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Racial Discrimination in the Syrian Constitution

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The present report set out practical recommendations to the Syrian Constitutional Committee and stakeholders to draft a Constitution granting equal citizenship rights to all Syrians

Introduction

Throughout the years following the Syrian uprising in 2011, dozens of panel discussions on the need to change or amend the Syrian Constitution were held. This is not surprising, since the Constitution, at the top of the legal architecture of any country, is considered to be the father of all laws. Thus, the principle of Constitutional supremacy, corollary of the principle of lawfulness, is one of the most important underpinnings of a state ruled by law, stating that the conduct of individuals and all public authorities is law-based.¹

Those discussions addressed major subjects including the form of the new Syria, its system of government, the presidential term or the principle of separation of powers. However, we, STJ, believe that the constitutional discussions neglected one of the most important and sensitive issues, that of **the racial discrimination based on national or ethnic origin**.

We know that this issue was raised by lawyers, judges, and specialists but timidly and in passing and it was not contained in official reports of the discussions. Even the negotiating sessions held in Geneva under the UN auspices between the regime and the opposition mentioned this important and vital issue only scarcely.

And since the policy of racial discrimination is considered one of the destructive practices of the state and society, we decided to discuss it. Historically, racial discrimination was enshrined in the successive Syrian Constitutions and it became more influential and effective after the Arab Socialist Ba'ath Party came to power in 1963. This was seen in the temporary and permanent Constitutions that were developed after that date. The central questions here are: was the racial discrimination against the non-Arab components, especially the Syrian Kurdish citizens, a fleeting practice or a systematic policy pursued by successive Syrian governments based on what was stipulated in the Syrian Constitutions and laws? What are the consequences of this policy? And how can the Syrian society get rid of it? In this brief research paper, we will try to answer these questions and address the issue from all its aspects.

What is racial discrimination?

Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 defines racial discrimination as:

“Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”²

¹ Maha Bahjat Younis al-Salhi: "Rule of Law" 26 October 2015, <https://almerja.com/reading.php?ida=1291&id=973&idm=22187> (Last visited: 18 August 2020).

² Adopted and opened for signature and ratification by General Assembly resolution 2106 (XXI) of 21 December 1965, entry into force 4 January 1969, in accordance with Article 19, Office of the High

Syria ratified this convention in April 1969, several months after its entry into force on 4 January 1969, in accordance with Article 19.³

Racial discrimination has many causes and it can manifest in numerous forms according to the attributes of the region and society. The form that we will reflect on in this paper is the Racial discrimination based on ethnic origin, since it is the clearest one in the Syrian Constitutions. We will focus on the 2012 Constitution, in particular, given that it is the second permanent Constitution since the arrival of the Ba'ath Party to power, knowing that it is a semi-cloned copy of the 1973 Constitution. And we will also shed the light on the keen controversy among members of the Constitutional Committee,⁴ about the core mission of the Committee, as some believe that it is to amend the current Constitution (of 2012), while others - including us - believe that its mission is to write a new Constitution.

Racial discrimination based on ethnicity, or national origin

Once you read the preamble to the Syrian Constitution of 2012, which is supposed to be inclusive of all Syrians regardless of their affiliations, nationalities, religions, sects and races, you can feel that the Constitution glorifies only one nation, that would be Arab, thus reducing the Syrian people's ethnic, religious and religious diversity – which is in fact a source of wealth, strength and beauty for Syria – to only one component.

“The Syrian Arab Republic is proud of its Arab identity and the fact that its people are an integral part of the Arab nation. The Syrian Arab Republic embodies this belonging in its national and pan-Arab project and the work to support Arab cooperation in order to promote integration and achieve the unity of the Arab nation.” Stating this in its preamble, the Syrian Constitution does not give the right to other Syrian indigenous nations to be proud of their identity, implying a request for them to neglect their affiliations whatever they are and to dissolve into the Arab nation.⁵

One can find this discrimination disseminated across the Constitution:

Article 1: “The people of Syria are part of the Arab nation.”

Article 4: “The official language of the state is Arabic.”

Commissioner for Human Rights, <https://ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx> (Last visited: 19 August 2020).

³ International Convention on the Elimination of All Forms of Racial Discrimination, Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969, in accordance with Article 19, Office of the High Commissioner for Human Rights, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx> (Last visited: 19 August 2020).

⁴ “Syria: The United Nations issues agreed terms of reference and basic elements regarding the Constitutional Committee”, UN, 28 September 2019, <https://news.un.org/ar/story/2019/09/1040632> , (Last visited: 19 August 2020).

⁵ The words Arabic and Arabism appeared in the one-page preamble (introduction) more than ten times, except for those mentioned in the texts of the articles.

