Absent from Syrian Constitutions: The Status of International Treaties, Independent Constitutional bodies, and Challenging Unconstitutional Laws.

Dr. Ibrahim Draji

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Legitimacy and Citizenship in the Arab World

Legitimacy and Citizenship in the Arab World is a project within the Civil Society and Conflict Research Unit at the London School of Economics. The project looks into the gap in understanding legitimacy between external policy-makers, who are more likely to hold a procedural notion of legitimacy, and local citizens who have a more substantive conception, based on their lived experiences. Moreover, external policymakers often assume that conflicts in the Arab world are caused by deep-seated divisions usually expressed in terms of exclusive identities. People on the ground see the conflict differently and often perceive it as collusion against the general populace.

The project aims to bridge these gaps and advance our understanding of political legitimacy, thus improving policymaking and constitution writing to achieve sustainable peace and state-building in the Arab world. It also investigates how exclusive identities are deliberately constructed by ruling elites as a way of deflecting democratic demands and hindering the prospects of substantive legitimacy.

While Syria is the project's focus, a comparative analysis is also being conducted to draw relevant lessons learned from post-war Lebanon and Iraq where ethno-sectarian power-sharing agreements were the basis of peacebuilding processes and constitution writing.

The research paper series comprises papers, published sequentially, concerned with the study of pivotal issues in democracy-building, legitimacy-building and identity formation in Syria from a constitutional perspective. These issues, and how they have been addressed in successive Syrian constitutions, are examined in a historical study, from the first constitution drafted in 1920 up until the present day. The developments and deliberations surrounding them are also examined, as per their historical context. A comparative analysis of how other countries' constitutions addressed these issues is also put forward, before presenting solutions and proposals for how they can be engaged with at the current time.

The project is carried out by a team of Syrian and Lebanese researchers and experts, led by Dr Rim Turkmani.

For more information visit the project's website: http://dustoor.org/

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1. Abstract

This study seeks to examine provisions that are absent in successive Syrian constitutions. In particular, it examines the elimination of provisions despite their great importance in ensuring the activation of the constitution provisions, the implementation of its content, the consolidation of citizenship values, and the mainstreaming of human rights for all citizens.

The study examines a chronic, inherited, and intergenerational deficiency found in successive Syrian constitutional texts regarding fundamental and important issues. Most importantly, constitutional texts lack clear identification regarding the status of international treaties and international law in general, disregarding the establishment of independent constitutional institutions. Moreover, they ignore the adoption of a clear, binding, and effective constitutional mechanism to amend or repeal national laws which are inconsistent with the provisions of the constitution itself

The chronic elimination of provisions in the constitution has prevailed intergenerationally for a century, specifically since the first draft of the Syrian constitution for the Arab Kingdom of Syria in 1920 and has remained so in all subsequent stages under multiple diverse political regimes. It has had a significant and clear negative impact on the Syrian constitutional system, and all those subject to its provisions. It has also led to signing international treaties that did not enjoy distinct constitutional supremacy, which allowed them to be violated by several national legislations and actual practices in various fields. The elimination of provisions has directly affected both men and women, depriving them of the benefits of protections and guarantees that could have been provided by independent and active constitutional institutions in many essential areas in the life of the state and individuals alike, further resulting in major legal turmoil resulting from the use of legislation that is inconsistent with the provisions of the constitution, despite their blatant conflict with many constitutional texts. As a result, these texts could no longer be regarded as the supreme law of the country.

In order to change this constitutional reality, this paper argues that the Syrian constitutional legislator should break free from this rigidly closed constitutional system, which is predicated on reproducing existing and defunct constitutional texts and settling for limited cosmetic amendments that only effect very minimal change. It has become necessary to adopt a constitutional revolution, in the legal sense, by introducing fundamental amendments to the entire constitutional process, whether in its formal framework related to the drafting and approval mechanism, public and societal participation in that process, or in its objective framework, related to the content of the constitutional texts and the effects and provisions they contain. These factors in particular relate to the timeliness of this study which advocates broader thinking and analysis in relation to the Syrian constitution moving beyond current practices of mere evaluation which fail to recognize what is missing from the provisions that should have been incorporated. The study concludes with specific recommendations to address this elimination in the constitution.

To examine the absence in representation of international treaties in the national legal system, the study recommends the inclusion of an article that clearly defines the status of these treaties within the constitution. The study argues that the article should assume more power than previous national legislation and prioritize international treaties over internal laws so that these laws become void in cases of posing a contradiction, with commitments pledged by the state and made under a valid and binding international treaty which was arranged according to legal and constitutional principles. Furthermore, these international treaties- which meet all necessary conditions of substance and of form- should, under the constitution, enjoy mandatory and immediate application, be respected, and implemented by law enforcement bodies, and be accessible to all.

The study also recommends that a constitutional reference should be made to basic human rights treaties ratified by the government so that these agreements become a reference point in interpreting the provisions of the constitution. This is in relation to the rights and duties related to them, as well as the possibility of referring to these agreements and benefiting from them if they include, in relation to those rights, better protection than that provided and stipulated by national legislation. This includes the provisions of the constitution itself, if these have been duly ratified, and have naturally become binding for the state in accordance with what has been established and considered stable in international dealings.

In order to preserve the supremacy of international treaties and avoid potential conflict with the provisions of the constitution, this study further recommends adopting the constitutional option that many countries of the world have resorted to by granting constitutional courts the authority of advance constitutional monitoring of those treaties before they are concluded in order to assess compatibility of the treaties with the provisions of the national constitution, in particular, and the rest of the state's laws, in general. It further recommends ignoring the conclusion of that treaty for including rules that contradict the provisions of the constitution or amending the provisions of the constitution in advance to ensure compatibility with that international treaty.

To deal with the absence of the establishment of independent constitutional bodies, and in line with what meets the Syrian context, this study recommends that under the constitution, a number of these bodies should be established, provided that at least one of them is a human rights, election, media, or anti-corruption commission. This is on the condition that the constitution itself ensures, in general, the success of the work of these bodies, and in particular guarantees their independence and impartiality regarding their appointment, subordination, accountability and reference. These independent constitutional bodies should also have all the powers that ensure they work effectively that is to say, their role should not be only advisory in nature or just reduced to issuing recommendations and reports. There should be reference to all those factors and guarantees within the constitution itself. The study argues that referring the implementation to subsequent national legislation is inadequate, as this could result in the legislation not being issued or being issued with content that voids these bodies of any effectiveness or influence. Moreover, a specific time limit should be set in the constitution for the formation of these bodies to ensure that they exercise their jurisdiction and are activated in terms of their constitutional texts.

Finally, to address the absence of determining the fate of legal texts that are inconsistent with the provisions of the constitution, this study recommends that it is necessary during the constitution-drafting process to identify laws that are totally inconsistent with its provisions, and which cannot be reconciled with the new constitutional texts. It further calls for clear stipulation, under a clear constitutional article, the abolition of those precisely defined laws. The study recommends the inclusion of a clear constitutional article which provides for the invalidation of any articles contained in the national legislation that violate the provisions of the constitution or impede the implementation of its articles. This can be activated by assigning the constitutional court to internally review all laws inconsistent with the provisions of the constitution, determine the aspects of the violation, and then ask the relevant authorities to amend these provisions in the laws. Alternatively, articles could be activated by cancelling those laws entirely, if this is done within a specific, short period of time, and does not exceed one year from the date on which the constitution entered into force. Furthermore, this can be achieved by giving concerned authorities (legislative and executive) the opportunity to repeal or amend laws that are inconsistent with the provisions of the constitution, within the specified time limit, ultimately granting any natural or legal person the right to resort to the constitutional court to request its intervention by canceling or amending those laws, In doing so, the constitution accordingly stipulates the formation of a specific committee which will have all the necessary powers to accomplish its mission, provided that it is entrusted with the power to issue identifying legal texts that contradict the provisions of the constitution, and to take measures to amend or cancel them in accordance with legal principles to comply with the provisions of the constitution. This process should be done over a maximum period of one year, with the constitutional court empowered to ensure that the obligation is fulfilled.

2. Introduction

The French emperor, Napoleon Bonaparte stated that, The Constitution should be short and obscure. It is a phrase that can be interpreted in the context of the time to which it referred, nearly two centuries ago. At the time, rulers preferred to reduce the constitutional provisions as much as possible in order to tackle the restrictions imposed on them which limited their absolute powers. This allowed rulers to avoid, to a large extent, monitoring, or control when the constitution is limited in scope, the rulers authority unilaterally expands in terms of decision making and interpretation. This is what modern constitutional approaches have sought to avoid by expanding the content and articles of the constitution, setting out the standards that must be respected and adhered to, and providing solutions to any existing or potential future problems.

It is expected and taken for granted that the constitution will not always succeed in providing all solutions and answers to the challenges that arise, given that it is normal that issues and challenges arise that were neither foreseeable nor anticipated during its drafting and adoption. Accordingly, it is also illogical that the constitution deliberately ignores addressing some fundamental issues, so it is issued and copied, over decades, devoid of constitutional provisions that are deemed necessary for resolving and settling constitutional issues. These provisions have become, in a sense, 'absent' due the 'deliberate' act of ignoring and avoiding them. This has become evident by studying the Syrian constitutional scene that has existed for a century.

This paper seeks to explore the absent provisions in successive Syrian constitutions, for example, texts that are eliminated despite their importance in ensuring the activation of the provisions of the constitution and the implementation of the content of its articles on the one hand, and their role in consolidating the values of citizenship and mainstreaming human rights for all citizens on the other.

By analyzing these Syrian constitutional texts and closely monitoring the process of their implementation on the ground, this study concludes that there are issues that are being deliberately ignored despite being present, consistent, and unchanged in many comparative constitutions. Perhaps one of the most prominent issues absent in successive Syrian constitutions is the lack of clear identification of the status of international treaties in the national legal system, the avoidance of establishing independent constitutional bodies, and the presence of ambiguity about legal texts that are in consistent with the provisions of the constitution. This paper will address the impact of the absence of these constitutional texts and will present the constitutional options and realistic alternatives to overcome that absence in order to ensure that constitutional texts are realistic, tangible and reflect positively on the lives of people subject to their provisions.

1.1. Importance of the Topic

The importance of addressing this topic is manifold and must be tackled through an *out of the box* mentality in constitutional thinking and analysis in Syria. This is important in the sense that thus far, the focus has been placed on evaluating existing constitutional texts and analyzing related articles alongside highlighting their negative and positive effects, without addressing absent provisions in these texts and highlighting the ensuing ramifications and repercussions. This practice has led to a sense of satisfaction with mere evaluation of what is already stated in texts, failing to recognize or focus on what has been missing and what should have been incorporated. It is this gap that this study is seeking to fill.

The absent constitutional provisions and the deliberate and consistent danger of their elimination has undermined the values and rights of citizenship and failed to determine the fate of legal texts that contradict the provisions of the constitution, leading to the prevalence of legislation that violate the values of citizenship and discriminate against citizens on many grounds and considerations. The absence of independent constitutional institutions has also deprived citizens of the possibility of resorting to those constitutional mechanisms that guarantee them justice. Furthermore, ignoring a clear identification of the status of international treaties has made it impossible to invoke and apply them before the national justice system, despite the fact that these treaties include texts that are capable of consolidating citizenship and promoting the equality of all citizens.

1.2. Research Questions

This paper addresses many questions, including the following:

- What are the most important overlooked issues that Syrian constitutions avoid addressing? What are the reasons behind this deliberate elimination and avoidance? Has this absence been present in all successive Syrian constitutions, or is it limited and partial in nature, appearing in constitutional texts at one stage then disappearing in others?
- What are the results and repercussions of such eliminations? And how are things done in actual practice in light of the absence of these fundamental and sensitive issues from the constitution?
- What constitutional options were adopted by comparative constitutions in dealing with the same issues? What comparative constitutional practices could be applicable in the Syrian case? What are the constitutional and practical proposals to overcome this absence of provisions in the constitution?

1.3. Research Problems

Many difficulties were faced in conducting this research, most notably: the lack of discussion and clear justification for the reasons behind excluding those constitutional issues that are absent from successive Syrian constitutions. The absence of an official or societal discussion of these issues has also been noted. In the limited documents available on the discussions of the constitution-drafting committees, we did not find any reference to such issues that did not arouse any societal discussion prior to the adoption of those successive constitutions. This can be explained, at the official level, by the fact that constitution-makers often rely in their work on limited replications of constitutions or slightly amended previous ones that did not, of course, include these constitutional issues. Therefore, it would be difficult to observe the elimination of these provisions because they simply did not exist in the first place. At the grass-roots level, societal discussions of constitutional issues have been missing in both current existing and eliminated texts. We also encountered difficulty in observing how things are done considering that constitutional absence, as it was very difficult to show the impact of the absence of many independent constitutional institutions and its reflection on the lives of citizens, and to reveal the options and alternatives used to compensate for this deficiency. This is so because there were no previous figures, statistics, or previous studies. This difficulty was also compounded by the ambiguity of official, limited positions on some of these issues. By monitoring some limited governmental reports to the international committees emanating from international treaties, we detect an ambiguity that does not help in reaching any conclusions or positions, as will become clear in subsequent pages. This is especially evident when addressing the impact of the absence of international treaties in the Syrian constitutional system, and how to deal with that situation.

