

A Preliminary Review of the Syrian Constitutional Declaration

Prepared by the Research Team at Equal Citizenship Center

Introduction

Unlike permanent constitutions, constitutional declarations are texts issued by de facto authorities in response to exceptional circumstances and to fill legal and constitutional vacuums. Their primary purpose is to regulate revolutionary legitimacy and transform it into a legitimacy based on written documents rather than customary practices. These declarations serve to define, organize, and allocate the powers and responsibilities of the state.

Despite their vital function, the Syrian Constitutional Declaration was issued more than three months after the fall of the Assad regime, and only after the transitional president tasked a specialized committee with drafting a constitution for his review and approval. This step can be seen as a positive move toward building trust between the interim authority and the public.

However, despite the significance of this declaration, particularly in constitutionalizing several key issues vital for national reconciliation and civil peace, it was accompanied by a set of measures that ultimately undermined the revolutionary legitimacy upon which the interim authority had relied to issue the declaration. This legitimacy stems primarily from its role in ending a six-decade-long authoritarian rule and its obligation to uphold the principles of the Syrian revolution. Among the most notable of these measures were:

1- Unilateral Appointments

While it may be understandable that the consolidation of revolutionary forces grants temporary and limited justification for appointing individuals from a single political orientation to key positions, the continued reliance on such a mono-political approach—especially without including diverse political perspectives, such as in the

formation of the constitutional drafting committee—risks producing one-sided outcomes that do not reflect the broader spectrum of society.

2- Setbacks in Organizing the National Dialogue Conference

The conference suffered from fundamental shortcomings in preparation, planning, and representation. Moreover, it was condensed into a single day, significantly undermining its effectiveness and its potential to generate meaningful dialogue.

3- Administrative Dismissals

The dismissal of numerous public sector employees has exacerbated the economic crisis for many families, particularly in the context of an already deteriorating economic situation.

4- Delayed Reintegration of Army and Police Personnel

Delays in reinstating military and police personnel who had undergone reconciliation processes and were not involved in killings, persecution, or other human rights violations under the previous regime have deepened societal divisions and hindered efforts to rebuild inclusive and accountable security and military institutions.

5- Violations in Coastal Areas

Widespread violations in coastal regions have significantly undermined public confidence in the current authorities' ability to protect civilians and their property. For many, the authorities appear either complicit in these violations or incapable of preventing them, further entrenching a sense of disorder and internal fragmentation.

Key Observations on the Content of the Constitutional Declaration

Given that a constitutional declaration must be understood within its broader political and social context, rather than solely through abstract and ideal legal standards, several critical observations emerge. These observations highlight concerns that, if unaddressed, may risk reproducing authoritarian practices or generating counterproductive outcomes that undermine stability during the transitional phase:

1- Rights and Freedoms

Paragraph (2) of Article (3) states: “*Freedom of belief is guaranteed, and the state shall respect all Abrahamic religions and ensure the freedom to practice their rituals, provided this does not disturb public order.*” However, limiting religious freedom to "Abrahamic religions" raises legitimate concerns among followers of other faiths regarding their right to freely practice their beliefs.

While the declaration does contain strong provisions for the protection of rights and freedoms, including the state’s commitment to ratified international treaties (recognizing them as an integral part of the constitutional declaration), the guarantee of party and union activity, judicial oversight of administrative decisions, equal opportunity, the protection of women’s rights, and the safeguarding of private property, Article (23) allows for restrictions on rights and freedoms based on vague references to “National Security and Public Morality.” In the absence of a constitutional court with clear authority to oversee such interpretations, this grants the executive branch broad discretion to define these terms as it sees fit. This raises critical questions about which body ultimately holds the power to determine the scope and limits of fundamental rights.

2- Separation of Powers

The Constitutional Declaration adopts a presidential system based on a strict separation of powers. However, it departs from this principle in two fundamental ways:

- ❖ **Legislative Authority of the President:** The declaration grants the president the right to propose legislation to the People's Assembly.
- ❖ **Lack of Parliamentary Oversight:** The declaration does not give Parliament the authority to impeach the president, vice president, or other senior officials in cases of serious misconduct. During the press conference, this was justified by referencing the Constitutional Court—even though no such provision appears in the declaration itself. Furthermore, the spokesperson acknowledged that no formal mechanism has been established to ensure presidential accountability before any institution.