These discriminatory provisions impede any further attempts to provide for equality as can be found in subsequent articles:

Article 9: “the Constitution shall guarantee the protection of cultural diversity of the Syrian society with all its components and the multiplicity of its tributaries.”

Article 33: “ Citizens shall be equal in rights and duties without discrimination among them on grounds of sex, origin, language, religion or creed.”

Although this Constitution was drafted under pressure from popular protests that took to the street in the spring of 2011, it was not able to overcome the legacy of marginalization and exclusion of certain components of the Syrian people, as it was no more than a copy from the 1973 Constitution, that befell the Syrian people and weighed heavily on them for decades.⁶ A simple comparison between the two Constitutions will show similarities and sometimes duplications of sentences and Articles: both Constitutions named the state as ‘The Syrian Arab Republic’ and state that it is a part of the Arab world and its people are an integral part of the Arab nation; and both of them provided that the system of government is republican, the religion of the head of state is Islam, and Arabic its official language.⁷ The congruence between the two Constitutions can also be seen in the principles they included on economic, societal, educational and cultural matters, as well as in those related to rights and freedoms, the rule of law and the organization of the powers of the legislative, executive and judicial authorities.⁸

Nevertheless, the minor amendments made to the Constitution in 2012, in particular the determination of the maximum presidency period to be two terms – seven years each –⁹ were nothing but a red herring by the ruling authorities.

Like its predecessors, the 2012 Constitution is filled with the Arab Socialist Ba’ath Party’s ideas including the marginalization, exclusion and integration of the non-Arab Syrians in the Arab nation, and its principles that go beyond the state of Syria. The 1947 Constitution thus stated:

“The Arab Homeland is an indivisible political and economic entity, and no Arab country can make up for the conditions of its existence away from the other Arab countries... The Arab Homeland belongs to the Arabs. They alone have the right to administer its affairs, wealth and the running of its potentials.”¹⁰ Further, the

⁶ The Constitution of the Syrian Arab Republic of 1973 and its amendments, the Parliament website, 7 July 2014, <http://parliament.gov.sy/arabic/index.php?node=5518&cat=413&> (Last visited: 19 August 2020).

⁷ Articles 1, 2, 3 and 4 of the Constitution of the Syrian Arab Republic of 2012.

⁸ Further, the two constitutions have almost the same number of Articles; the 1973’s consists of 156 articles, while the 2012’s consists of 157 articles.

⁹ This provision is applied to president Bashar al-Assad with his years in power, from 2000 to 2012, not included.

¹⁰ The first principle of the party's included in its Constitution of 1947.

Constitution stipulated that a person should be loyal to the Arab nation in order to be granted full citizenship rights.¹¹

These ideas are in line with those stated in Article 1 of the 2012 Constitution and its preamble stating: **“The Syrian Arab Republic is proud of its Arab identity and the fact that its people are an integral part of the Arab nation. The Syrian Arab Republic embodies this belonging in its national and pan-Arab project and the work to support Arab cooperation in order to promote integration and achieve the unity of the Arab nation.”**

This confirms that the abolition of Article 8 that gives the authority to the Ba'ath Party to lead the state was merely formal and not real. Indeed, in the last legislative elections that took place on 19 July 2020, and while not internationally recognized, the Ba'ath Party and its allies on the National Unity list won 177 seats out of 250 in the Parliament,¹² maintaining the party the de facto leader of the state and society.¹³

Consequences of racial discrimination in Syria

As we mentioned above, the 2012 Constitution is an amended version of the 1973's that was based on the Ba'ath Party ideas that promote the Arabs at the expense of people of other nations, whose existence it does not recognize.

In this paper we will focus on the consequences of racial discrimination included in the successive Constitutions since the Ba'ath Party took over the power in 1963.

Beside marginalization, minority groups in Syria, including the Kurds, Armenians, Circassians, Assyrians, Turkmen, Chaldeans, Chechens, Jagans, and others, were subjected to racist and discriminatory policies.¹⁴ The Kurds, however, were the most targeted by these policies, since they are the largest ethnic minority in Syria and for their demands are so high, as described by the Ba'ath Party supporters.¹⁵

Perhaps the most obvious of these discriminatory policies against the Kurds is their denial to the Syrian nationality based on the exceptional census that was carried out under Decree

¹¹ Article 20 of the Ba'ath Party's Constitution of 1947.

¹² Syria's elections for parliament: is it a mere play or a message of steadfastness from Bashar al-Assad to the world?, BBC, 22 July 2020, <https://www.bbc.com/arabic/inthepress-53501994> (Last visited: 19 August 2020).