Furthermore, reference to comparative international practices was not without its difficulties in terms of selecting what can be presented in the context of this paper, due to the differences found in constitutional and legal systems in many countries of the world. Moreover, there were difficulties encountered because of the different historical, cultural and legal context in which these texts are applied, which makes some constitutional precedents inappropriate for the Syrian context, even if these are valid in their societies. For example, the absence of a certain text can be avoided by other constitutional or legal mechanisms that exist in the legal systems of those countries, which is not found in the Syrian national context. Simply adopting a general, brief text on cancelling or amending legal texts that contradict the provisions of the constitution, may suffice in certain countries in which the government can be held accountable in the event of a breach of this obligation, or reference could be made to the constitutional court or other existing constitutional mechanisms to ensure implementation of the text. This is not necessarily the case in other constitutional systems, as is the case in the Syrian constitutional context.

In order to overcome the previous difficulties, the limited official positions were presented as they are, but were analysed and evaluated. To be realistic, without excessive exaggeration, the closest possible constitutional experiences that can be potentially implemented in the Syrian context were also selected in the hope that the proposals for

the Syrian context would be taken seriously in the context of any upcoming Syrian constitutional process.

1.4. Legal Methodology and Surveyed Texts

The study adopts a critical, historical, comparative and inductive approach, in which a historical review of relevant texts in all Syrian constitutions was conducted since the first draft constitution in 1920 until the constitution issued in 2012, which will still be in force on the date on which this study would be completed. These constitutional texts were critically analyzed, focusing on what should be incorporated, rather than what is already in place, as they were compared with what is prevalent in many Arab and foreign countries alike. The study is concerned with the comparative historical approach to looking towards the future and extrapolating the amendments that can be introduced in any future constitutional process. Therefore, proposals and recommendations are made for all the issues and problems that we discuss in this study.

The Syrian constitutions in question, which are covered in this study, are the following:

- The 1920 Draft Constitution

  The Basic Law of the Kingdom of Syria, which was drawn up by the Syrian Congress during its sessions between June 3, 1919 and July 19, 1920, did not enter into force due to the occupation of Syria by the French army.

- The 1930 Constitution

  The work on this constitution began in 1928 and was published by a decision of the High Commissioner of the French Republic on May 14, 1930, and its work was suspended several times during the period of the French Mandate of Syria.

- The 1950 Constitution

  It was approved by the Syrian Constituent Assembly on September 5, 1950.

- The 1953 Constitution

  It was issued on 07/11/1953 by a decision of the President of the Supreme Military Council.

- The 1958 Constitution

  It was issued on 05/3/1958 by a decision of President Gamal Abdel Nasser.

- The 1961 Constitution

  It was the interim constitution of the Syrian Arab Republic after secession from Egypt.

- The 1962 Constitution

  It was issued on 13/9/1962.

- The 1964 Constitution

It was issued on 24/4/1964 pursuant to a decision of the National Council for Revolutionary Command.

- The 1969 Constitution

  It was the interim constitution of the Syrian Arab Republic, issued on 01/5/1969 pursuant to a decision of the regional leadership of the Arab Socialist Baath Party.

- The 1971 Constitution

  It was the interim constitution of the Syrian Arab Republic, issued on 16/2/1971 pursuant to a decision of the regional leadership of the Arab Socialist Baath Party.

- The 1973 Constitution

  It was the permanent constitution of the Syrian Arab Republic, issued by the President of the Republic under Decree No. 208 dated on March 13, 1973, after a referendum on it.

- The 2012 Constitution

  It is the current constitution of the Syrian Arab Republic, issued during the years of war, and which is currently in force after it was prepared by a committee appointed by a republican decision and whose draft was submitted to a public referendum.

The comparative constitutions reviewed in this study are:

- Moroccan Constitution of 2011
- Tunisian Constitution of 2014
- Portugals Constitution of 1976, amended in 2005
- The Constitution of the Russian Federation issued in 1993, including its amendments through 2014
- Germanys Constitution issued in 1949, including its amendments through 2014
- Turkeys Constitution of 1982, amended in 2017
- Frances Constitution of 1958, amended in 2008
- Spains Constitution of 1978, amended in 2011
- Brazils Constitution of 1988, amended in 2017
- Venezuelas Constitution of 1999, amended in 2009
- Constitution of the Netherlands
- Ukraines Constitution of 1996, amended in 2016
- Bolivias Constitution of 2009
- Argentinas Constitution of 1853, reinstated in 1983, and amended in 1994
- Burundis Constitution of 2005

- Austrias Constitution of 1920, reinstated in 1945, and amended in 2013
- South Africas Constitution of 1996, amended in 2012
- Ecuadors Constitution of 2008, amended in 2015
- Kenyas Constitution of 2010
- Iraqs Constitution of 2005
- Pakistans Constitution of 1973, reinstated in 2002, and amended in 2018
- Polands Constitution of 1997, amended in 2009
- Egypts Constitution of 2014, amended in 2019

To discuss all of the above, this paper has been divided into three main sections to address the following fundamental issues, namely the following:

(a) The position of international treaties in the national legal system

(b) The establishment of independent constitutional bodies

(c) The final status of legal texts in violation of the constitution

3. The Position of International Treaties in the National Legal System

International treaties are defined as the international agreement concluded between states in written form, which is regulated by international law, whether it is contained in one or two related documents, or more, and whatever name it assumes.[1] States have a fundamental obligation to implement the international treaties they have accepted, ratified, or acceded to. This is the obligation clearly stated in the Vienna Convention on the Law of Treaties[2], which affirms that every treaty in force is binding upon the parties to it and must be performed by them in good faith[3] and that a party may not invoke the provisions of its internal law as a justification for its failure to perform the treaty.[4]

In order to fulfill the previous obligations, states usually provide in their constitutions for the position of international treaties within the hierarchy of the national legal system, with the aim of constitutionally confirming their transcendence and ensuring their implementation and fulfillment of the obligations included. This step is particularly important, as it guarantees the control of the required conditions under the constitution so that the rules of international law are enforceable within the national legal system. It also guarantees addressing cases of conflict that may arise between internal and international regulations in a way that ensures the primacy of international law over internal law, in the manner required by both international law and justice.[5]

This practice appears to be almost completely absent from the successive Syrian constitutional texts, in contrast to what is adopted by the majority of the constitutions of the world. We note that all Syrian constitutions[6] have no reference to international law in general and international treaties in particular. They treat them with great suspicion and are keen to avoid them as much as possible, and may refer to them when absolutely necessary, but very briefly and with as few references and words as possible. This lack of reference is not only evident in the constitutional articles themselves, but also extends to

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[1] States usually give several names to the international agreements that they conclude. "Treaty" is used when it comes to regulating important and predominantly political issues, such as the 1919 Versailles Peace Treaty that ended World War I. "Convention", is a term that is usually used in international treaties that are concerned with regulating legal subjects, such as the Vienna Convention on the Law of Treaties and the Jamaica Convention on the Law of the Sea. "Agreement" is used for international treaties that do not have a political character; such as commercial and financial agreements. "Protocol" means additions and amendments to a previous convention, such as the 1977 Additional Protocols to the Geneva Conventions of 1949 on the rules of international humanitarian law. "Charter", is a term given to the treaties establishing international organizations, such as the Charter of the United Nations and the Charter of the League of Arab States. It is to be noted that the Vienna Convention on the Law of Treaties clearly confirmed that all of these terms denote an agreement between two or more states, and are subject to the provisions of that agreement.

[2] Vienna Convention on the Law of Treaties: adopted by the United Nations Conference on the Law of Treaties held in two sessions in Vienna from March 26 to May 24, 1968, and from April 9 to May 22, 1969. At the conclusion of its work on May 22, 1969, it was opened for signature on May 23, 1969 and entered into force on January 27, 1980.

[3] Vienna Convention on the Law of Treaties, Article 26.

[4] Vienna Convention on the Law of Treaties, Article 27.

[5] The New Constitutional School: The New Form of the Foundational Path - Report of Democracy Reporting International Organization, Berlin, Germany P.11.

[6] This means all the Syrian constitutions issued since the first draft constitution of 1920 through the constitution in force upon the completion of this paper, issued in 2012, and they are the constitutions we referred to in the introduction to this study.

include the preamble and introduction to the constitution, which usually contains many symbolic references and rhetorical terms. The preamble is devoid of any reference to the position of international law or the role played by international treaties, e.g. core human rights conventions, in interpreting or applying the provisions relating to rights and freedoms, at least those rights and freedoms contained in the provisions of the constitution itself. We will explain this issue in the following pages.

1.1. The Syrian Context

Throughout its modern history, Syria has known several successive and draft constitutions that did not have the opportunity to be applied and entered into force. By reviewing the course of 11 constitutions that the country has witnessed since the secession from the Ottoman Empire, in addition to the draft constitution of 1920, we can derive two basic rules related to how those constitutions dealt with international treaties and the international law system. These are:

1.1.1. Constitutional Texts Referring to International Treaties

The most prominent note from the review of the Syrian constitutional texts is that all the twelve successive Syrian constitutions that have been reviewed have provided in detail for the authority that shall have power to conclude international treaties, with a difference in defining that authority. It was the king who had this authority in the 1920 draft constitution, followed by the Parliament in the 1950 constitution, the Presidency Council in the 1964 constitution, and the President of the Republic and the Council of Ministers in other constitutions. There are precise details of the types of treaties that each authority has the power to conclude and the conditions and procedures that should be observed to ensure the enforcement and implementation of international treaties on the ground. This is evident by reviewing the following constitutional texts:

- The 1920 Draft Constitution

  The king shall be the commander in chief and shall have power to declare war and conclude peace and treaties, provided that this is presented to the conference for ratification, and treaties shall not be effective until they are ratified....[7]

- The 1930 Constitution

  The President shall conclude and sign treaties those concerning the safety of the State or the public finances, and also commercial treaties, and, in general, all treaties which cannot be denounced at the expiring of any year, shall not, however, come finally into force until they have been adopted by the Chamber.[8]

- The 1950 Constitution

[7] The 1920 Draft Constitution, Article 8.
[8] The 1930 Constitution, Article 74.

The President shall sign and conclude treaties after they are approved by the Chamber of Deputies.[9]

- The 1953 Constitution

  Treaties concerning the safety of the State or the public finances, the status of persons, or the rights of Syrians' to own property abroad, peace treaties, commercial treaties, and every other treaty concluded for more than one year, and every treaty that leads to the amendment of effective internal laws, shall be concluded by the President only after being approved by the Chamber of Deputies under a legislation.[10]

- The 1958 Constitution

  The President shall conclude treaties and communicates them to the National Assembly... However, peace treaties, alliances, trade and navigation treaties, and all treaties that entail a modification in the lands of the state, or that relate to the rights of sovereignty, or that incur the state treasury with some expenditures not included in the budget, shall not be effective unless approved by the National Assembly.[11]

- The 1961 Constitution

  The President shall sign and conclude treaties after they are approved by the Chamber of Deputies.[12]

- The 1962 Constitution

  Treaties affecting the integrity or finances of the state, commercial treaties, and every other treaty concluded for more than one year, shall not be considered effective until approved by the Chamber of Deputies.[13]

  The President shall sign and conclude treaties after they are approved by the Chamber of Deputies.[14]

- The 1964 Constitution

  The Presidency Council, after the approval of the Council of Ministers, shall conclude treaties and agreements, and informs the National Council of them, and they have the force of law after their conclusion, ratification and publication in accordance with the law. However, peace and alliance treaties, and all treaties

[9] The 1950 Constitution, Article 77, Paragraph 2.
[10] The 1953 Constitution, Article 64, Paragraph 1.
[11] The 1958 Constitution, Article 56
[12] Bis from the 1950 Constitution - Article 77, Paragraph 2; because the 1961 Constitution stipulates that the President of the Republic, the Council of Ministers and the ministers shall exercise the executive authority in accordance with the provisions stipulated in the Executive Authority and in accordance with the provisions stipulated in the Constitution of September 5, 1950, until the publication of the new Constitution.
[13] The 1962 Constitution, Article 51, Paragraph 1.
[14] The 1962 Constitution, Article 71, Paragraph 2.

related to the rights of sovereignty or granting concessions to foreign companies or institutions, shall not be effective unless approved by the National Assembly.[15]

- The 1969 Constitution

  The Peoples Assembly shall exercise the power.... for approving international treaties and agreements related to the integrity of the state.[16]

  The President of the Republic shall assume the authority... to conclude treaties and agreements approved by the Peoples Assembly.[17]

- The 1971 Constitution

  The Peoples Assembly shall exercise the power.... for approving international treaties and agreements related to the integrity of the state.[18]

  The President of the Republic shall assume the authority... to conclude treaties and agreements approved by the Peoples Assembly.[19]

- The 1973 Constitution

  The Peoples Assembly shall exercise the power.... for approving international treaties and agreements related to the integrity of the state. These are peace and alliance treaties, and all treaties related to the rights of sovereignty or agreements that grant concessions to foreign companies or institutions, as well as treaties and agreements that incur the state treasury with some expenditures not included in the budget, or that violate the provisions of the laws in force and whose enforcement requires the issuance of new legislation, shall not be effective unless approved by the National Assembly.[20]

  The President of the Republic shall conclude and cancel international treaties and agreements in accordance with the provisions of the Constitution.[21]

  The Council of Ministers shall exercise the following functions... concluding agreements and treaties in accordance with the provisions of the Constitution.[22]

- The 2012 Constitution

  The Peoples Assembly shall exercise the following functions ... for approving international treaties and agreements related to the integrity of the state. These are peace and alliance treaties, and all treaties related to the rights of sovereignty or agreements that grant concessions to foreign companies or institutions, as well as treaties and agreements that incur the state treasury with some expenditures not included in the budget, or that are related to loans contract, or that violate the

[15] The 1964 Constitution, Article 52.
[16] The 1969 Constitution, Article 48, Paragraph 7.
[17] The 1969 Constitution, Article 54, Paragraph 5
[18] The 1971 Constitution, Article 48, Paragraph 7.
[19] The 1971 Constitution, Article 54, Paragraph 5.
[20] The 1973 Constitution, Article 71, Paragraph 5.
[21] The 1973 Constitution, Article 104.
[22] The 1973 Constitution, Article 127, Paragraph 7.

