

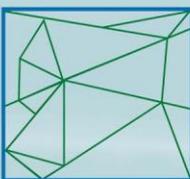
The background features a pair of golden scales of justice resting on a stack of books. The scales are positioned in the upper right, and the books are open, showing their pages. The image is overlaid with a blue and green geometric design consisting of several overlapping triangles and trapezoids. The text is placed within a blue triangular area on the left side.

Transitional Justice and the Constitution Process in Syria

Syrian Voices for an Inclusive Constitution

NED

سوريون
من أجل
الحقيقة
والعدالة
Syrians
For Truth
& Justice



Syrian Voices for an Inclusive Constitution

*Report 3 - “Transitional Justice and the Constitution
Process in Syria”*

Syrian Voices for an Inclusive Constitution

Throughout 2020, Syrians for Truth and Justice (STJ), with the support of the National Endowment for Democracy (NED), organized consultations and documented the perspectives of over 80 Syrian civil society representatives, activists, and civilians in Northeastern and Northwestern Syria on topics related to the constitution-building process in Syria. We chose participants who were not given the opportunity to contribute their thoughts about the new Syrian constitution and gave them the opportunity to discuss issues related to how it should be drafted. Among them, 74.7% believed that the Committee should write a new constitution, and 14.6% believed the current constitution should be amended.

To share the results of our consultations in Syria, STJ is publishing this report as the third of a series of five exploring the following topics:

Report 1: The Formation and Responsibilities of the Syrian Constitutional Committee

Report 2: Inclusivity and Diversity

Report 3: Transitional Justice

Report 4: Governance and Judicial Systems

Report 5: Socio-Ecological Justice and Personal Experiences

Our sixth report summarizes the five published reports, as well as sheds light on the outcomes and notable recommendations which emerged from the project.

In this report, we will discuss the role of the Constitutional Committee and the constitution-building process in addressing the repercussions of the Syrian conflict. Although the outcome of the Syrian conflict remains unresolved, the devastating toll it has had on all facets of Syrian life and society requires parties interested in the peace-building process to start developing ways to structure the reconciliation process of the country once it does resolve. The Syrian Civil War has been comparatively more devastating than other conflicts in the MENA region, with significantly high numbers of [victims](#) to address and peace-building being complicated by a significantly higher number of armed actors and agents of violence than in other post-authoritarian conflicts, such as Tunisia or Egypt¹.

The mechanisms implemented and topics dealt with during an early post-conflict situation are often referred to as **transitional justice**, representing actions that start dealing with the consequences of mass scale human rights violations. Syria should adopt measures to implement accountability for violations of human rights and war crimes, seek the truth of events that occurred over the last decade, ensure those affected by the war receive reparations for their damages, and implement structures that prevent such a war from recurring.

Even though this might not seem to directly relate to a constitution-building process and the result thereof, constitutions do more than establish a government and regulate its relationships with citizens. Namely, they can set the tone for a peaceful future by taking countering perspectives on historical cases of discrimination, violence, and exclusion². Furthermore, to ensure a human rights-based approach to transitional justice, the process must be conceived and designed in the context of in-depth consultations with affected communities and civil society partners.

This paper reflects the views of Syrian respondents on how the constitution-building process can address consequences of the war by exploring how the process of amending or creating a constitution can initiate or encourage a transitional period in Syria.

¹ [Paving the Path Ahead with International Law and Comparative Examples](#), Monica Leonardo, Transitional Justice Coordination Group, 2013

² [Constitution building after conflict: External Support to a Sovereign Process](#), IDEA, 2011

The Syrian Constitutional Committee as Mechanism for a Transitional Period

We can interpret the current Constitutional Committee as a transitional body. Symbolically, the body embodies an (inter)national struggle defining the country's past, interpreting its recent history, and shaping its future identity. Defining values through a new constitution contributes to this process. Regardless, a transitional body, or multiple, that would oversee more than constitution building could be beneficial for a wider range of purposes. Examples of these are truth commissions, a temporary court dealing with war crimes, and a transitional (interim) government.

66.3% of our participants believe that an interim governance body is a necessary goal for the Committee to introduce when announcing its findings. Moreover, 75.9% think that there should be a special committee and/or court that is independent and deals with the consequences and the needs of those affected by the conflict. The needs that should be addressed include but are not limited to: ensuring the return of refugees, starting security reforms, finding missing people, releasing prisoners, uncovering human rights violations, and letting victims share their stories.