¹³ Syria's Ba'ath leads the parliamentary elections to form a 'War Parliament', Asharq al-Awsat, 7 July 2020, <https://aawsat.com/home/article/2375006/%C2%AB%D8%A7%D9%84%D8%A8%D8%B9%D8%AB%C2%BB-%D8%A7%D9%84%D8%B3%D9%88%D8%B1%D9%8A-%D9%8A%D9%82%D9%88%D8%AF-%D8%A7%D9%84%D8%A7%D9%86%D8%AA%D8%AE%D8%A7%D8%A8%D8%A7%D8%AA-%D8%A7%D9%84%D8%A8%D8%B1%D9%84%D9%85%D8%A7%D9%86%D9%8A%D8%A9-%D9%84%D8%AA%D8%B4%D9%83%D9%8A%D9%84-%C2%AB%D9%85%D8%AC%D9%84%D8%B3-%D8%AD%D8%B1%D8%A8%C2%BB> (Last visited: 19 August 2020).

¹⁴ A report issued by the Kurdish Organization for Human Rights in Syria (DAD) entitled "The Annual Report on the Status of Human Rights in Syria for the year 2009.", page no.35.

¹⁵ "SYRIA: KURDS IN THE SYRIAN ARAB REPUBLIC ONE YEAR AFTER THE MARCH 2004 EVENTS", Amnesty International, 2005, <https://www.amnesty.org/en/documents/MDE24/002/2005/en/>, (Last visited: 19 August 2020).

No. 93 of 1962.¹⁶The 1962 census¹⁷ deprived the Kurds from citizenship and categorized them as 'ajanib'¹⁸ and 'maktumeen'¹⁹, preventing them from benefitting from the Syrian nationality Act No. 267 of 1969, which stipulates that any one born in the country to parents unknown or of unknown nationality, has the right to the Syrian nationality.²⁰ Only on 7 April 2011 did the Syrian President issue Decree 49, granting Syrian nationality to the 'ajanib' only registered in the al-Hasakah registry. The *maktumeen*, whose number is estimated by STJ to over 45,000 persons, remain stateless.²¹

Later, in the fall of 1974, the Syrian authorities started the implementation of the so-called 'Arab Belt' project in Syria's Jazira along the borders with Turkey. The programme involved the resettlement of thousands of Arab families from the provinces of Raqqa and Aleppo to model villages established on Kurdish-owned land seized under the Agrarian Reform Act of 1958.

That was followed by several discriminatory decrees including one requiring the Kurds, in particular,²² to obtain approvals from the Syrian Security Services if they wanted to own real estates in the border areas,²³ with low rates of success.

In addition to the fact that the Syrian Constitution does not recognize the Kurdish language, the authorities tried to prevent the Kurds from speaking their mother tongue, and several decisions were issued in this regard.²⁴ Security forces thus arrested some Kurdish people for teaching the Kurdish language privately and sentenced others to long-term imprisonment over broad charges like perturbing the nation's concord and attempting to annex a Syrian territory to a foreign country.²⁵

¹⁶ Although the census took place about a year before the Ba'ath Party came to power, the latter could re-grant citizenship to those who were unlawfully deprived of it.

¹⁷ "Syrian Citizenship Disappeared; How the 1962 Census destroyed stateless Kurds' lives and identities", STJ, 15 September 2018, <https://stj-sy.org/en/745/>, (Last visited: 19 August 2020).

¹⁸ Sing. ajnabi/ajnabiyah, literally »foreigners« i.e. stateless. unregistered stateless people.

¹⁹ Sing. maktum/maktumah, i.e., unregistered stateless people.

²⁰ Legislative Decree 276 of 1969 - Syrian Arab Nationality + Executive Instructions, Syrian Parliament website, <http://www.parliament.gov.sy/arabic/index.php?node=201&nid=8182&ref=tree&>, (Last visited: 19 August 2020).

²¹ Legislative Decree 49 of 2011 granting Syrian Arab nationality to those registered in the al-Hasakah foreigners registry, Syrian Parliament website, 7 April 2011, <http://www.parliament.gov.sy/arabic/index.php?node=201&nid=4451&ref=tree> (Last visited: 19 August 2020).

²² Decree 41 of 2004 and Decree 49 of 2008.

²³ The entire province of al-Hasakah has been considered a border region, despite the fact that it is 150 km. deep from the border inside Syria.

²⁴ For example, the decision of the Governor of al-Hasakah, No. 1012 of 1986, which prohibited speaking the Kurdish language in the workplace, and Resolution No. 1865, which confirmed the previous decision and also prohibited singing in languages other than the Arabic at weddings and events in general.

