



Syria's Transitional Phase  
One Step Forward... Two Steps Back

## A Legal-Political Analysis of the Constitutional Declaration

### I. Introduction

The Syrian case is not unique in the annals of history: a popular revolution morphing into an armed conflict—verging on civil war—fueled by regional powers, and culminating in the military victory of a particular faction. This sequence often yields a form of military legitimacy that retroactively justifies itself through the revolution. The typical trajectory unfolds as follows:

- A revolution begins as a grassroots uprising against the existing regime.
- It gradually transforms into an armed confrontation between the regime and various opposition forces.
- Eventually, a dominant military faction emerges, either toppling the regime or gaining control over large swaths of territory.

The outcome is a state of military dominance that seeks to cloak itself in revolutionary legitimacy. Such a dynamic often leads to:

- The erosion of popular legitimacy: The principle of legitimacy derived from the people's will is sidelined in favor of what becomes a «legitimacy of arms.»
- The reproduction of authoritarianism: Whether in the hands of a centralized army or dispersed armed factions, tyranny is often reconstituted—particularly during the transitional period.
- Dependence on external support: Victorious factions frequently rely on international backing to consolidate power, rendering them susceptible to political and economic dependency.

At dawn on December 8, 2025, widespread feelings of hope and relief swept across the majority of Syrians following the collapse of the former authoritarian regime. This came after more than a decade of resistance, endurance in the face of grave atrocities and violations, the displacement of millions, the loss of hundreds of thousands of lives, and the ongoing plight of tens of thousands of missing persons.

The forward-looking statements issued by the Military Operations Command—promising non-retaliation, justice and dignity for all Syrians, and a break from the practices of the previous regime, while pledging to build a state founded on law and justice—were perceived as a genuine step forward.

In light of these developments, the Military Operations Command could have issued a constitutional declaration from the very first day following the regime's fall—defining the structure and powers of the new authorities, and outlining the immediate priorities. Instead, the Command, represented by the leader of Hay'at Tahrir al-Sham, Mr. Ahmed Al-Sharaa, announced its intention to establish governance grounded in the principles of popular legitimacy, through a series of foundational steps—most notably the convening of a Syrian National Conference. This conference was meant to produce the framework





for the transitional phase. Meanwhile, the Command granted itself caretaker authority for a period of three months, during which the conference would be held and its outcomes used to shape the path forward.

However, developments took a different turn. On January 29, 2025, the Military Operations Administration convened the so-called Victory Conference, bringing together leaders of 18 armed factions. The conference concluded with the appointment of Mr. Ahmed Al-Sharaa as transitional President of Syria, authorizing him to perform the functions of the head of state, granting him full executive powers, and delegating to him the formation of a temporary legislative council.

The conference also produced sweeping decisions: the dissolution of the Baath Party and all parties of the National Progressive Front, the disbanding of the security apparatus and the Syrian army, the dissolution of the People's Assembly, the annulment of the 2012 Constitution, and the dismantling of all armed factions and revolutionary, political, and civil bodies—with plans to integrate them into newly established state institutions.

At a time when the current administration was expected to initiate consultations with political actors, societal forces, and civil society groups to organize a Syrian National Conference—consistent with previous promises—it instead took a step back. The planned conference was reduced to a consultative gathering under the name National Dialogue Conference. Its final statement—reportedly pre-drafted—was then adopted as the basis for legitimizing subsequent measures, chief among them the issuance of the Constitutional Declaration.

On March 2, the Syrian Presidency announced the formation of a committee of legal experts tasked with drafting the text of the Constitutional Declaration, in accordance with the core parameters established by the Presidency. The committee completed its work and submitted the draft to the Presidency on March 13. The declaration is to be promulgated by the President and enter into force upon its publication in the Official Gazette.

