

A Crisis in Syria: From the Constitution to the Streets

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Constitution of September Stamp, Syria, 1951. Source: LastDodo.

Since 2011, the situation in Syria has shown little sign of changing. Conflict in Syria has displaced millions of people. The ongoing war has profoundly affected Syria and the Syrians, with serious human rights violations, and a chronic breakdown in the functioning of law and order. In addition to a humanitarian crisis, it is vital to understand the situation in Syria as a *constitutional crisis*, where conflict is sustained, and often driven, by constitutional change and reform efforts, which nevertheless fall short of addressing all the demands of the Syrian people.

The development of law in Syria has sometimes been eclipsed by attention to the more acute atrocities. However, the conflict is underscored and accentuated by years of constitutional instability and change which are intimately related to real-world governance. Since 2010, there have been several uprisings and revolutions in the region, some of which resulted in a direct change to the constitution. Some of these changes, as Dr. Rim Turkmani argues, are reactionary, made 'from the top down' by the de facto authorities wanting to suppress revolutionary uprising. This top-down approach has also been deployed in Syria. Reactionary enforced changes risk leading to further conflict when they do not reflect the world of the streets that they are intended to govern. In contrast, some Arab states, like Morocco and Jordan, have

made pre-emptive constitutional changes intended to divert revolution. In the same year that accelerated Syria's descent into war, seven new constitutions were adopted across six Arab countries, including three interim constitutions in 2011 and 2012.

In Syria, the call for constitutional reform has been a central demand, not only by jurists and academics but also from the vast majority of the Syrian people. The call for constitutional reform began with the Damascus Spring which followed the death of Hafez al-Assad in 2000. During the ensuing period of intense opposition, activists demanded political, legal, and economic reforms. Even before the outbreak of war in March 2011, there were calls for a change to the constitution, in particular Article 8, which states that 'The leading party in society and the state is the Socialist Arab Baath Party'. A simultaneous demand was the call to end martial law, which was declared following the 1963 Syria coup d'état, and continued until the 2012 constitution was adopted. During the December 2022 'Arab Constitutional Responses to the Revolutions and Transformations in the Region' conference in Beirut, it was argued that the new Syrian constitution did not in fact diverge from the previous constitution. And although martial law was formally removed, its mechanisms were simply replaced by Law No. 19 of the Anti-Terrorism Act 2012. Furthermore, a contested addition to the 2012 constitution restricted eligibility for presidential nominations, by creating a legal requirement that eligible nominees must have been resident in Syria for 10 consecutive years. This seriously undermined the political freedom of potential opposition candidates, as many had been displaced to other countries through safety concerns, fear of persecution, and war. Efforts to defuse the authoritative hold of the ruling party over Syria's citizens through constitutional reform have arguably had a very limited effect. Nor does the current constitution protect the rights of ethnic and religious minorities in Syria, and there is a long way to go in protecting the rights of all citizens equally.

It can be argued that the current constitution of Syria, whether the so-called permanent constitution of 1973 or the new one of 2012, does not answer people's demands. The 1973 constitution did not reflect the current political, economic, and social situation and the 2012 constitution has failed to consider the socio-political changes that have occurred in the intervening decade. One key failure is that while the constitution *imposes* law through the creation of acts, it contains few provisions governing *how* the law is applied. This leaves the application of law dangerously vulnerable to interpretation, and such interpretation is inevitably impacted by war, political divides, conflict, and instability.

This blindness to the social context, which also includes the rights of ethnic, racial, and religious groups that make-up Syrian society, is also a key gap in the analysis of constitutional reform in Syria. Dr Nael Georges has argued that the shortfalls in the 2012 constitution go beyond the text itself, and can only be properly understood as a property of the dynamics in which the constitution was written. Shifting from a purely legal to a social analysis would foster a more critical approach, which interrogates the relationships between the constitution, its enactment, and its historical and social

context. Analyses of this nature are vital for the proper evaluation of constitutional reform, and for the broader study of Arab constitutional responses to revolutions and transformations in the region. Empirical inquiries should not be limited to *what* constitutions contain, but *how* they are enacted and *why* they persist or fail. Searching questions also need to be asked about whether the present Syrian constitution is, or should be, an interim or a post-conflict constitution, and how it could be rewritten in a participatory way.

Such analyses are not purely of academic value. True reform which might result in adopting a new constitution, and lead to a functioning rule of law, and peace, needs another approach. Such an approach needs to consider the constitution within its social context. This would foster a move away from external actors, and properly engage all citizens in a 'bottom-up' generation of a constitution that is fit for purpose, and reflects the daily realities faced by people on the streets of Syria.

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