Priorities	Not Relevant	Not Relevant; Could be Included	Relevant	Very Relevant	Other	Unknown
Addressing rights of displaced persons and refugees to safely return to their areas of origin or choice	1.20%	9.64%	20.48%	56.63%	1.20%	10.84%
Establishing an independent body that documents HLP violations	3.62%	6.02%	36.20%	48.20%	0%	6.02%
Establishing a body to investigate violations and give space for the victims to share their experiences	6.02%	9.64%	38.55%	38.55%	0%	7.23%
Establishing a body to search for missing persons and settle their legal affairs	4.82%	4.82%	38.55%	44.60%	0%	7.23%
Working for the immediate release by prisoners held by all parties in Syria	6.02%	3.62%	34.94%	47%	2.41%	6.02%
Establishing a central court to hold fair trials for those responsible for war crimes, crimes against humanity, and human rights violations	3.62%	7.23%	36.20%	43.37%	0%	9.64%
Establishing a committee to address pre-2011 issues, notably HLP violations in the “Arab Belt”, and restoring/giving citizenship to al-Hasakeh residents	4.82%	7.23%	22.89%	57.83%	0%	7.23%
Addressing the return to work of employees and officials who left/were dismissed for political reasons to jobs commensurate with their qualifications	4.82%	16.90%	43.37%	36.20%	0%	7.23%
Establishing a special committee to restructure security forces and the Syrian army to ensure the safety of the people, and promote neutrality among security services	8.43%	10.84%	30.12%	44.60%	0%	7.23%
Considering the removal of all foreign forces from Syria	6.02%	16.90%	27.71%	39.80%	3.62%	6.02%

The Interim and Permanent Constitution

Besides a transitional body, experts explored the possibilities of a transitional (interim) constitution that includes issues that are a result of the conflict, and that will be replaced after the country is in a position to democratically decide and implement a permanent constitution³. This interim constitution would deal with significant and urgent problems created by the conflict that are temporary and do not belong in a permanent constitution⁴. Examples of the issues include: establishing the rights of the refugees and internally displaced populations, resolving problems of citizenship and personal identification documents, decommissioning militias and reintegrating them into the Syrian military or society, resolving property disputes created by the conflict⁵, creating spaces for sharing experiences, finding the truths of the human rights violations that took place, and creating mechanisms that ensure accountability and provide reparations.

We laid out some of the formats of a constitution that the Constitutional Committee could suggest for our participants: a permanent constitution addressing post-conflict issues, a permanent constitution which does not address post-conflict issues, or an interim constitution. 49.4% of the respondents argued for a permanent constitution that is short and has attached special annexes that are an integral but temporary part of the Constitution. These annexes include guidelines on dealing with conflict-related issues, such as the safe and voluntary return of displaced persons and refugees, a special supplement on real estate issues, a supplement on transitional justice, and accountability machinery. 20.5% of our participants believe that there should be an interim constitution that itself is focused on the post-conflict issues and will be in place until a new government is in place and has developed a permanent constitution that is not measured against the post-conflict context. Only 6% voted for a permanent constitution that does not include post conflict issues. Thus, most participants supported drafting a constitution which addresses conflict-related challenges.

Our participants' desire to see a working constitution, rather than a permanent one, is not universal among Syrians. Respondents from The Day After's extensive survey chose a permanent constitution rather than an interim/working constitution⁶. The shift from no interest in a permanent constitution, among the Day After respondents' group, to the opposing

³ [Constitution building after conflict: External Support to a Sovereign Process](#), IDEA, 2011

⁴ [Constitutional Options for Syria: Governance, Democratization and Institutions Building](#), The National Agenda for the Future of Syria (NAFS) Programme, 2017

⁵ *Idem*.

⁶ Which Constitution Does Syria Need?, The Day After, 2018

current view from our respondents is an important one. Besides the differences in demographics, this might have to do with the participants seeing more chance right now, after the establishment of the Constitutional Committee, for national dialogue and consensus, something that was less likely a couple years ago. Furthermore, our participants responded well to the option for a permanent constitution that includes temporary annexes dealing with conflict related issues which is not a constitutional option frequently available in similar surveys.

Conclusion

Syria will need more than an amended or new constitution to move forward from this past decade of violence and mass human rights violations. However, the data in this paper demonstrates that the Constitutional Committee embodies the spirit of moving towards a sustainable, peaceful future. Our respondents reiterate this message and highlight the importance of dealing with conflict related themes, so that Syrian citizens will have access to justice, truth, reparations, and mechanisms which will prevent the recurrence of human rights violations.

Recommendations

Considering the data represented in this report, both from the consultations and the complementary sources, STJ recommends that the Syrian government, the international community, and Syrian Constitutional Committee:

1. Recognize the potential the constitution-building process has in instigating a transitional process in Syria and embodying a part of the transitional justice process;
2. Prioritize the right of victims to reparations, the right of victims and society to know the truth about violations, and guarantee non-recurrence of violations committed by all parties, and that these should be implemented in accordance with international law;
3. Act upon the fact that the current context in Syria requires the creation of an interim constitution or constitution like declaration or annexes that are specifically focused on dealing with post-conflict issues;
4. Create an interim body that ensures accountability for all parties responsible for human rights violations, discovers the truth of what violations occurred over the past decade, provides reparations to those affected by the conflict, and implement structures and reforms that will prevent the country from relapsing into devastating war.



Our team of researchers and volunteers at Syrians for Truth and Justice are dedicated to uncovering human rights violations in Syria. Believing that diversity has historically defined and benefitted the country, we work everyday to promote inclusivity and justice to ensure that all Syrians are represented, and their human rights secured.