## II. Reflections on the Political Implications of the Constitutional Declaration

The issuance of the Constitutional Declaration sparked widespread criticism from legal experts, political actors, and large segments of the Syrian public. Yet beyond technical and procedural critiques, a number of more fundamental concerns were raised regarding the political implications embedded in both the process through which the declaration was produced and the conceptual framework underpinning it. These concerns center on three major absences: the absence of political society, political philosophy, and political reality.

### 1. The Constitution Is Primarily a Political Act

Drafting a constitutional declaration—or a constitution—is not merely a legal exercise. It is, above all, a political undertaking. The priority in constitution-making lies with the political community itself: Syria's political forces, parties, and movements. Before legal drafting begins, there must first be a Syrian political consensus on core issues relating to the state, authority, the people, and citizenship—all of which are fundamentally political questions.

Only after such consensus is reached can a constitutional legal committee be tasked with translating





the political agreement into binding legal language. Conferring the responsibility solely on jurists, without a preceding political accord, risks losing sight of the Constitution's essential nature as a high-order political project. It relegates the constitutional process to technocracy and proceduralism, thereby stripping it of its most vital function: to reflect a shared national vision.

## 2. Absence of a Coherent Political Philosophy

The Constitutional Declaration suffers from a lack of internal coherence and a clearly articulated political philosophy. It merges a range of concepts that do not constitute an integrated framework. For example, while the declaration affirms a commitment to the International Bill of Human Rights, it conspicuously avoids any reference to a democratic system—even though democracy and democratic governance are explicitly affirmed within the Bill itself.

This selective engagement with foundational concepts reveals the absence of a guiding political philosophy. Instead of presenting a vision for statehood and political life, the declaration assembles divergent ideas in a fragmented manner—ultimately serving the consolidation of centralized power and paving the way for a new iteration of authoritarianism.

Moreover, the declaration suffers from conceptual ambiguities and connotations. Terms such as state, authority, government, and political system are used interchangeably, despite referring to distinct notions. A democratic institutional order depends on recognizing the differences, boundaries, and interrelations among these concepts. Whether the confusion stems from oversight or deliberate design, the result is the same: a reconfiguration of authoritarianism under a new guise—especially as these diverse entities are all subsumed under the vague rubric of executive authority.

There is also a noticeable absence of precise definitions and linkages among key terms. A viable constitutional framework must rest on a clear articulation of the tripartite structure of the Syrian state—something this declaration fails to provide.

## 3. Disregard for the Political Context

The Constitutional Declaration appears detached from the political reality it purports to govern. It comes in the wake of a revolution, a protracted war, deep social fragmentation, widespread animosity, economic collapse, and unprecedented foreign intervention. A constitutional text issued in such a context must necessarily acknowledge these ruptures.

Instead, the declaration reverts to centralizing tendencies and reaffirms the logic of military dominance, rather than striving to articulate a new social contract grounded in shared values and collective ownership. What was needed was an effort to identify common denominators—points of convergence that could unify Syrians across political, sectarian, and regional divides.

To believe that Syria can be governed today without a decentralized system is to engage in wishful thinking. Equally illusory is the belief that the logic of domination can shepherd the country to safety. Both assumptions disregard the hard-earned lessons of the past decade and risk repeating its most damaging patterns.

## III. An Analysis of the Articles of the Constitutional Declaration

The Constitutional Declaration was issued in an expanded format, resembling a provisional constitution.





It includes a preamble and 53 articles. Taken as a whole, it represents—according to the Syrian Center for Media and Freedom of Expression—yet another step backward in the path toward a democratic transition.

Notably absent from the declaration are any provisions that enshrine the principle of broad societal participation in managing the transitional period. No mechanisms were established to involve representatives from civil society, trade unions, youth or women's groups, nor were any provisions made for public consultations or deliberative processes. This exclusion reflects a centralized conception of power—one that sidelines the broader society from meaningful engagement in decision-making. By doing so, it undermines the democratic foundations upon which any credible transitional phase must be built.