> provisions of the laws in force and whose enforcement requires the issuance of new legislation.[23]
>
> The President of the Republic shall conclude and cancel international treaties and agreements in accordance with the provisions of the Constitution and rules of international law.[24]
>
> The Council of Ministers shall exercise the following functions... concluding agreements and treaties in accordance with the provisions of the Constitution.[25]

As mentioned earlier, the previous constitutional texts only allow for the specification of the body that has the authority to conclude and ratify international treaties, while some of these texts elaborate more on distributing competencies to approve those treaties according to how important they are and to the provisions and effects they contain. For example, the legislature is usually given power to approve special treaties that have serious implications namely international agreements that relate to the integrity of the State and rights of sovereignty, that grant concessions to foreign companies or institutions, that incur the state treasury with expenditures not included in the budget, or that violate the provisions of the laws in force, as in the 1920 Constitution.

The review of the constitutional documents under study also reveals that there are limited references to cases that require reference to international treaties and norms on certain issues. These references are repealed under the current constitution. Through this study, it became clear that three constitutions have mentioned reference to international treaties regarding two issues, namely, extradition of criminals who committed ordinary crimes and the legal status of foreigners. The constitutions of 1950, 1953 and 1962 provided for the extradition of criminals who committed ordinary crimes: international agreements and laws shall determine the rules for the extradition of criminals with ordinary crimes.[26] With regard to the legal status of foreigners, the same constitutions stipulate that the law shall determine the legal status of foreigners, wherein international norms and conventions shall be observed.[27]

This is one of the rare cases in which Syrian constitutional texts mention referral to an international reference represented by international treaties and norms, even if this referral is carried out for mere consideration. This reference was solely limited to constitutions mentioned earlier. It was abandoned for more than six decades, which witnessed five subsequent constitutions, all of which are devoid of any similar reference, including the 2012 constitution currently in force.

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[23] The 2012 Constitution, Article 75, Paragraph 6
[24] The 2012 Constitution, Article 107.
[25] The 2021 Constitution, Article 128, Paragraph 7.
[26] The 1950 Constitution - Article 20, Paragraph 2 / The 1953 Constitution - Article 19, Paragraph 2 / The 1962 Constitution - Article 20, Paragraph 2.
[27] The 1950 Constitution - Article 31, paragraph 2 / The 1953 Constitution - Article 7, paragraph 2 / The 1962 Constitution - Article 31, paragraph 2.

1.1.2. Constitutional Texts Referring to the Position of International Treaties

Only three constitutions referred to the position of international treaties and their role in the national legal system as follows:

- The 1953 Constitution

  Treaties approved by the Chamber, concluded and published by the President of the Republic, shall be considered, as soon as they come into force, amendments to previous internal laws that contradict them.[28]

  Treaties in force, approved by the Chamber, shall take precedence over internal laws, and their provisions shall not be amended, rescinded or suspended except after notification by methods stipulated therein or in accordance with international norms.[29]

- The 1958 Constitution

  The President of the Republic concludes treaties and communicates them to the National Assembly, and they have the force of law after their conclusion, ratification and publication in accordance with the established conditions.[30]

- The 1964 Constitution

  The Presidency Council, after the approval of the Council of Ministers, concludes treaties and agreements, and communicates them to the National Council, and they have the force of law after their conclusion, ratification and publication in accordance with the law.[31]

It is noted that:

(a) The 1958 and 1964 constitutions exclusively granted international treaties the force of law, after they were duly concluded, ratified and published, but without expressly stating their precedence and preference over the provisions of the law. This means that international treaties were granted a force that is equal and similar to that of the law, but which does not make them superior to it. In addition, the use of the word law has some ambiguity in terms of defining what is meant by law in the application of these texts. Is the Constitution itself, being "the supreme law of the country", included? Or is this use limited to mean legislation in its narrow sense, which could only refer to laws, decrees, regulations or decisions, with the exception of the Constitution which shall remain the supreme law taking precedence over international treaties themselves?

(b) The 1953 Constitution takes credit for the fact that it was well-drafted in terms of clearly stipulating the supremacy of international treaties and granting them priority over previous internal laws and for not allowing their violation by

[28] The 1953 Constitution – Article 64, Paragraph 2.
[29] The 1953 Constitution – Article 64, Paragraph 3.
[30] The 1958 Constitution _ Article 56.
[31] The 1964 Constitution – Article 52.

subsequent laws unless they were duly amended in accordance with international norms.

(c) Except for the aforementioned instances, all subsequent constitutional texts (from the era after the 1964 Constitution through the current 2012 Constitution) have been devoid of any reference to the position and arrangement of international treaties in the national legal system. This classifies the Syrian constitution among the "silent constitutions" on this issue.

1.1.3. Legal and Factual Methodology in Addressing this Elimination in the Constitution

In light of this constitutional negligence, a return to national legislation and jurisprudence takes place in an attempt to determine the position of international treaties in Syria. Two legal texts are usually cited here from which it is inferred that the Syrian legislator has granted international treaties more power than only national legislation, but not higher or greater than the constitution. Article 25 of the Syrian Civil Code states that the provisions of the previous articles shall not apply except where there is no provision to the contrary in a special law or an international treaty in force in Syria. In addition, the Code of Civil Procedure in Syria stipulates in Article 313 that: the foregoing rules shall apply without prejudice to treaties contracted or to be contracted between Syria and other States on this subject.

On the basis of these two legal texts with resulting provisions and jurisprudence, the Syrian government confirms in its periodic reports to the various human rights committees that the national legal system recognizes the transcendence of international treaties and their preference over internal laws, not the constitution, if there exists any contradiction with these treaties. For example, it is stated in one of those reports that in the event that any domestic law conflicts with the provisions of an international treaty to which Syria is a party, the international treaty shall take precedence. According to Court of Cassation ruling No. 23 of 1931, a domestic law cannot establish rules that contradict the terms of an international treaty existing prior to the said law, nor may it alter, even implicitly, its implementing provisions. This principle is confirmed in another ruling that was issued by the civil division of the Court of Cassation, namely, ruling No. 1905/366 of 21 December 1980[32], which states that domestic courts do not apply treaties on the basis that the State had undertaken to implement them, but rather because the treaties have become part of the State's domestic law: In the event of a conflict between a treaty and a domestic law, the domestic court must apply the provisions of the treaty, since they have precedence over domestic law.[33] Based on the aforementioned, the Syrian Minister of

[32] Decision No. 1905 /366 of 21 December, 1980 as published in "The Lawyers" [Al Muhamoon] magazine, Available at: https://bit.ly/3TcQmd5

[33] This position is indicated in the written replies submitted by the Government of the Syrian Arab Republic to the list of issues to be taken up in connection with the consideration of the initial report of the Syrian Arab Republic submitted under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict [Replies received on 21 August 2007] UN document: CRC/C/OPAC/SYR/Q/1/Add.1 27 August, 2007.

Justice issued a circular in 2014 requesting all judges and state lawyers to adhere to the application of the provisions and terms of international treaties in force and signed by the Syrian Arab Republic. This is in implementation of the texts and provisions of the law, and in compliance with the provisions of the Civil Code and the Code of Procedure, especially Article 25 of the Civil Code and Article 311 of the Code of Civil Procedure, requesting public defenders and the Judicial Inspection Department to monitor the proper implementation of the content of this circular.[34]

Despite the importance of the above, this neither replaces nor precludes the need to adopt clear constitutional texts that precisely define the position of international treaties within the legal system and grant them constitutional support for implementation and enforcement. It is illogical to rely on old and vague jurisprudence to derive the will of the legislator and the government's position on this important constitutional and legal issue, especially since these references are ambiguous and allow for revocation of those treaties and the reversal of their application locally as long as the courts consider that their application is not based on the fact that the State had undertaken to implement them, but rather because the treaties have become part of the State's domestic law. This allows the government to issue subsequent legislation in violation of the treaty and to abandon or ignore its implementation, which is what is taking place on the ground. Through monitoring the official government discourse, an example of this is retracting its recognition of the transcendence of international treaties and allowing their violation, if not under the pretext of conflicting with national legislation, then on the pretext that some of those treaties conflict with divine laws. This was evident from the reports of the Syrian government to the CEDAW committee emanating from the Convention on the Elimination of All Forms of Discrimination against Women, which the Syrian government has ratified as previously mentioned. For example, the government recognized in its report in 2005 that the Personal Status Law in force at the time was discriminatory, which contradicted the subject and content of the CEDAW Convention, as it stated verbatim that most of the articles of the Personal Status Law are discriminatory, so work is currently underway to propose a modern family law that guarantees equal rights for women and men.[35] Then in 2012, the government changed its position in its official report to the CEDAW Committee, in the context of defending that law, which contains in some of its articles what contradicts this agreement. This change is evidenced by the government's consideration that international agreements may take precedence over national laws but shall not be superior to divine laws and related provisions on this subject.[36]

This official position raises concerns regarding the governments reversal in recognizing the globally established and stable principle of the supremacy of international treaties

[34] Circular No. 4 - Ministry of Justice - No. 49/T/1095/2014. Issued on 19/01/2014, available at: https://bit.ly/3R6Qp8F.

[35] Committee on the Elimination of Discrimination against Women - consideration of reports submitted by states parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women. Initial reports of states parties - Syrian Arab Republic - see UN document: CEDAW/C/SYR/1 - 15 September 2005.

[36] The report of the Syrian government contained in the United Nations document - Committee on the Elimination of Discrimination against Women - Consideration of reports submitted by states parties under Article 18 of the Convention - Second periodic report of states parties - Syria - 24 July 2012. See UN document: CEDAW/C/SYR/2- 25 October 2012.

over national legislation, especially since this reversal was also expressed in the guide document to legislative drafting issued by the Presidency of the Council of Ministers in Damascus in May 2019. This guide indicated that it must be emphasized that the inconsistency of national laws with the principles and provisions of the international instruments to which the Syrian Arab Republic has acceded would lead to its appearance as not complying with its international commitments, in addition to the resulting negative assessments that follow the process of reviewing national efforts at the international level.[37] This document highlights the fact that there is inconsistency in national legislation with international treaties duly ratified by the government. It does not however consider these internal legislations invalid, in keeping with the principle of the precedence discussed above, but rather deems it as mere international embarrassment to the government. This is in fact what is virtually happening, but it should not be the only effect discussed. Rather the principle of precedence, which has been completely neglected and never mentioned, must also be recognized.

It should also be noted that all Syrian constitutions- including the current constitution of 2012- ignore any reference to human rights agreements in interpreting and implementing constitutional rights, though many of the world's constitutions have already included clear references, in explicit constitutional texts and articles, to specific international or regional human rights treaties. What is more, they have made them a reference for the implementation and interpretation of the rights and freedoms contained in the constitution itself. Therefore, those constitutions have permitted the application of rights and guarantees contained in international treaties if they were more comprehensive and extensive than what was stated in their own constitutions. This is what all Syrian constitutions are ignoring without exception. It is worth mentioning that these references will have great constitutional, legal, and moral force in revealing the identity of the constitution and its supreme goal, which is to preserve rights and freedoms of the people. It will motivate legislators and law enforcement bodies to observe and respect those rights, and to avoid any legal or factual practices that conflict with or violate them. All of the aforementioned confirm and reinforce the importance of the need for a clear and specific constitutional text on international treaties and position in any future Syrian constitutional document.

1.1.4. An Attempt to Explain this Deliberate Negligence of Provisions in the Constitution

The insistence on ignoring the system of international law altogether in successive Syrian constitutional documents can be interpreted as an expression of the position of the national legislator regarding the rules of all international law. In fact, international rules are usually viewed with a lot of suspicion and caution, and they are treated as an infringement on sovereignty, a tool for interfering in the States internal affairs and for importing values and practices that do not necessarily correspond to the local reality and

[37] Guide Document to Legislative Drafting, Presidency of the Council of Ministers. Damascus, Syria - May 2019, p. 22.

its needs. It could be argued that there is no desire to mainstream and apply those rules in the local context. It is a vision that is not limited to the Syrian constitutional legislator alone, but a common view shared in most Arab countries, at least those which deal (with great caution) with the international legal system as if it were a necessary evil which cannot be ignored yet cannot be applied. This requires devising solutions and texts to neutralize it as much as possible such as referring to it when necessary for external marketing while ignoring its application as much as possible at the domestic level.

There is no doubt that the previous view is deficient, superficial, and limited in terms of the rules of international law and the reference for their application at the national level, because stressing international treaties, revealing their position and the requirement for their mandatory application and giving them precedence over domestic law, should not be considered an act of interference in the internal affairs of states nor an infringement on sovereignty. It is in fact, quite the opposite: an expression of state sovereignty and a manifestation of it. States ratify international treaties at will because they are fully sovereign states. It is this sovereignty that requires them to fulfill what they have undertaken with full will and freedom. One of the most prominent features that distinguishes fully sovereign states from states that lack sovereignty, or have limited sovereignty, is the ability to conclude international treaties and fulfill their obligations. On the one hand, when a state loses its sovereignty through occupation, mandate, trusteeship, or effective control, it automatically loses power to conclude and fulfill international treaties. This authority is only regained when the state regains its sovereignty. On the other hand, constitutionally giving international treaties precedence and priority over domestic law is an expression of respect for the national will that is empowered to sign and ratify such treaties. When, for example, the constitution authorizes the executive authority to conclude treaties, and grants the legislative authority the power to approve and ratify them, then the implementation of those treaties and the constitutional recognition of their precedence is an expression of respect for the will of the national authorities that have concluded and ratified them. These authorities would not be treated with such respect if their signature on and ratification of those treaties did not have any value or effect at the domestic national level that they represent.