²⁵ A report issued by the Kurdish Organization for Human Rights in Syria (DAD) entitled "The Annual Report on the Status of Human Rights in Syria for the year 2009".

Also, in the context of imposing the Arab identity on Syria, the authorities started Arabizing names of the Kurdish areas as well as many important Aramaic places.²⁶

All these discriminatory policies made non-Arab minorities overwhelmed with the feeling of not belonging to Syria, prompting many of them to emigrate, including highly skilled workers and professionals. What is more, this racist ideology generated great cracks in the Syrian society and we, Syrians, are still suffering its devastating effects to this very day. Even in areas that got out of the regime's hand and are now controlled by de facto authorities, the judgmental mind is still dominating, and that was reflected in the deportation of the indigenous population and the demographic changes in several Syrian cities like Afrin and Ras al-Ayn/Serê Kaniyê.²⁷ If the situation remains as it is or deteriorates, the Syrian society will be destroyed, so it is necessary to think of effective solutions that will lift Syrians out of the quagmire of national racism.

Possible ways to eliminate this phenomenon

Such dangerous practices that threaten the Syrian society and the sense of belonging to it, could be fought by reinforcing the notion of equal citizenship and ensuring full appreciation and equal rights to citizens of all nations, religions, sects, languages, ethnicities, and races. Here it must be pointed out that even Syria's Arabs were victims of the Arab Socialist Ba'ath Party racist ideologies, as the latter's glorifying of Arabism was just a facade hiding project serving its own interests, and what Arabs got was merely empty slogans and promises. The Syrian Arabs who stood against the B'ath Party's discriminatory thoughts and acts were also oppressed and intimidated by authorities.

Perhaps the first step to that end that could be taken in the process of facing racial discrimination in Syria lies in drafting a new Constitution that could end the era of tyranny and all policies and ideologies of racial discrimination, and guarantee the achievement of full and effective equality among all Syrian citizens without discrimination of any kind. Besides, the new Constitution must not contain words and articles which show partiality to one component at the expense of the others, and must address all Syrians equally in a language that rejects marginalization, exclusion and racial discrimination in all its forms. It also must stipulate adherence to international agreements and conventions aimed at eliminating all forms of racial discrimination.

²⁶ "Researcher: Arabizing places' names in Syria affects identity and belonging", Snack Syrian, 11 September 2019, <https://snacksyrian.com/%d8%a8%d8%a7%d8%ad%d8%ab-%d8%aa%d8%b9%d8%b1%d9%8a%d8%a8-%d8%a3%d8%b3%d9%85%d8%a7%d8%a1-%d8%a7%d9%84%d8%a3%d9%85%d8%a7%d9%83%d9%86-%d9%81%d9%8a-%d8%b3%d9%88%d8%b1%d9%8a%d8%a7-%d9%8a%d8%a4%d8%ab%d8%b1/> (Last visited: 27 July 2020).

²⁷ "Syria: Civilians Abused in 'Safe Zones'", HRW, 27 November 2019, <https://www.hrw.org/news/2019/11/27/syria-civilians-abused-safe-zones> ,(Last visited: 19 August 2020).

Drawing upon the experiences of other countries

Several countries suffered racial inequality and discrimination and thus tried to face it through amendments to their constitutions, hence, we can draw upon their experiences in the drafting of the new Syrian Constitution.

For example, the [Constitution](#) of the Republic of South Africa of 1996 tried to not prejudice any nation by stating in its preamble: “We, the people of South Africa”. The same Constitution also mentioned that to ‘heal the divisions of the past’ is one of its objectives. Besides, in the sixth paragraph of the first chapter, it recognized eleven languages as official languages in the state, and in its ninth chapter it prohibited authorities of the State from practicing racial discrimination.

In Article 4, the [Iraqi Constitution](#) of 2005 recognized Arabic and Kurdish as official languages of the country, and guaranteed the right of Iraqis to educate their children in their mother tongue, such as Turkmen, Assyrian, and Armenian in government educational institutions and said that each region or governorate may adopt any other local language as an additional official language if the majority of its population so decides in a general referendum. In Article 7 it stipulates that the state shall undertake to combat terrorism in all its forms, and shall work to protect its territories from being a base, pathway, or field for terrorist activities.

The 1995 [Dayton Peace Agreement](#) laying the constitution of the state of Bosnia and Herzegovina, stresses in the preamble to Annex 4 the full respect for the international humanitarian law, the Universal Declaration of Human Rights, The International Covenant on Economic, Social and Cultural Rights (ICESCR), and other international conventions related to human rights, including the Convention on the Elimination of All Forms of Racial Discrimination of 1965. In order to ensure respect for human rights in the state of Bosnia and Herzegovina and to abide by the international conventions mentioned in Annex 4, Annex 6 provides for the formation of a Human Rights Commission, whose tasks include examining issues of discrimination based on sex, race, colour, language, religion, or national and social origin.

