a de facto permit system. The use of force against peaceful assemblies is prohibited, and any restrictions imposed must comply with the standards set forth in Article 23(a).’

Article 23(c) (access to information): ‘Every person has the right to access information held by public authorities. The law shall clearly define the scope of exceptions, which must be limited to the protection of legitimate, specific interests, while allowing them to be overridden in the public interest. The authorities are obligated to proactively publish information of public importance.’

Article 23(d) (political participation): ‘Every citizen has the right to participate in public affairs directly or through freely elected representatives, and the right to vote and run for office in free and fair regular elections conducted by universal and secret ballot; equal access to public office is guaranteed.’

The aim of these proposed amendments is not to fundamentally rewrite the constitutional declaration, but rather to adapt it into a practical framework for managing the transition by ensuring a minimum level of political consensus, enhancing citizens’ confidence in institutions, and laying the groundwork for a lasting democratic system in the future Syria.

Clarifying the Constitutional Path

The current declaration, while providing for a five-year transitional period, does not specify the steps for drafting a permanent constitution, creating ambiguity and uncertainty. A clear, detailed mechanism should therefore be outlined for the establishment of a constituent assembly to oversee the drafting of the permanent constitution according to a clear timetable and defined procedures.

The exceptional circumstances facing Syria—ongoing security threats, weak institutions, social breakdown—highlight the need to adopt a balanced approach that combines the imperatives of state stability with the requirements of a gradual democratic transition.¹³ In this context, it seems appropriate to adopt a phased-in reform strategy that accounts for the current reality while simultaneously laying the foundations for sustained democratisation. Achieving this balance requires initiating constitutional and legal reforms in stages, prioritising the enshrinement of fundamental rights and liberties and guarantees for judicial independence as the primary pillar of any democratic system. This would be followed by a gradual reform of the legislature commensurate with the relative improvement in the security situation, leading to universal, general elections at a later stage, when the political and logistical conditions are in place to ensure their integrity and inclusiveness.

To avoid perpetuating the exceptional situation, the constitution should include explicit provisions limiting the use of exceptional measures to a specific timeframe, renewable only with

the approval of a broad majority of the People's Assembly. This would ensure institutional oversight of emergency situations and prevent the exception from becoming the rule. To support this process without compromising national sovereignty, it is advisable to solicit international technical support via the establishment of an independent, international constitutional office. This office would provide technical advice and institutional assistance based on the needs of the current phase, with the aim of strengthening the capacity of Syrians to write their constitutional future in an independent and transparent manner.

Finally, the constitutional order should combine the flexibility to respond to shifts in the political and social landscape with the entrenchment of fundamental, non-derogable democratic principles. This would sustain progress towards the construction of a pluralistic democratic system without falling into the trap of stagnation or interpretive anarchy.

Conclusion: Towards a Genuinely Participatory Constitutional Process

The Syrian constitutional declaration of 2025 is an important milestone in Syria's political transition after the collapse of the Assad regime. The declaration came in response to an objective necessity—namely, the need for a legal framework to regulate the transitional phase and prevent an institutional vacuum. From this perspective, the declaration can be viewed as a first step towards the construction of a new constitutional order that takes into account the exceptional challenges facing the country.

An analytical reading of the declaration reveals mixed tendencies in its structure and content. On one hand, it includes positive elements such as the recognition of international human rights treaties and an emphasis on the principles of citizenship and human dignity. On the other hand, some institutional arrangements suggest that an inclination towards the concentration of power persists, especially when it comes to executive powers and the mechanisms for appointing judicial and legislative officials.

In this context, the amendment process provided for in Article 50 is of particular importance, as it outlines a legal path for developing the constitutional framework in line with evolving national circumstances and needs. The proposals contained in this paper are a contribution to the national debate on how to enhance the participatory and democratic nature of the constitutional process considering both Syrian particularities and internationally recognised standards.

The success of the transitional phase in Syria depends to a great extent on the ability of various political and social actors to engage in a constructive dialogue on the constitutional foundations of the new state. This requires expanding the scope of participation to include all segments of Syrian society, ensuring true representation of national diversity and enhancing the legitimacy of outcomes. The current constitutional declaration represents a starting point that can be developed and improved. The coming period will be pivotal in determining the trajectory of constitutional development in Syria. Political will is capable of transforming current challenges into opportunities to build a constitutional order that fulfils Syrians' aspirations for a state of law and democratic institutions.

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