1.2. Comparative Constitutional Models

Although there are other examples that adopt a position similar to that of the Syrian constitution in terms of constitutional lack of representation of the position on international treaties and avoidance of any reference to international law, international reality reveal many positive constitutional practices that determined the position of international treaties in the national legal system and establish a reference to some international treaties on human rights by means of a constitutional text in realization of those rights. These examples will be reviewed in the following pages.

1.2.1. Determining the Position of International Treaties in the National Legal System

Many state constitutions adopt explicit texts and phrases, in which they define the position of international treaties and give them precedence over ordinary laws, or even over the provisions of the constitution itself. By reviewing a number of comparative constitutional texts, it is noted that that there are many and varied constitutional options that countries have resorted to in order to determine the position of international treaties in their national legal system.

Some chose to stress the transcendence of international treaties over internal legislation in the preamble to the constitution itself, as is the case with the Moroccan constitution, which states: ...Based on these immutable values and principles, and consistent with a strong desire to consolidate the ties of brotherhood, cooperation, solidarity and constructive partnership with other states, and to work towards shared progress, the Kingdom of Morocco, as a united, fully sovereign State belonging to the Greater Maghreb, affirms and vows to work for the following : granting international conventions duly ratified by the Kingdom supremacy over domestic laws - within the framework of the provisions of the Constitution, the laws of the Kingdom, and respect for its immutable national identity, and as soon as these conventions are published - and bringing the national legislative provisions concerned in line with the requirement of such ratification.[38]

Some other constitutions allocated special constitutional articles to stipulate the supremacy of international treaties over domestic laws only, not the constitution, as is the case with the Tunisian constitution, which states briefly and clearly that 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 .[39] Also, the Portuguese Constitution states that the rules set out in duly ratified or passed international agreements shall come into force in Portuguese internal law once they have been officially published, and shall remain so for as long as they are internationally binding on the Portuguese state.[40] This same constitution considers that the rules and principles of general or customary international law shall form an integral part of Portuguese law.[41] In the same context, we can refer to the Russian Federal Constitution, which states that The commonly recognized principles and norms of the international law and the international treaties of the Russian Federation shall be a component part of its legal system. If an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty shall apply.[42] Germanys Constitution also stipulates that the generally recognized rules of the international law shall be an integral part of federal law. They shall take precedence over the federal laws and directly create

[38] Moroccan Constitution of 2011- The Preamble.
[39] Tunisian Constitution of 2014- Article 20.
[40] Portugal's Constitution of 1976 (amended in 2005) Article 8, Paragraph 2.
[41] Portugal's Constitution of 1976 (amended in 2005) Article 8, Paragraph 1.
[42] The Constitution of the Russian Federation issued in 1993, including its amendments through 2014 - Article 15, Paragraph 3.

rights and duties for the inhabitants of the federal territory.[43] Turkeys Constitution states that international agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements, duly put into effect - concerning fundamental rights and freedoms - and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.[44] Frances Constitution also states that: treaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, with respect to each agreement or treaty, to its application by the other party.[45]

Other constitutions considered duly concluded international treaties part of internal law, which result in the inevitability and immediacy of their application. Those treaties were immunized from the possibility of cancellation, modification or suspension by the sole will of the national legislator, so this process was subject to the provisions of the international treaties themselves, or the general principles of the international law. This is the case in Spains Constitution which stipulates that: validly concluded international treaties, once officially published in Spain, shall be part of the internal legal system. Their provisions may only be repealed, amended or suspended in the manner provided for in the treaties themselves or in accordance with the general rules of international law .[46]

Some constitutions specifically give international human rights treaties equal value to constitutional amendments themselves as is the case with Brazils Constitution which stipulates that international treaties and conventions on human rights approved by both houses of the National Congress, in two separate voting sessions, by three-fifths of the votes of their respective members, shall be equivalent to constitutional amendments.[47] Similarly, Venezuelas Constitution states that the treaties, pacts and conventions relating to human rights which have been executed and ratified by Venezuela have a constitutional rank, and prevail over internal legislation, insofar as they contain provisions concerning the enjoyment and exercise of such rights that are more favorable than those established by this Constitution and the laws of the Republic, and shall be immediately and directly applied by the courts and other organs of the Public Power.[48]

Other constitutions stipulate giving international treaties priority over national legislation as opposed to the constitution, unless those human rights treaties specifically include better protection from violations than what is stipulated in the constitution. As a result, they will receive preferential treatment over the corresponding texts in the constitution, provided that it has priority in all other matters. Bolivias Constitution states that: the international treaties and instruments in matters of human rights that have been signed and ratified, or those that have been joined by the State, which declare rights more favorable than those contained in the Constitution, shall have preferential application over

[43] Germany's Constitution issued in 1949, including its amendments through 2014- Article 25.
[44] Turkey's Constitution of 1982 (amended in 2017) – Article 90.
[45] France's Constitution of 1958 (amended in 2008) – Article 55.
[46] Spain's Constitution of 1978 (amended in 2011) –Article 96, Paragraph 1.
[47] Brazil's Constitution of 1988 (amended in 2017) – Article 5.
[48] Venezuela's Constitution of 1999 (amended in 2009) – Article 23.

those in this Constitution.[49] It further states that the Constitution is the supreme norm of Bolivian law and enjoys supremacy before any other normative disposition. The components of constitutional law include the international treaties and conventions in the matter of human rights and the norms of communitarian law, which have been ratified by the country. The application of the legal norms shall be governed by the following hierarchy, in accordance with the authority of the territorial entities:

(a) Constitution of the State

(b) International treaties

(c) National laws, statutes of the autonomies, organic charters and the other departmental, municipal and indigenous legislation.

(d) Decrees, regulations, and other resolutions issued by the corresponding executive orders.[50]

Conversely, other constitutions permit the possibility of concluding international treaties that contradict the constitution, provided those treaties are approved by a special majority in Parliament, thus outweighing the provisions of those treaties over the provisions of the constitution itself, as is the case with the Constitution of The Netherlands which stipulates that any provisions of a treaty that conflict with the Constitution or which lead to conflicts with it may be approved by the Houses of the States General only if at least two-thirds of the votes cast are in favour.[51] This same constitution immunizes international treaties from being subject to monitoring by the Court and from the right to appeal on the grounds that they are unconstitutional, which allows for the conclusion and implementation of international treaties that contradict the provisions of the constitution itself. It states that the constitutionality of Acts of Parliament and treaties shall not be reviewed by the courts.[52]The Constitution also stipulates that the provisions of treaties are mandatory for all after their publication, and at the same time prohibits the application of any internal rules, regulations or by-laws if they conflict with the provisions of international treaties binding on the Netherlands stating that: provisions of treaties and of resolutions by international institutions which may be binding on all persons by virtue of their contents shall become binding after they have been published.[53] Furthermore, it states that statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties that are binding on all persons or of resolutions by international institutions.[54] On the other hand, Ukraines Constitution permits the conclusion of international treaties that contradict the provisions of the Constitution, provided that the relevant amendments to the countrys Constitution are made in advance, stating that international treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine. The

[49] Bolivia's Constitution of 2009 – Article 256, I.
[50] Bolivia's Constitution of 2009 – Article 410, II.
[51] Constitution of The Netherlands – Article 91, Paragraph 3.
[52] Constitution of The Netherlands – Article 120.
[53] Constitution of The Netherlands – Article 93.
[54] Constitution of The Netherlands – Article 94.

conclusion of international treaties that contravene the Constitution of Ukraine is possible only after introducing relevant amendments to the Constitution of Ukraine.[55]

It is clear from what is presented above that there are many constitutional options that all agree on determining the legal position of international treaties under the provisions of the constitution itself, though they are different in terms of the degree of power in that position. It ranges from being satisfied with granting international treaties precedence over domestic laws only and making some types of international treaties equal to some constitutional texts, to granting international treaties priority over the provisions of the constitution itself, in accordance with restrictions and conditions that were discussed above.

1.2.2. Referral to Specific Treaties on Specific Matters

It is also remarkable that some constitutions stipulate certain treaties to be a reference for the application or interpretation of particular provisions of these constitutions. This is specifically true in human rights related issues. To ensure the application of these treaties in a manner consistent with their purpose and fearing that the rights contained in constitutions might be interpreted inconsistently with the content of those international treaties, constitution-makers in many countries have provided additional constitutional guarantees. For example, they defined a set of relevant international treaties to be stipulated in the constitution provided that the constitutional provisions on rights and freedoms are interpreted in a manner consistent with those treaties in particular.

One example is Spains Constitution which states that provisions relating to the fundamental rights and liberties recognized by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain.[56] Another example is Portugals Constitution which states that the provisions of this Constitution and of laws concerning fundamental rights shall be interpreted and construed in accordance with the Universal Declaration of Human Rights.[57] Bolivias Constitution also states that the rights recognized in the Constitution shall be interpreted in agreement with international human rights treaties when the latter provide more favorable norms.[58]

However, Argentinas Constitution expands on these treaties and regards them as complementary of the rights and guarantees contained in its provisions. It states that the following [international instruments], under the conditions under which they are in force, stand on the same level as the Constitution, [but] do not repeal any article in the First Part of this Constitution, and must be understood as complementary of the rights and guarantees recognized therein: The American Declaration of the Rights and Duties of Man the Universal Declaration of Human Rights the American Convention on Human Rights the

[55] Constitution of Ukraine of 1996 (amended in 2016) – Article 9.
[56] Spain's Constitution of 1978 (amended in 2011) – Article 10, Paragraph 2.
[57] Portugal's Constitution of 1976 (amended in 2005) – Article 16, Paragraph 2.
[58] Bolivia's Constitution of 2009 (Article 256, II).

International Covenant on Economic, Social and Cultural Rights the International Covenant on Civil and Political Rights and its Optional 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 Women the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment and the Convention on the Rights of the Child.[59] Also Burundis Constitution states in its preamble that we proclaim our commitment to respect for fundamental human rights as a result of the Universal Declaration of Human Rights 10 December 1948, the International Covenants on Human Rights of 16 December 1966, the African Charter on Human and Peoples Rights of 18 June 1981.[60] The importance of such references is that they can become a tool for using these standards and instruments in interpreting the constitution as a whole, thus providing guidance to law-making bodies, as well as to courts and administrative authorities.[61]

1.2.3. Presentation of Treaties to the Constitutional Court to Ensure they are not Inconsistent with the Constitution

As previously discussed, the majority of the constitutions of the states of the world grant international treaties precedence over national legislation, with the exception of the constitution. But this does not mean, of course, authorizing states to conclude international treaties that contradict the provisions of the Constitution and then invoking it to renege on the implementation of those treaties and evade fulfilling the obligations they contain, especially since the Vienna Convention on the Law of Treaties had stipulated that a party may not invoke the provisions of its internal law as justification for its failure to implement the treaty.[62]

Therefore, to avoid inconsistencies in the international treaty with the provisions of the Constitution, many countries resort to prior presentation of international treaties to the Constitutional Court to help them decide, the extent to which they are compatible with the provisions of the Constitution. Accordingly, this determines the procedure to be followed in this case, and whether ratification of the provisions of that treaty will be reversed in advance, to avoid its subsequent conflict with the constitution, as is the case in Morocco, or whether the provisions of the constitution will be amended in advance to ensure compatibility with the provisions of the treaty, then it is ratified as it is in France.

Comparative analysis of several constitutions reveals a differentiation in terms of the power they each grant to constitutional courts to a priori review of the constitutionality of international treaties. The analysis further reveals whether there is recourse for the Constitutional Court towards obligatory or optional reviewing, and whether its powers

[59] Argentina's Constitution of 1853 (reinstated in 1983, amended in 1994), 75.
[60] Burundi's Constitution of 2005 - The Preamble.
[61] Human Rights and Constitution-making - United Nations Publications. Issued by the United Nations High Commissioner for Human Rights. New York and Geneva, 2018 (p. 26).
[62] Vienna Convention on the Law of Treaties - Article 27.

extend to all types of international treaties or only certain ones.[63] According to the Moroccan constitution, this review is optional. In regards to international obligations, the Constitutional Court is competent to rule on their compliance with international obligations to the Constitution, and if it declares that an international obligation includes a clause that contradicts the latter, it cannot be ratified.[64]In Tunisia, the President of the Republic may present treaties to the Constitutional Court to review their constitutionality before approval,[65] noting that the matter is related to the discretionary competence of the President, given that referral to the court is optional. On the other hand, this oversight does not include all types of international treaties and is limited to a specific type of agreement[66] that requires approval by the Assembly of the Representatives of the People by means of a law before ratification by the President of the Republic. However, in Frances Constitution, if the Constitutional Council, on a referral from either the President of the Republic, the Prime Minister, the President of one or the other Houses, or from sixty Members of the National Assembly or sixty Senators, has held that an international undertaking contains a clause contrary to the Constitution, authorization to ratify or approve the international undertaking involved may be given only after amending the Constitution.[67]

According to Spains Constitution, conclusion of an international treaty containing stipulations contrary to the Constitution shall require prior constitutional amendment. The Government or either House may request the Constitutional Court to declare whether such a contradiction exists.[68] As for Austrias Constitution, the Constitutional Court pronounces whether international treaties are contrary to law. This shall apply only to political, to law-modifying and law-amending treaties and to treaties modifying the contractual bases of the European Union.[69] Bolivias Constitution gives the Pluri-National Constitutional Court power to a prior review of the constitutionality of international treaties before being ratified.[70]

[63] Reviewed in detail by Dr. Ibrahim Draji, 'The Constitutional Court in Syria's Constitutions: A Comparative, Historical and Legal Reading', published by Legitimacy and Citizenship in the Arab World Programme. Conflict and Civil Society Research Unit at the London School of Economics (LSE) July 2020, pp. 94-95.
[64] Morocco's Constitution (Chapter 132, Article 24 of Organic Law No. 066.13 of 2014 relating to the Constitutional Court).
[65] Article 43 of Organic Law No. 50 of 2015, dated December 3, 2015, relating to the Constitutional Court.
[66] This specifically means, in accordance with the provisions of Articles 13 and 67 of the Tunisian Constitution, commercial treaties, treaties related to international organization, state borders, state financial commitments, the status of individuals, dispositions of a legislative character, or agreements concluded regarding investment contracts related to natural resources.
[67] France's Constitution of 1958 (amended in 2008) Article 54.
[68] Spain's Constitution of 1978 (amended in 2011) - Article 95, Paragraph 1/2.
[69] Austria's Constitution of 1920 (reinstated in 1945, amended in 2013) - Article 140.
[70] Bolivia's Constitution of 2009 - Article 202, Paragraph 9.