Conclusion

The new Constitution may not be enough to achieve the desired form of society. It should be accompanied by a comprehensive legal system ensuring absolute equality, and respect the community’s cultural diversity. Thus, the existing Syrian laws must be thoroughly reviewed, and the discriminatory ones must be replaced or amended. Laws criminalizing racial discrimination must be passed and provide for severe penalties to perpetrators in order to put an end to this phenomenon and open the way to address its consequences, all the whilst ensuring the principles of freedom of thought and expression. It is imperative to protect the ethnic, cultural, linguistic and religious identity of minorities, and to treat all the

society components equally with granting them basic human rights and freedoms without any kind of discrimination.²⁸

What is also required is to raise awareness of the principles of tolerance and acceptance of differences and to take appropriate measures to combat the stereotyping of groups and minorities. In this area, Syria's future education institutions have so much to do, as they must abolish the hate speech and the ideologies imposed by the Ba'ath Party's 'Tala'i al-Ba'ath/the Ba'ath Vanguard' and 'Shabibat al-Thawra/the Revolutionary Youth'. Civil society organizations and the media should also work to that end, through educational programs and campaigns about the treasures and advantages of cultural diversity.

Recommendations

It is evident from the foregoing that racial discrimination is a serious social disease, especially since it sometimes leads to bigotry, violence and unhealthy exclusivism, which was reflected in attempts to integrate all minorities in the Arab nation without respecting their differences, which led to backlashes from those minorities. Therefore, we are all responsible for fighting this disease with more determination, humanism and efficiency. This must go in tandem with establishing justice and strengthening the national institutions. For a healthy Syrian society, it is vital to combat racial discrimination that has been enshrined in the constitution and the law and was embedded in practice for decades. Based on the findings we have drawn from our study of this subject and from similar past experiences other countries have gone through, we propose the following recommendations:

1. To write a new constitution addressing all Syrians in overarching language far from the language of marginalization, exclusion and racial discrimination, that backboned the Constitution of 1973 and that of 2012, in order to ensure equal citizenship and the participation of all in building a new Syria.
2. If the Constitutional Committee decides to only amend the existing Constitution, the preamble and articles that implied racial discrimination based on national or ethnic basis, especially Articles 1 and 4, must be reformulated to become free of discrimination of any kind.
3. Provisions emphasizing the due respect of international human rights conventions must be added to the Constitution. Here, we would like to recall that experiences of Iraq, Bosnia and Herzegovina, South Africa and other countries in this area could be drawn upon.
4. To conduct a comprehensive review of all Syrian laws, decrees and circulars, and abolish those constructed the rule of racial discrimination in Syria.

²⁸ "Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities", UN, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Minorities.aspx>, (Last visited: 19 August 2020). See also: Mervat Rishmawi: "Minority rights in international law: Some highlights", Amnesty International, <http://www.amnestymena.org/en/Magazine/Issue19/MinorityRightsinInternationalLawSomehighlights.aspx?articleID=1076>, (Last visited: 19 August 2020).

5. To issue new laws compatible with the participatory approach, and able to achieve effective and full equality for all Syrians without discrimination.
6. To seek the elimination of all the negative effects that resulted from the application of discriminatory laws, within the limits of the available possibilities.
7. To enact a law criminalizing all forms of racial discrimination and stipulating severe penalties for anyone who conduct acts of racial discrimination against others (individuals and groups). In this regard, the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 can be drawn upon.
8. To establish an integrated action plan to support media and other Syrian institutions, as well as civil society organizations, to help them play their part in disseminating the culture of equal citizenship, non-discrimination and non-racialism.
9. To develop a programme for compensating victims of racial discrimination and urging them to participate in building a new Syria free of any discrimination.



History

Syrians for Truth and Justice was conceived during the participation of its co-founder in the Middle-East Partnership Initiative (MEPI) Leaders for Democracy Fellowship program, who was driven by a will to contribute to Syria's future. Starting as a humble project to tell the stories of Syrians experiencing enforced disappearances and torture, it grew into an established organisation committed to unveiling human rights violations of all sorts.

Convinced that the diversity that has historically defined Syria is a wealth, our team of researchers and volunteers works with dedication at uncovering human rights violations committed in Syria, in order to promote inclusiveness and ensure that all Syrians are represented, and their rights fulfilled.

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