Furthermore, this approach stands in direct contradiction to the very principles of popular legitimacy that the transitional leadership had previously affirmed in its initial public addresses.

## Chapter One: General Provisions

### On the Principle of Full Equality Among Syrians

Citizenship rests on two fundamental pillars: the first is equality, often defined as a condition in which rights and duties are shared equally among all members of society; the second is active participation in political, economic, social, and cultural spheres. Equality requires that all individuals be treated alike—with equal obligations and equal rights under the law—without discrimination or distinction.

While Article 10 of the Constitutional Declaration affirms the principle of equality among Syrians, several other provisions directly contradict this principle and undermine its implementation.

To begin with, the declaration reintroduces Article 3 from the previous constitution, which stipulates the religion of the President of the Republic. This clause implicitly excludes adherents of other faiths from accessing the highest public office, thereby institutionalizing religious discrimination and violating the notion of equal citizenship.

Furthermore, the declaration designates "Islamic jurisprudence" as the source of legislation, rather than a principal source, as was the case in earlier constitutional texts. The choice of wording—specifically the use of the definite article «the»—is significant. It may imply a hierarchically dominant status for Islamic jurisprudence over other legal frameworks. According to some interpretations, this phrasing suggests that where Islamic jurisprudence addresses a particular legal matter, there is no space for resorting to civil or positive law. This contrasts with previous formulations, which, while recognizing Islamic jurisprudence as a major source, still left room for alternative legal systems and pluralistic legislative approaches.

The declaration also limits the definition of religions recognized by the state to «divine» or Abrahamic religions, granting state respect exclusively to their followers. This effectively excludes religious communities such as the Yazidis, Al-Murshidiyah, and others from formal legal protection—particularly with regard to the right to freedom of belief and religious practice.

In terms of cultural identity, the declaration adopts a monolithic national-cultural model, recognizing Arabic as the sole official language of the state, without any mention of other widely spoken languages such as Kurdish or Syriac. It also reaffirms Arabism as a defining feature of the state, despite the fact





that not all Syrians are ethnically Arab. Such provisions fail to accommodate the country's multiethnic reality and risk deepening the marginalization of non-Arab communities.

Additionally, indigenous communities—ethnic minorities with historical presence in Syria—are reduced in the declaration to the vague and abstract notion of «cultural diversity,» with protections limited to «cultural and linguistic rights.» This generalized framework lacks specificity and fails to offer legal recognition of these groups as distinct ethnic communities. By treating them as merely culturally diverse rather than ethnically distinct, the declaration denies their collective identity and their right to constitutional recognition of their difference.

## Chapter Two: Rights and Freedoms

The inclusion of all rights and freedoms enshrined in international human rights treaties, conventions, and charters ratified by the Syrian Arab Republic as an integral part of the Constitutional Declaration represents a significant advancement compared to previous Syrian constitutions. It marks a step in the right direction toward embracing the universality of human rights.

Notably, Article 18 of the Constitutional Declaration affirms that crimes of torture shall not be subject to a statute of limitations. However, such provisions remain largely declarative and abstract unless accompanied by concrete legal frameworks and implementation mechanisms. In particular, the declaration fails to specify procedures for resolving conflicts between the provisions of international treaties and those of the Constitutional Declaration itself. Furthermore, it omits a critical clause mandating the harmonization of national legislation with the obligations arising from those treaties and conventions.

While the declaration does incorporate the rights and freedoms found in international human rights instruments, it does so in a restricted and selective manner. In practice, Syria has not recognized the jurisdiction of any of the human rights treaty bodies to receive individual complaints, with the sole exception of the Committee on the Rights of Persons with Disabilities. As a result, despite referencing these treaties, the declaration reinforces Syria's longstanding position of non-recognition toward the full jurisdiction, such as the Committee Against Torture or the Human Rights Committee, thereby limiting the enforceability and accountability of its stated commitments.