2. Establishment of Independent Constitutional Bodies

It has become common for some constitutions to provide for the establishment of independent constitutional bodies to exercise certain responsibilities and functions, such as giving them responsibility to hold state institutions accountable (as is the case with the role played by the Human Rights Commission or the Auditor General). Other functions include authorizing them to deal with complaints against government agencies due to maladministration or unfair discrimination (as is the case with the Board of Grievances) or eradicating corruption and managing politically sensitive functions (such as the Anti-Corruption Body, the Independent Management Body for elections or the media). In addition, these independent constitutional bodies promote constitutional values and rights (like bodies promoting the values of equality and non-discrimination).[71] Accordingly, what is meant by these bodies, in this context, is not only the independent national bodies concerned with human rights in their narrow sense, which are, of course, an important component in these constitutional bodies. Rather, they expand to include other sectors related to human rights in its broad sense, as will become clear from the constitutional practices that will be reviewed in the following pages.

Usually, the establishment of these bodies is provided for by the provisions of the constitution itself, and according to which they are also entrusted with the supervision, management, and regulation of specific sectors. To exercise their powers effectively, these institutions enjoy legal personality and financial and administrative independence. They are not subject to traditional forms of control in exercising their functions. To ensure that these bodies are effective, most modern constitutions do not only constitutionalize them (that is, only stipulating their creation in the constitution's core). Rather, constitutions tend to include a set of rules that would secure real independence for these bodies, such as rules which help determine the composition of the commission, terms of membership, how to appoint its president, and guidance on controlling its basic functions.[72]

The importance of establishing these bodies is reflected in the fact that today they constitute a strong balancing factor in the democratic system in terms of the oversight functions they exercise and the powers that may be assigned to them in the field of protecting and guaranteeing human rights and freedoms. The growth of these bodies represents a new development in the separation of powers and in the establishment of checks and balances between authorities.[73] In addition, these bodies play a key role in informing the public opinion by flagging various functional imbalances that may occur in the exercise of functions by public administrations, or even by denouncing cases of misconduct within institutions subject to the control of the public authority.[74]

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[71] Yash Ghai and Jill Cottrell. The Millennium Declaration, Rights and Constitutions. United Nations Development Programme, pp. 182-183.
[72] Drafting the Constitution: Comparative Experiences and Lessons Learned. International Institute for Democracy and Electoral Assistance. June 2013, p. 37.
[73] Yash Ghai and Jill Cottrell. The Millennium Declaration, Rights and Constitutions. Previous reference, pp. 182-183.
[74] The New Constitutional School. Previous reference, p.7.

In the comparative constitutions, these bodies bear different names, such as a supreme body, council, ombudsman, conciliator, protector of rights, and these present various characteristics and organizational structures. However, they do share significant commonalities such as impartiality, integrity, independence, and expertise. The Office of the United Nations High Commissioner for Human Rights has previously identified seven essential factors for the success of these national bodies and institutions, namely: independence specific jurisdiction adequate powers accessibility cooperation operational efficiency accountability.[75]

2.1. The Syrian Context

In contrast to modern constitutional trends in a few countries around the world, successive Syrian constitutions are devoid of any reference or constitutional provision regarding the establishment of independent constitutional bodies to protect fundamental human rights, monitor the government's implementation of them, and enhance the values of citizenship. To cover this negligence, they resort to using judicial mechanisms and official oversight bodies. An example of this is presented in the third periodic report submitted by the Syrian government to the committee on implementation of the International Covenant on Civil and Political Rights which indicates that to address abuses, complaints, and violations it created a Complaints Bureau under the Ministry of Presidential Affairs by virtue of article 25 of Presidential Decree No. 29 of 1971. The Bureau receives and investigates complaints and grievances filed by citizens and takes appropriate action thereon and submits a monthly report to the President of the Republic, thereby ensuring that all citizens enjoy the right to lodge a complaint in respect of any violation of their rights or freedoms. A complaint may be referred to the Central Authority of Oversight and Inspection to investigate whether it contains charges that may constitute a violation of the duties of an official.[76]

2.2. Comparative Constitutional Models

The constitutions of several countries around the world refer to independent constitutional bodies to address multiple issues according to the priorities of their local reality and national needs. Such constitutional practices are listed below.

- South Africas Constitution

  The Constitution of South Africa is one of the best constitutions in dealing with the establishment of independent constitutional bodies. Chapter Nine of their constitution, State Institutions Supporting Constitutional Democracy, describes those bodies:

  (a) The Public Protector

  (b) The South African Human Rights Commission

[75] The main aspects of the Libyan Constitutional Process. International Institute for Democracy and Electoral Assistance. Sweden 2014, P. 29.
[76] CCPR/C/SYR/2004/3 - 19 October 2004.

(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

(g) Independent Authority to Regulate Broadcasting

Initially, the constitution guaranteed these institutions independence and effectiveness, stipulating that:

(a) They are independent, subject only to the Constitution and the law, must be impartial, and must exercise their powers and perform their functions without fear, favour, or prejudice.

(b) Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure their independence, impartiality, and effectiveness.

(c) No person or organ of state may interfere with the functioning of these institutions.

However, the Constitution made these institutions accountable to the National Assembly, requiring them to report on their activities and the performance of their functions to the Assembly at least once a year[77]. The constitution has also included detailed information about the conditions for appointing members of these independent commissions and bodies or removing them from office.[78]

Then the constitution presented precise details of the functions of each of these constitutional institutions, and their mechanism of action:

(a) The Public Protector

This institution has the power, as regulated by national legislation, to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice to report on that conduct and to take appropriate remedial action. The Public Protector has the additional powers and functions prescribed by national legislation. However, The Public Protector may not investigate court decisions. The Constitution also stipulates that The Public Protector, appointed for a non-renewable period of five years, must be accessible to all people and communities, and that any report issued by it must be open to the public unless exceptional circumstances, to be determined in terms of national legislation, require that a report be kept confidential.[79]

(b) Human Rights Commission

[77] South Africa's Constitution of 1996 (amended in 2012)- Article 181.
[78] South Africa's Constitution of 1996 (amended in 2012) - (Article 193 and Article 194).
[79] South Africa's Constitution of 1996 (amended in 2012) - (Article 182 and Article 183).

The Constitution expressly stipulates that the South African Human Rights Commission must promote respect for human rights and a culture of human rights promote the protection, development, and attainment of human rights monitor and assess the observance of human rights in the Republic and to have the powers necessary, as regulated by national legislation, to perform its functions, including the power to investigate and to report on the observance of human rights to take steps to secure appropriate redress where human rights have been violated to carry out research and to educate. The Constitution also stipulates that each year, the Human Rights commission must require relevant organs of state to provide it 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.[80]

(c) The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities

The Constitution stipulates that the primary objects of this commission are: to promote respect for the rights of cultural, religious and linguistic communities to promote and develop peace, friendship, humanity, tolerance, and national unity among cultural, religious, and linguistic communities, on the basis of equality, non-discrimination and free association and to recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for a community or communities in South Africa. Furthermore, the Constitution also states that this Commission has the necessary power, as regulated by national legislation, to achieve its primary objectives, such as monitoring, investigating, researching, educating, lobbying, advising, and issuing reports concerning the rights of cultural, religious, and linguistic communities. The Commission may report any matter which falls within its powers and functions to the South African Human Rights Commission for investigation. The Constitution also stresses that the composition of the Commission must be broadly representative of the main cultural, religious, and linguistic communities in South Africa and must generally reflect the gender composition of the country.[81]

(d) The Commission for Gender Equality

As stated in the Constitution, this Commission must promote respect for the acknowledgement, protection, and development of gender equality. It also 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.[82]

(e) The Auditor-General

The Constitution stipulates that the Auditor-General, appointed for a fixed non-renewable term of between five and ten years, must audit and report on the

[80] South Africa's Constitution of 1996 (amended in 2012) - (Article 184).
[81] South Africa's Constitution of 1996 (amended in 2012) - (Article 185 and Article 186).
[82] South Africa's Constitution of 1996 (amended in 2012) - (Article 187).

accounts, financial statements, and financial management of all national and provincial state departments and administrations, all municipalities, and any other institution or accounting entity required by national or provincial legislation to be audited by the Auditor-General. In Addition, the Auditor-General may audit and report on the accounts, financial statements, and financial management of any institution funded from the National Revenue Fund or a Provincial Revenue Fund or by a municipality or, indeed, any institution that is legally authorized to receive money for a public purpose. The Auditor-General must submit audit reports to any legislature that has a direct interest in the audit and to any other authority prescribed by national legislation and all reports must be made public.[83]

(f) The Electoral Commission

The Constitution states that The Electoral Commission must manage elections of national, provincial, and municipal legislative bodies in accordance with national legislation ensure that those elections are free and fair and declare the results of those elections within a period that must be prescribed by national legislation. It is stated that the Commission must be composed of at least three persons. The number of members and their terms of office must be prescribed by national legislation.[84]

(g) The Independent Authority to Regulate Broadcasting

The Constitution mandated the establishment of an independent authority to regulate broadcasting in the public interest and to ensure fairness and a diversity of views broadly representing South African society.[85]

- Tunisias Constitution

Chapter Six of the Tunisian Constitution, Constitutional Bodies, stipulates that bodies should be established to act in support of democracy and all institutions of the State must facilitate their work. The Constitution affirms that these bodies shall enjoy a legal personality as well as financial and administrative independence. It states that these shall be elected by the Assembly of the Representatives of the People by a qualified majority and shall submit an annual report on each body to it. This report is discussed in a special plenary session of the Assembly.[86] Subsequent articles of the Constitution include a list of these bodies, their composition, their confines, and powers as follows:

(a) The Elections Commissions

The elections commission, named the Supreme Independent Elections Commission, is responsible for the management and organization of elections and referenda, supervising them in all their stages, ensuring the regularity, integrity, and transparency of the election process, and announcing election results. The Commission has regulatory powers in its areas of responsibility. It shall be composed of nine independent, impartial, and competent members, with integrity,

[83] South Africa's Constitution of 1996 (amended in 2012) - (Article 188 and Article 189).
[84] South Africa's Constitution of 1996 (amended in 2012) - (Article 190 and Article 191).
[85] South Africa's Constitution of 1996 (amended in 2012) - (Article 192).
[86] Tunisian Constitution of 2014 – (Article 125).

who undertake their work for a single six-year term. One third of its members are replaced every two years.[87]

(b) Audio-Visual Communication Commission

The Audio-Visual Communication Commission is responsible for the regulation and development of the audio-visual communication sector and ensures freedom of expression and information, and the establishment of a pluralistic media sector that functions with integrity. The Commission has regulatory powers in its domain of responsibility. It must be consulted on draft laws in its areas of competence. The Commission shall be composed of nine independent, neutral, competent, experienced members, with integrity, who serve for one six-year term. One third of its members are replaced every two years.[88]

(c) Human Rights Commission

The Human Rights Commission oversees respect for, and promotion of, human freedoms and rights, and makes proposals to develop the human rights system. It must be consulted on draft laws that fall within the domain of its mandate. The Commission conducts investigations into violations of human rights with a view to resolving them or referring them to competent authorities. The Commission shall be composed of independent and impartial members with competence and integrity. They undertake their functions for a single six-year term.[89]

(d) Commission for Sustainable Development and the Rights of Future Generations

This Commission shall be consulted on draft laws related to economic, social, and environmental issues, as well as development plans. The Commission may give its opinion on issues falling within its areas of responsibility. The Commission shall be composed of independent and impartial members with competence and integrity. They undertake their functions for a single six-year term.[90]

(e) The Good Governance and Anti-Corruption Commission

This Commission contributes to policies of good governance, and corruption prevention. It is responsible for following up on the implementation and dissemination of these policies for the promotion of a culture of good governance, and for the consolidation of principles of transparency, integrity, and accountability. The Commission is responsible for monitoring cases of corruption within the public and private sectors. It carries out investigations into these cases and refers them to the necessary authorities. The Commission must be consulted on draft laws related to its area of competence. It can give its opinion on regulatory texts related to its area of competence. The Commission is composed of independent, impartial, competent members with integrity, who undertake their

[87] Tunisian Constitution of 2014 – (Article 126).
[88] Tunisian Constitution of 2014 – (Article 127).
[89] Tunisian Constitution of 2014 – (Article 128).
[90] Tunisian Constitution of 2014 – (Article 129).

tasks for a single six-year term. One third of the members are replaced every two years.[91]

- Ecuadors Constitution:

  The Constitution of Ecuador dedicates Chapter Five to these bodies under the title Transparency and Social Control Branch of the Government. It stipulates that the people are the mandator and prime auditor of public power, in the exercise of their right to participation. So, the Transparency and Social Control Branch of Government promotes and fosters monitoring of public entities and bodies and of natural persons or legal entities of the private sector who provide services or carry out activities for the general welfare, so they shall conduct them with responsibility, transparency, and equity. The Branch also fosters and encourages public participation protects the exercise and fulfillment of rights and prevents and combats corruption. The Branch is comprised of the following bodies:

(a) Council for Public Participation and Social Control

(b) Office of the Human Rights Ombudsman

(c) Office of the Comptroller General

(d) Superintendencies

These entities shall have a legal status and administrative, financial, budgetary, and organizational autonomy.[92] Subsequent articles in the Constitution included clear constitutional codification in terms of the composition of these bodies and guarantees of exercising their powers stipulated in the constitution itself.