3- The Legislative Authority

The declaration adopts two forms of appointment to constitute the legislative authority. It grants the president the power to form a higher committee responsible for selecting the electoral bodies that will appoint two-thirds of the members of the People's Assembly, without setting clear criteria to ensure fair representation. This opens the door once again to a pattern of unilateral appointments. As for the remaining third, it is appointed directly by the president, which is, at best, a double-edged sword.

4- Judicial Independence

One notable aspect of the Constitutional Declaration is that it does not grant the transitional president the role of presiding over the Supreme Judicial Council. It also places military courts under the Council's supervision. However, the declaration falls short of providing clear guarantees for judicial independence, particularly regarding the composition, appointment mechanisms, and authority of the Supreme Judicial Council.

The Constitutional Declaration was clear in its prohibition of the establishment of exceptional courts — a welcome provision given the painful experiences Syrians endured under such courts during the days of the former regime.

On the other hand, the Constitutional Declaration does not define the role or powers of the Supreme Constitutional Court, instead deferring its regulation to the existing law. Furthermore, the declaration does not provide the court with immunity from executive interference, nor does it establish its jurisdiction in protecting rights and freedoms or upholding the constitutional declaration. Lastly, the declaration fails to set criteria for the appointment of constitutional court judges, leaving their selection solely in the hands of the president, without any involvement from the People's Assembly or the Supreme Judicial Council. This undermines both the independence and competence of the court and risks compromising its credibility and effectiveness.

5- Constitutionalization of Transitional Justice

The final provisions of the Constitutional Declaration address the state's responsibility to implement transitional justice, through repealing exceptional laws that contradict human rights, annulling the rulings issued by the Terrorism Court, returning confiscated properties, and eliminating all exceptional security measures related to civil and property documentation.

The declaration also mandates the establishment of a Transitional Justice Commission tasked with adopting victim-centered consultative mechanisms to determine appropriate paths for accountability, the right to truth, redress for victims and survivors, and the honoring of martyrs.

One of the most significant provisions of the Constitutional Declaration is the exclusion of war crimes, crimes against humanity, the crime of genocide, and all crimes committed by the former regime from the principle of non-retroactivity of laws. While we agree with the Declaration that war crimes, crimes against humanity, and genocide are not subject to statutes of limitations, we believe this principle must apply to all such crimes, whether committed by the former regime or by others. These crimes should not be time-barred, regardless of who committed them, because they concern the rights of victims, not the perpetrators, and this is what distinguishes transitional justice from criminal justice.

6- Preparation for the Permanent Constitution

The Constitutional Declaration sets the duration of the transitional period at five years, a notably long timeframe with no clear justification. Moreover, it fails to specify the mechanism by which the permanent constitution will be drafted: whether through a constitutional committee, an elected constituent assembly, or by the People's Assembly itself. The absence of such safeguards raises concerns about the potential for undemocratic arrangements in the constitution-drafting process. Drawing parallels with the National Dialogue Conference and the way the Constitutional Declaration was formulated, there is a legitimate fear that the future constitution may merely be a slightly modified version of the current declaration.

Conclusion

While the Constitutional Declaration represents a step toward the restructuring of the state and addresses several critical issues that are essential to national reconciliation and civil peace, certain provisions within its text raise serious concerns. Specifically, some of its content may risk reproducing authoritarianism or undermining stability during the transitional period.

Accordingly, we maintain that ensuring Syria's stability and reconstruction, whether in terms of civil peace, inclusive social and political participation, or the protection of citizens' right to a dignified life, requires a substantive review of the Constitutional Declaration and the amendment of certain provisions. Particular attention should be given to those articles that confer absolute authority upon the executive branch, notwithstanding the formal reference to the separation of powers, as they create a tangible risk of infringing upon fundamental rights and freedoms.

Furthermore, it is essential to incorporate binding guarantees that reinforce judicial independence and to establish a clearly defined, participatory process for the transition to a permanent constitution, one that upholds democratic principles and the rule of law.