The Constitution further stipulates the establishment of the National Equality Councils, but as advisory bodies. It states that these shall be responsible for ensuring the full observance and exercise of the rights enshrined in the Constitution and in international human rights instruments. The Councils shall exercise their attributions for the drafting, comprehensive 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 specialized organizations for the protection of rights at all levels of government. The National Equality Councils shall be comprised, based on 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.[93]

- Austrias Constitution

  The Constitution of Austria devotes Chapter Eight to the Ombudsman Board which is independent in the exercise of its authority. It has its seat in Vienna and consists of three members on of whom acts in turn as a chairman. The term of office lasts six

[91] Tunisian Constitution of 2014 – (Article 130).
[92] Ecuador's Constitution of 2008 (amended in 2015) – Article 204.
[93] Ecuador's Constitution of 2008 (amended in 2015) – Article 156 and Article 157).

years. Re-election of the ombudsmans board members more than once is inadmissible. The Constitution includes detailed information on the powers of the Ombudsman Board and guarantees of performance.[94] The most prominent functions referred to by the Constitution are the following:

(a) Powers and Authorities

In accordance with the provisions of the Constitution, everyone can lodge complaint with the Ombudsman Board against alleged maladministration by the Federation, including its activity as a holder of private rights, mainly for alleged violation of human rights, if they are affected by such maladministration and in so far as they do not or no longer have recourse to legal remedy. All such complaints must be investigated by the ombudsman board. The complainant shall be informed of the investigations outcome and what action, if necessary, has been taken. Anyone can complain with the Ombudsman Board for alleged delay of a Court to hear a case, if being personally affected. Furthermore, the ombudsman board is ex officio entitled to investigate its suspicions of maladministration by the Federation including its activity as a holder of private rights, mainly of alleged violations of human rights. For the protection and the advancement of human rights, it is incumbent on the Ombudsman Board and the commissions appointed by it to visit and inspect the locations of deprivation of liberty to watch and check in advisory manner the conduct of the organs authorized to exert direct administrative power and compulsion to respectively check visit certain institutions and programs for handicapped persons. It is moreover incumbent on the ombudsman board to assist in the disposal of petitions and group memorials presented to the National Council.[95]

(b) Support and confidentiality

The Constitution stipulates that all Federal, Laender, municipal authorities, and municipal associations as well as other self-administrating bodies shall support the ombudsman board in the performance of its tasks, allow it inspection of its records, and upon request furnish the information required. Official confidentiality is inoperative towards the ombudsman board. The ombudsman board must observe official confidentiality to the same degree as the authority whom it has approached in the fulfillment of its tasks. The ombudsman board is however bound by the observation of official confidentiality in its reports to the National Council only in so far as this is requisite on behalf of the interest of the parties concerned or of national security.[96]

(c) Recommendations and their effectiveness

The ombudsman board can issue to the authorities entrusted with the Federations highest administrative business recommendations on measures to be taken in or by reason of a particular case. In matters of autonomous administration, or of administration by agents not subject to directives, the ombudsman board can issue

[94] Austria's Constitution of 1920 (reinstated in 1945, amended in 2013) – Article 148g.
[95] Austria's Constitution of 1920 (reinstated in 1945, amended in 2013) –Article 148a.
[96] Austria's Constitution of 1920 (reinstated in 1945, amended in 2013) –Article 148b.

recommendations to the autonomous administrative authority or to the agency not subject to directives. The Federations highest administrative authority shall likewise have its attention drawn to such recommendations the authority concerned must respond within a deadline to be settled by Federal law, either to conform to the recommendations or inform the ombudsman board accordingly and state, in writing, why the recommendations have not been complied with. The Ombudsman board may, in specific cases, request a deadline to cure the delay by a court and suggest measures of supervisory control. It is noted that the Constitution stipulates that if differences of opinion arise between the ombudsman board and the Federal Government or a Federal Minister on the interpretation of legal provisions, the Constitutional Court, on application by the Federal Government, decides the matter.[97]

- Kenyas Constitution

  The Kenyan Constitution devotes Chapter 15 to commissions and independent offices. It identifies the following commissions:

(a) the Kenya National Human Rights and Equality Commission

(b) the National Land Commission

(c) the Independent Electoral and Boundaries Commission

(d) the Parliamentary Service Commission

(e) the Judicial Service Commission

(f) the Commission on Revenue Allocation

(g) the Public Service Commission

(h) the Salaries and Remuneration Commission

(i) the Teachers Service Commission

(j) the National Police Service Commission.

The independent offices are:

(a) the Auditor-General

(b) the Controller of Budget.[98]

The Constitution states that the objects of the commissions and independent offices are to: protect the sovereignty of the people and secure the observance by all State organs of democratic values and principles. It stresses that members of these commissions and offices are independent and not subject to direction or control by any person or authority. To ensure this, the Parliament allocates adequate funds to enable each commission and independent office to perform its functions.[99] Several subsequent articles of the

[97] Austria's Constitution of 1920 (reinstated in 1945, amended in 2013) – (Article 148c and Article 148f).
[98] Kenya's Constitution of 2010 – (Article 248).
[99] Kenya's Constitution of 2010 – (Article 249).

Constitution detail the powers that these commissions and independent offices have and the guarantees for their performance.

- The Moroccan and Iraqi Constitutions

  Moroccos Constitution of 2011 provides for the establishment of institutions and instances of protection of rights and freedoms, of good governance, of human and lasting development, and of participative democracy. These comprise several institutions, including (The National Council of the Rights of Man – The Mediator – the authority charged with parity and with the struggle against all forms of discrimination – The High Authority of Audio-Visual Communication – The National Instance of Probity, of the Prevention and of the Struggle Against Corruption...).

  Iraqs Constitution of 2005 stipulates that The High Commission for Human Rights, the Independent Electoral Commission, and the Commission on Public Integrity are considered independent commissions subject to monitoring by the Council of Representatives, and their functions shall be regulated by law.[100]

A comparative review of several constitutions suggests that none are devoid of a provision for the establishment of one or more independent bodies in the country, according to the requirements and needs of each state, the conditions of its community, and the reality of its political and legal development. Among the constitutions, human rights bodies, and the position of the ombudsman, are the most prevalent and widely used. In addition, constitutions vary in the way they deal with these bodies in terms of the powers that are granted to them, the scope in which they operate, as well as the scope of the autonomy with which they function. Therefore, only stipulating the establishment of these bodies shall not be considered sufficient to our investigation. Rather, it is crucial to analyse the influence and efficacy of these bodies and the degree of autonomy they enjoy. Basically, charting the establishment of these independent constitutional bodies is a means to reach a higher goal: to the preservation of rights, freedoms, and the insurance of equality and transparency in all fields.

[100] Iraq's Constitution of 2005 – (Article 102).

3. The Final Status of Legal Texts in Violation of the Constitution

Investigation of the Syrian constitutional and legal reality reveals another forgotten mechanism that greatly affects the possibility of enjoying constitutional rights: when new constitutional provisions, containing rights, are adopted and contradict some of the old legislation that continues to be enforced, they disrupt the new introduction of constitutional provisions, rendering them meaningless. Consequently, the previous hypothesis raises the issue of determining the final status of previous active laws that violate, in whole or in part, the provisions of the constitution, bearing in mind that the Guide Document to Legislative Drafting, issued by the Presidency of the Syrian Council of Ministers in May 2019, already acknowledges the existence of active legislations that contradict the provisions of the current constitution. It referred to the existence of legislation in force prior to the issuance of the country's constitution in 2012, that may conflict with its provisions, and have not been expressly amended or repealed.[101] It also clarified that the number of legislations proposed to be fully or partially amended is 190.[102]

In reality, we detect many constitutional rights that have been effectively suppressed, or rendered meaningless by pre-existing legislation which contradicts the aims of the provisions. The continued enforcement of this legislation violates not only the provisions of the current constitution, but also the provisions of several successive Syrian constitutions.

3.1. The Syrian Context

Investigation of the Syrian constitutional context reveals the existence of a general provision that has been literally used in the majority of Syrian constitutions. Then it was developed in the 2012 constitution without much changing in terms of practical reality, as the following pages reveal:

3.1.1. The General Provision Contained in Successive Syrian Constitutions

Referring to all successive Syrian constitutions since the1920 draft constitution, we find that their dominant feature is their adoption of a general provision without a supporting executive mechanism. Further to this, they reveal no time limitation nor any penalties in cases of non-compliance. The provision is copied and repeated in many of those constitutions, reading, legislations in effect and issued before the proclamation of this Constitution remain in effect until they are amended so as to be compatible with its provisions. This line is repeated verbatim in the constitutions of 1950, 1953, 1962, 1964,

[101] Guide Document to Legislative Drafting. Ibid, p.8.
[102] This guide states that "the number of legislation issued since 1958 to date is estimated at 7,500, ranging from 3,032 to 4,500 legislative decrees, while the number of legislation in force regulating the work of public authorities in the state is 949". See Guide Document to Legislative Drafting. Ibid, p.7.

1969, 1971, and 1973.[103] It is also mentioned in the 1920 draft constitution which expresses the same idea with the phrase existing legislation remain in force until they are revised or changed.[104]

It is noticeable that that constitutional drafting was practically useless, as it did not include a mechanism to ensure the revision of laws that contradict the provisions of the constitution. In other words, it did not clarify how those laws would be dealt with, what determines the extent to which they contradict the provisions of the constitution, or what measures should be taken to clarify their status and outcome. Also, the constitutional drafting did not set a specific deadline for laws to be amended or repealed, in addition to the fact that it ignored the fate of those laws if they were not amended in accordance with its provisions. Will these laws be ultimately revoked? Or will they remain in force and have effects, even though they contradict the provisions of the new constitution, which after all is supposed to be the supreme law in the country?

The 1950 Constitution stipulates, in Article 162, that after approval of the Constitution, the House of Representatives would immediately elect a special committee from its members that would seek the assistance of a sufficient number of specialists and experts to present the necessary proposals for laws to reconcile the existing legislation with the provisions of this Constitution. It also indicates that the Committee and the House of Representatives must accomplish this task within two years since the implementation of the constitution.

Although this article may constitute a reasonable mechanism for revising and amending laws that contradict the provisions of the constitution, the purpose is not to deal with previous legislations violating the provisions of the constitution, but rather to formulate new legislations necessary to activate some articles and provisions of the constitution, specifically legislation that needs to be issued under the constitution, such as laws for the trial of the president and ministers, preparation of the Bedouins and clans, and the electoral law. This is what is understood from the previous article which stipulates the need to present necessary proposals rather than a need to revise, amend, and evaluate actual existing legislation. This same constitution includes a special provision concerning legislation which violates the provisions of the constitution. It reiterates that existing legislation that are inconsistent with the provisions of the constitution remain temporarily in force until they are amended in accordance with the provisions of the constitution, even though the verbatim records of the discussion of the Constituent Assembly, during the drafting of that constitution, do not refer to any such discussion. Furthermore, the review of the work of the Representative Council, after the approval of that constitution, does not refer to any practical steps for forming the committee.

[103] Articles 163 in the 1950 constitution, 127 in the 1953 constitution, 158 in the 1962 constitution, 79 in the 1964 constitution, 77 in the 1969 constitution, 77 in the 1971 constitution, and 153 in the 1973 constitution.
[104] The 1920 Draft Constitution – Article 147.

3.1.2. The Special Provision Contained in the 2012 Constitution

The most prominent development in dealing with this issue came about during the current constitution, the 2012 constitution, which stipulates, in Article 154, that the legislation in force and passed before approving this Constitution remain in force until they are amended in accordance with its provisions, provided that the amendment is done within a period of no longer than 3 years. Thus, this Constitution evaded criticism for the length of time allotted for any contradictory-to-provisions laws to be amended and did so by setting that three-year deadline. On the other hand, it neglected to explain the mechanism by which contradictory-to-provision legislation would be sorted and amended. It further ignored referring to the legal status of constitution-violating legislation if they were not amended after the three-year expiry period stipulated in the provisions of the constitution.

3.1.3. To What Extent Is the Special Provision Contained in the 2012 Constitution Operationally Effective?

In reality, the provision outlined in the 2012 constitution remained suspended despite the governments assertion in its periodic reports to relevant human rights committees, emanating from international treaties ratified by the government, that legislation violating the provisions of the constitution would be amended in compliance with the provisions of that constitutional article. This is evident, for example, in the reports of the Syrian government to the Committee on the Elimination of Discrimination against Women. When the current constitution was issued in 2012, the Syrian government affirmed its commitment to amend discriminatory laws that contradict the provisions of the constitution, indicating, in the second periodic report, that the new Constitution of 2012 stipulates in Article 33 that citizens shall be equal in rights and duties without discrimination among them on grounds of sex, origin, language, religion or creed. It further stipulates in Article 154 that all legislation shall be amended in accordance with the provisions of the Constitution within a period of no longer than 3 years. This means that any legal article that violates Article 33 of the Constitution, and includes discrimination against women, will be amended within the aforementioned period.[105] In 2014, the Syrian government reaffirmed the same principle, informing the Committee on the Elimination of Discrimination against Women that, under article 154 of the new Constitution of the Syrian Arab Republic, which was promulgated in 2012, laws and statutory instruments shall be amended so as to be consistent with the provisions of the Constitution within a period of not more than three years (i.e. by not later than February 2015). Under article 33, the Constitution provides equality and non-discrimination among citizens on any grounds, including sex. Pursuant to executive decree No. 914 of 1 April 2013, and amending executive order No. 1276 of 6 May 2013, a review committee has been established, with members representing the Ministry of Justice, the Syrian Commission for Family Affairs, the Ministry of Religious Endowments, the General Women's Union, the

[105] United Nations - Committee on the Elimination of Discrimination against Women – Consideration of reports submitted by states parties under Article 18 of the Convention - Second periodic report of states parties – Syria, 24 July 2012. See UN document: CEDAW/C/SYR/2- 25 October 2012.

Lawyers' Guild, the League of Legal Personnel, trade union women's committees, and Syrian women activists. The task of that committee is to identify all discriminatory laws that might entail violence against women and children and formulate proposed legislative amendments. To date, the committee has examined most Syrian statutory instruments, including the Penal Code, the Nationality and Personal Status Code, the Labour Code, the Social Insurance Act, the Young Offenders Act, and the Basic Law on Workers. The committee has identified all discriminatory provisions and has proposed amendments that will bring them into line with the Constitution and the relevant international conventions. Once these proposed amendments have been adopted, in whole or in part, the process of legislative reform in this domain will have made substantial progress.[106]

In fact, this committee ended its work on 7/4/2014, when its chairperson, Judge Amna Al-Shammat, announced that the committee consisted of ten members from all sectors in the state, and it included multiple spectra. It held about 33 weekly and periodic meetings, and all the laws in force were probed and the discriminatory articles were identified... Then the committee submitted its final report to the Minister of Labor to ensure its success and to bring it into the realm of actual amendment.[107] However, until the date of the completion of this study, July 2021, nothing has been issued about the implementation of this committee's proposals, and the content of its recommendations has not been published, despite the constitutional deadline for amending legislation having elapsed more than seven years ago. This explains the reference in the guide to drafting legislation, issued by the Syrian government in 2019, to the existence of legislation that partially or completely contradict the provisions of the constitution in force.

This useless procedural path was also repeated with attempts to amend the nationality code, issued in 1969, which is in violation of all following constitutions in terms of discrimination against the Syrian woman for example, unlike Syrian men, women are not allowed to grant Syrian nationality to their children based on right of blood. Numerous efforts and attempts have been made to correct this defect, and many projects have been presented to amend the Nationality Law, to remove the prejudicial laws which impact upon the lives of Syrian women and children. When reviewing the reports of the Syrian government to the Committee on the elimination of discrimination against women, we find that the 2005 government's report states that a bill on the amendment of article 3 of the Syrian Nationality Act was tabled by 35 members of the People's Assembly. The bill was also included in the agenda of the May-June 2004 session of the Assembly and submitted to the Government, which prepared a draft amendment that is currently under discussion in the Cabinet.[108] In a 2012 report it was stated that The General Women's

[106] Committee on the Elimination of Discrimination against Women. List of issues and questions in relation to the second periodic report of the Syrian Arab Republic. Replies of the Syrian Arab Republic. See UN document: CEDAW/C/SYR/Q/2/Add.1 - 23 January 2014.

[107] A summary of an interview with the chairperson of the committee published in an article entitled: The committee composed of the Ministry of Justice finishes its work and Judge Amna Al-Shammat confirms that the committee was formed for the first time and its work is very important to prevent violence against women and children. Dated 7/4/2014. Email link:
http://www.dampress.net/index.php?page=show_det&category_id=6&id=42188

[108] Committee on the Elimination of Discrimination against Women – Consideration of reports submitted by states parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against

Federation formulated a proposal to grant Syrian nationality to children born of a Syrian woman and foreign father. The Federation submitted the proposal to the Office of the Prime Minister in 2006 with a view to amendment of the Nationality Law. It resubmitted the proposal in 2010, and a legal and policy committee was formed to study the proposal and to draft a legal formula to amend the law. The committee completed its work and submitted it to the Office of the Prime Minister. Procedures for proper promulgation of an amendment are currently being followed up.[109] In a 2011 report the Government stated that a committee established pursuant to executive order No. 9660, issued by the Prime Minister's Office on 19 July 2011, has been charged with the task of drafting an amendment to article 3 of the Nationality Law (law No. 276 of 1969). The committee has produced a proposed draft text containing an additional paragraph that would provide for the granting of Syrian nationality to the children of a Syrian woman married to a non-Syrian national. This draft has been submitted to the Prime Minister's Office.[110]

When the new constitution of 2012 was introduced, the government report stated that the promulgation of the new Constitution, whose article 3 stipulates equality among citizens without discrimination and the need to amend all laws that do not harmonize with the Constitution within three years, opens new horizons for amending the Nationality Law and granting women their right in this regard by force of the Constitution.[111] In a subsequent report, from 2013, the Government affirmed that the committee established pursuant to legislative decree No. 941 has drafted a comprehensively amended version of the Nationality Law with a view to bringing it into line with the 2012 Constitution. The amended text will provide that rights and conditions shall be equal for all Syrian citizens (men and women), and that their nationality shall be transmitted to their children born of a marriage with a non-Syrian national.[112]

The Committee's function, as previously discussed, is established in the Ministry of Justice, and pursuant to executive decree No. 914 of 1 April 2013, amending executive order No. 1276 of 6 May 2013. As announced by chairperson, Judge Amna Al-Shammat, in statements dated 7/4/2014, the committee concluded that the issue of the Syrian woman granting Syrian nationality to her children was discussed, just like the Syrian man who enjoys this right, in accordance with the principle of equality stipulated in the

Women. Initial reports of states parties - Syrian Arab Republic. See UN document: CEDAW/C/SYR/1 - 15 September 2005.

[109] United Nations - Committee on the Elimination of Discrimination against Women – Consideration of reports submitted by states parties under Article 18 of the Convention - Second periodic report of states parties – Syria, 24 July 2012. See UN document: CEDAW/C/SYR/2- 25 October 2012.

[110] Committee on the Elimination of Discrimination against Women. List of issues and questions in relation to the second periodic report of the Syrian Arab Republic. Replies of the Syrian Arab Republic. See UN document: CEDAW/C/SYR/Q/2/Add.1 - 23 January 2014.

[111] United Nations - Committee on the Elimination of Discrimination against Women – Consideration of reports submitted by states parties under Article 18 of the Convention - Second periodic report of states parties – Syria, 24 July 2012. See UN document: CEDAW/C/SYR/2- 25 October 2012.

[112] Committee on the Elimination of Discrimination against Women. List of issues and questions in relation to the second periodic report of the Syrian Arab Republic. Replies of the Syrian Arab Republic. See UN document: CEDAW/C/SYR/Q/2/Add.1 - 23 January 2014.

constitution.[113]Unfortunately, over many years, none of these projects and initiatives has been achieved, however, there has been additional committees formed with many meetings held, ending each time with undisclosed recommendations, which are never published, circulated, or discussed, suggesting no change is being achieved on the ground.

All the above reveals that determining the fate of provision-violating laws is an issue that is clearly being systematically neglected by successive Syrian constitutions, as evidenced by the survival of many of these laws in the current constitution as well as in preceding constitutions. This not only leads to the deprivation of the activation of many of the rights and guarantees stipulated in the provisions of those constitutions, but also allows and encourages the issuance of many subsequent provision or reform-violating legislation. This is the case with much recent legislation. All committees previously referred to in the Syrian government's reports to the Committee on the Elimination of Discrimination against Women, as mentioned above, are not the desired and required constitutional committees to correct this chronic constitutional imbalance. This defect cannot be merely corrected by means of establishing committees that only have the power to recommend, and whose work is limited to specific details and certain rights, as we will explain later.

3.2. Comparative Constitutional Models

In various constitutions of countries around the world, transitional provisions dealing with this issue usually follow a principle based on keeping the old laws in force, except for those that contradict the new or amended constitution, and repealing laws with unclear constitutionality. The constitutional legislator also decides, in accordance with the provisions of the constitution itself, to cancel old laws that are not in line with the countrys new constitutional text if they clearly conflict with the principles approved.[114] The following practices can be drawn from the analysis of several comparative constitutional provisions:

3.2.1. Immediate and Direct Abolition of Laws that Directly and Completely Contradict the Provisions of the Constitution

This means that some existing laws completely contradict the provisions of the new constitution and there is no room for reconciliation between them. Therefore, the constitution expressly provides for the abolition of these laws as soon as it comes into force. For example:

- Spains Constitution

[113] See: The committee composed of the Ministry of Justice finishes its work and Judge Amna Al-Shammat confirms that the committee was formed for the first time and its work is very important to prevent violence against women and children. Dated 7/4/2014. Email link: http://www.dampress.net/index.php?page=show_det&category_id=6&id=42188

[114] The Role of Transitional Provisions in the Constitution - Democracy Reporting International Organization - Information Note 44 - January 2014, p3.

(a) Act 1/1977, of January 4, for Political Reform, is hereby repealed, as well as the following, in so far as they were not already repealed by the above-mentioned Act: the Act of the Fundamental Principles of National Movement of May 17, 1958 the Chart of the Spanish People (Fuero de los Españoles) of July 17, 1945 the Labour Chart of March 9, 1938 the Act of Constitution of the Cortes of July 17, 1942 the Act of Succession to the Head of State of July 26, 1947, all of them as amended by the Organic Act of the State of January 10, 1967. The last-mentioned Act and that of the National Referendum of October 22, 1945, are likewise repealed.

(b) To the extent that it may still retain some validity, the Act of October 25, 1839, shall be definitively repealed in so far as it applies to the provinces of Alava, Guipúzcoa, and Vizcaya. Subject to the same terms, the Act of July 21, 1876, shall be deemed to be definitively repealed.

(c) Likewise, any provisions contrary to those contained in the Constitution are hereby repealed.[115]

- Egypts Constitution

  The Constitutional Declaration issued on the 5th of July 2013, the Constitutional Declaration issued on the 8th of July 2013, and any constitutional texts or provisions mentioned in the Constitution issued on 2012 but not covered by this constitutional document are hereby repealed as of the date that it comes into effect. However, their consequent effects remain in force.[116]

- South Africas Constitution

  Article 242 of the Constitution provides for the abolition of the laws mentioned in Schedule 7, which include:

(a) Act No. 200 of 1993 Constitution of the Republic of South Africa, 1993.

(b) Act No. 2 of 1994 Constitution of the Republic of South Africa Amendment Act, 1994.

(c) Act No. 3 of 1994 Constitution of the Republic of South Africa Second Amendment Act, 1994.

(d) Act No. 13 of 1994 Constitution of the Republic of South Africa Third Amendment Act, 1994.

(e) Act No. 14 of 1994 Constitution of the Republic of South Africa Fourth Amendment Act, 1994.

(f) Act No. 24 of 1994 Constitution of the Republic of South Africa Sixth Amendment Act, 1994.

[115] Spain's Constitution of 1978 (amended in 2011) – Repeals.
[116] Egypt's Constitution of 2014 (amended in 2019) –Article 246.

(g) Act No. 29 of 1994 Constitution of the Republic of South Africa Fifth Amendment Act, 1994.

(h) Act No. 20 0f 1995 Constitution of the Republic of South Africa Amendment Act, 1995.

(i) Act No. 44 of 1995 Constitution of the Republic of South Africa Second Amendment Act, 1995.

(j) Act No. 7 of 1996 Constitution of the Republic of South Africa Amendment Act, 1996.

3.2.2. Judgment to Partially Nullify Legislation Contradicting the Provisions of the Constitution

Many constitutions lay down a general rule whose essence is to maintain the existing old laws, provided that they do not conflict in whole or in part with the provisions and principles of the constitution. For example:

- Ecuadors Constitution

  The Political Constitution of the Republic of Ecuador published in Official Register number one on the eleventh of August 1998, and all provisions contrary to the present Constitution are hereby repealed. The remaining legal structure shall remain in force as long as it is not contrary to the Constitution.[117]

- South Africas Constitution

  All law that was in force when the new Constitution took effect, continues in force, subject to (a) any amendment or repeal and (b) consistency with the new Constitution.[118]

- Ukraines Constitution

  Laws and other normative acts, adopted prior to this Constitution entering into force, are in force in the part that does not contradict the Constitution of Ukraine.[119]

- Portugals Constitution

  The ordinary law that existed prior to the entry into force of this Constitution shall be maintained on condition that it is not contrary to this Constitution or to the principles enshrined therein.[120]

- Kenyas Constitution

[117] Ecuador's Constitution of 2008 (amended in 2015) Transitional Provisions – Repeal Provision.
[118] South Africa's Constitution of 1996 (amended in 2012) Schedule 6 – Transitional Arrangements.
[119] Ukraine's Constitution of 1996 (amended in 2016) Chapter XV: Transitional Provisions – Paragraph 1.
[120] Portugal's Constitution of 1976 (amended in 2005) Final and transitional provisions – Article 290 – Previous law.

All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution.[121]

- Pakistans Constitution

Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.[122]

3.2.3. Setting a Specific Time Limit for Repealing Legislation that Contradict the Provisions of the Constitution

In this case, a specific period is set to reconcile national legislation with the provisions of the Constitution, so the government, with its various organs, must finish the process of reconciliation during that period after which the laws that are not line with the Constitution become invalid. For example:

- Germanys Constitution

Law which is inconsistent with paragraph (2) of Article 3 of this Basic Law shall remain in force until adapted to that provision, but not beyond 31 March 1953.[123]

3.2.4. Setting a Specific Time Limit for the Issuance of Legislation Stipulated in the Constitution

Constitutions also expressly stipulate time limits within which specific legislation necessary for the proper implementation of the constitution must be passed, and to replace legislation inconsistent with the provisions of the constitution (which were repealed as previously presented) in order to avoid any legislative vacuum or unwanted legal disorder. For example:

- Ecuadors Constitution

The legislative body, within a term of one hundred twenty (120) days as of the entry into force of this Constitution, shall pass the law that develops the system for food sovereignty, the electoral law, the law governing the Judicial Branch, the Judiciary Council, and the law that governs the Council for Public Participation and Social Control. Within a maximum term of three hundred sixty (360) days, the following laws shall be passed:

[121] Kenya's Constitution of 2010 – Sixth Schedule, Part 2 (7. Existing laws).
[122] Pakistan's Constitution of 1973 (reinstated in 2002, amended in 2008).
[123] Germany's Constitution of 1949 (amended in 2014). Chapter XI, Article 117 [Suspended entry into force of two basic rights].

(a) The law governing the function of the Constitutional Court and the procedures for monitoring constitutionality.

(b) The law governing water resources, water use and development, which shall include permits for current and future water use and development, their terms of duration, conditions, mechanisms for review and audit, to ensure the formalization and equitable distribution of this national asset.

(c) The law governing public participation.

(d) The law on communication.

(e) The law governing education, higher education, culture, and sport.

(f) The law governing public services.

(g) The law governing the Office of the Attorney for the Defense of the People.

(h) The laws organizing data registration, in particular the vital statistics, mercantile and property registries. In any case, systems for cross-checking data and national databases shall be established.

(i) The law governing territorial decentralization of the various levels of government and the system of jurisdictions, which shall incorporate procedures for the calculation and annual distribution of funds that decentralized autonomous governments shall be receiving from the General Budget of the State. This law shall set the time-limits for establishing autonomous regions.

(j) Criminal law and the law for criminal procedures in military and police affairs.

(k) The law governing public security and the State.

The legal regulatory structure needed for the development of the Constitution shall be adopted during the first term of office of the National Assembly.[124]

- South Africas Constitution

National legislation envisaged in sections 9 (4), 32 (2) and 33 (3) of the new Constitution must be enacted within three years of the date on which the new Constitution took effect.[125]

- Polands Constitution

Within a period of 2 years from the day on which the Constitution comes into force, the Council of Ministers shall present to the Sejm such bills as are necessary for the implementation of the Constitution.[126]

[124] Ecuador's Constitution of 2018 (amended in 2015) – Transitory Provisions – One.
[125] South Africa's Constitution of 1996 (amended in 2012), Schedule 6 – Transitional Arrangements.
[126] Poland's Constitution of 1997 (amended in 2009) Article 236.

- Egypts Constitution

  In its first legislative term after this Constitution comes into effect, the House of Representatives shall issue a law to organize building and renovating churches, guaranteeing Christians the freedom to practice their religious rituals.[127] Furthermore, in its first session after the enforcement of this Constitution, the House of Representatives commits to issuing a transitional justice law that ensures revealing the truth, accountability, proposing frameworks for national reconciliation, and compensating victims, in accordance with international standards.[128]

[127] Egypt's Constitution of 2014 (amended in 2019) Article 235.
[128] Egypt's Constitution of 2014 (amended in 2019) Article 241.

4. Conclusion and Recommendations

The investigative research presented in these pages reveal the existence of an intergenerational, inherited, chronic deficiency plaguing successive Syrian constitutional texts, regarding fundamental and important issues. Most significantly, these constitutional texts lack clear identification of the status of international treaties and international laws in general, they disregard the establishment of independent constitutional institutions, and what is more, they ignore the adoption of a clear, binding, and effective constitutional mechanism to amend or repeal national laws inconsistent with the provisions of the constitution itself.

This absence of texts cannot be simply explained or excused by calling attention to the political, constitutional, or legal positions of the state because the issue has remained prevalent, having been intergenerationally perpetuated for an entire century, since the first draft of the Syrian constitution for the Arab Kingdom of Syria in 1920. It has remained so in all subsequent stages, under multiple diverse political regimes. Clearly, it cannot be denied that this absence and elimination may have been spontaneous, given that the absent concepts were not commonly discussed when drafting the first Syrian constitutions. However, the practice has later become deliberately chronic, considering that these absent concepts have become the default components of constitution drafting in many countries of the world.

Whatever the reason for this absence of constitutional texts, it has had an overt negative impact on the Syrian constitutional system and all those subject to its provisions. It has also led to signing international treaties that do not enjoy distinct constitutional supremacy, allowing their violation on the ground by many national legislations and actual practices in various fields, as is the case with civil and political human rights covenants on the one hand, and economic and social rights on the other. Another example of this negative impact is manifested in the CEDAW convention on womens rights, which is composed of agreements that are violated on the grounds of numerous pieces of national legislation and actual practices and in many and varied fields. This absence of constitutional texts has also deprived many women and men of benefiting from the protections and guarantees that could have been provided by independent and active constitutional institutions in many essential areas of public and private life. It further created major legal disorder by keeping in-situ legislation that is inconsistent with the provisions of the constitution, despite their blatant conflict with many constitutional texts. As a result, these texts could no longer be regarded as the supreme law of the country. To change this abnormal constitutional reality, the Syrian constitutional legislator should break free from this rigidly closed constitutional system, which is based on reproducing existing constitutional texts, maintaining the status quo, and making do with limited, cosmetic amendments which effect minimal change. It has become necessary to adopt a constitutional revolution, in the legal sense, by introducing fundamental amendments to the entire constitutional process, whether via a formal framework, relating to the drafting and approval mechanism, or, in its objective framework, relating to the content of the

constitutional texts and the provisions therein. Clearly, we cannot deny the fact that fundamental constitutional principles reflecting the identity and values of the State will still exist and remain in force. Of course, these principles neither preclude nor contradict the introduction of many unfamiliar and unprecedented constitutional texts in successive Syrian constitutions.

Based on the foregoing, we conclude by making the following recommendations to address the constitutional absence of texts specified in this study:

4.1. Recommendations for Addressing Absence of a Clear Identification of the Position of International Treaties in the National Legal System

Adoption of a clear constitutional article identifying the position of international treaties in the constitution, which should be given, at least, more precedence over previous or subsequent national legislation. This should also guarantee the supremacy of treaties over internal laws so that they become void in cases of contradiction with the commitments pledged by the state. These should be made under valid and binding international treaties, arranged according to legal and constitutional principles.

Duly ratified international treaties which meet all necessary conditions of substance should, under the constitution, enjoy mandatory and immediate application and must be respected and implemented by law enforcement bodies. Everyone should have the right to uphold these treaties and request they be put into action.

Constitutional reference should be made to basic human rights treaties ratified by the Government of the Syrian Arab Republic, in particular the International Convention on the Elimination of All Forms of Racial Discrimination,[129] the International Covenant on Economic, Social and Cultural Rights,[130] the International Covenant on Civil and Political Rights,[131] the Convention on the Elimination of All Forms of Discrimination against Women,[132] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[133] the Convention on the Rights of the Child – New York[134], and other human rights agreements, so they become a reference point in interpreting the provisions of the constitution. This is in relation to the rights and duties related to them, as well as the possibility of referring to these agreements and benefiting from them if they include, in relation to those rights better protection than that provided and stipulated by national legislation. This includes the provisions of the constitution itself that have naturally become binding for the state in accordance with what has been established as stable in international dealings.

To preserve the supremacy of international treaties, and in order to avoid the potential of conflict with the provisions of the constitution, we recommend adopting the constitutional

[129] The Government of the Syrian Arab Republic acceded to this treaty on 21/4/1969.
[130] The Government of the Syrian Arab Republic acceded to this treaty on 21/4/1969.
[131] The Government of the Syrian Arab Republic acceded to this treaty on 21/4/1969.
[132] The Government of the Syrian Arab Republic acceded to this treaty on 29/9/2002 by virtue of Decree 330.
[133] The Government of the Syrian Arab Republic acceded to this treaty by virtue of Decree 39 of 2004.
[134] The Government of the Syrian Arab Republic acceded to this treaty on 15/7/1993.

option that many countries of the world have resorted to. This is done through granting constitutional courts the authority of a priori constitutional review of those treaties before they are concluded. This allows for a compatibility assessment of the treaties with the provisions of national constitution and the rest of the state's laws in general. Adoption of such a constitutional option in the Syrian context necessitates extending the powers exercised by the constitutional court and granting it the power to a priori review of international treaties before being concluded. So as not to overwhelm the Court with huge number of international treaties that states periodically conclude, it is possible to focus on important treaties, which requires ratification by the Parliament under the constitution. This category of treaties is expressly stipulated in Article 75, paragraph 6 of the current constitution of 2012 (international treaties and conventions related to the safety of the state, including treaties of peace, alliance and all treaties related to the rights of sovereignty or conventions which grant privileges to foreign companies or institutions as well as treaties and conventions entailing additional expenses not included in its budget or treaties and conventions related to loans' contract or that are contrary to the provisions of the laws in force and requires new legislation which should come into force). Therefore, we propose here to amend Article 146 of the 2012 Constitution, which includes defining the mandate of the Supreme Constitutional Court, so that a new paragraph may be added that provides for granting the Syrian Constitutional Court mandatory prior oversight over international treaties that the constitution requires to be submitted to the People's Assembly for approval, in accordance with Article 75, paragraph 6. We also propose to amend Article 75, paragraph 6 of the current constitution of 2012, to expressly state that international treaties provided for in that paragraph will not be approved by the People's Assembly unless after prior presentation and approval of the Constitutional Court to ensure that they are not contrary to the provisions of the Constitution.[135]

4.2. Recommendations for Addressing the Absence of Texts on the Establishment of Independent Constitutional Bodies

(a) In line with what the Syrian context requires, we recommend that a number of independent constitutional bodies should be established, provided that at least one of them focus on: human rights commission, election commission, media commission, or anti-corruption commission. Establishment of other bodies is possible as needed, considering practicality and rationality. This is to ensure that they are activated on the ground, and that they are not only theoretically stipulated in the constitution.

(b) The Constitution itself must provide for all the ingredients for the success of the work of these bodies, in particular:

– Ensuring independence and impartiality of these bodies, in terms of appointment, subordination, accountability and reference.

[135] Dr. Ibrahim Draji 'The Constitutional Court in Syria's Constitutions: A Comparative, Historical and Legal Reading'. Ibid, P.114.

- Providing independent constitutional bodies with all the powers that enable them to work and succeed their role should not be only advisory in nature or just reduced to issuing recommendations and reports.
- The constitution should stipulate those ingredients and guarantees. It is not enough to be satisfied with referring the implementation to subsequent national legislation, which may never be issued, or issued with content that voids these bodies of any effectiveness or influence.

(c) A specific time limit should be set in the constitution for the formation of these bodies, and to ensure that they exercise their jurisdiction, to ensure the activation of related constitutional texts.

4.3. Recommendations for Addressing the Absence of Texts Determining the Fate of Legal Texts Inconsistent with the Provisions of the Constitution

To address the absence of texts determining the fate of legal acts that are inconsistent with the provisions of the constitution, a clear constitutional article should expressly provide for the abolition of those laws. In addition, it is necessary to adopt a further constitutional article which provides for determining the mechanism for implementing this obligation and ensuring its actioning. This can be realized through following one of the options:

(a) Option 1

Authorizing the Constitutional Court to automatically review all laws inconsistent with the provisions of the Constitution, identify aspects of the violation and then ask concerned relevant authorities (legislative and executive) to amend these provisions in the laws or cancel those laws entirely if this is done within a specific and realistically short period of time, and does not exceed one year from the date on which the constitution enters into force.

(b) Option 2

To unburden the Constitutional Court of the previous task, concerned authorities (legislative and executive) are given the opportunity to repeal or amend laws that are inconsistent with the provisions of the constitution, within the specified time limit, ultimately granting any natural or legal person the right to recourse to the Constitutional Court, to request its intervention by repealing or amending those laws. This should be done without being limited by the current existing traditional terms, such as the condition for the existence of an actual lawsuit, or the necessity for the existence of an interest, given that any citizen has an interest in repealing laws that contradict the provisions of the Constitution. To fulfill this obligation (if this option is adopted), the Constitution shall facilitate a specific committee, entrusted with the power to identify legal texts that contradict the provisions of the Constitution, and to take measures to amend or repeal them in accordance with legal principles. This process should be done over a maximum period of one year, and the Constitutional Court shall be given power to ensure and monitor that this constitutional obligation is being fulfilled.

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