The chapter on rights and freedoms preserves many of the fundamental civil, political, economic, social, and cultural rights previously outlined in the 2012 Constitution. These include the right to liberty, bodily integrity, protection from torture, freedom of movement, freedom of opinion and expression, the right to political participation, the right to a fair trial and legal defense, as well as rights to education and work. The state is formally tasked with taking concrete measures to ensure the effective realization of these rights.

However, Article 23 introduces a contradiction that undermines these protections. While it reaffirms the state's role in safeguarding rights and freedoms, it simultaneously subjects their exercise to a broad set of vaguely defined restrictions—including those linked to national security, territorial integrity, public order, crime prevention, public health, and morality. Such undefined terms are open to wide interpretation and pose a serious risk of abuse, contradicting both the spirit of the declaration and international human rights standards.





According to the established principles of international human rights law, any limitation on rights must adhere to strict criteria, typically framed as:

“No restrictions may be placed on the exercise of this right except those imposed in accordance with the law and necessary in a democratic society...”

The language of Article 23 falls short of this standard, lacking safeguards against arbitrariness or over-reach.

Similarly, Article 14, paragraph 2, states that “the state guarantees the work of associations and unions”, but fails to guarantee their independence. This omission is particularly troubling in light of post-regime developments, wherein the new administration dissolved all unions and appointed new leadership bodies. Without an explicit commitment to ensuring union independence, the declaration effectively allows these appointed councils to remain in place for the entirety of the transitional period, undermining democratic representation in labor institutions.

Paragraph 1 of the same article provides that “the state shall safeguard the right to political participation and the formation of political parties on national foundations, in accordance with a new law”. However, the declaration does not specify a timeline for enacting this law, leaving the matter suspended in uncertainty. In practical terms, this means that no party-political activity is currently viable in Syria.

Finally, the declaration offers no guarantees that the rights and freedoms it contains will be protected from future amendment. It fails to elevate them to the level of foundational constitutional principles that are non-negotiable or exempt from constitutional review. For comparison, Germany’s Basic Law includes explicit provisions forbidding any constitutional revision that would infringe upon human dignity or the direct applicability of fundamental rights. Without such protections, the rights outlined in the declaration remain vulnerable to alteration or suspension, calling into question the long-term integrity of the constitutional order being proposed.

## Chapter Three: The System of Government During the Transitional Phase

### A. Absence of Balance Between the Three Branches of Power

The Constitutional Declaration establishes a presidential system in which the executive authority, represented by the President of the Republic, is granted extensive powers, alongside a formal declaration of separation of powers. While such arrangements are common in presidential systems, effective presidential governance requires more than structural separation—it depends on mechanisms of accountability, oversight, and balance between the executive, legislative, and judicial branches. Without these, power becomes overly concentrated in the hands of the executive.

In theory, separation of powers does not imply isolation between branches, but rather the existence of functional checks and balances to prevent any one authority from becoming dominant. In well-designed systems, this balance is preserved through several key mechanisms:

- Approval of senior appointments: In most presidential, semi-presidential, parliamentary, and constitutional monarchic systems, the appointment of high-level officials—such as ministers, judges, heads of independent commissions, or public prosecutors—is subject to legislative approval, often by the national assembly or an upper house. This serves as a safeguard against unilateral executive control.







- Impeachment and accountability procedures: Legislatures in democratic systems have the authority to hold executive officials accountable, including initiating removal proceedings against ministers or officials found guilty of corruption, misconduct, or abuse of power.

However, the Constitutional Declaration lacks any such balancing mechanisms. The President of the Republic is granted unchecked authority over appointments, and the People's Assembly is limited to merely posing questions to ministers, with no further oversight or corrective powers. This absence of horizontal accountability fundamentally undermines the principles of democratic governance.

In robust presidential systems, constitutional courts play a vital role in reviewing executive orders to ensure their compliance with the constitution. If an executive decree is found unconstitutional, the court has the authority to nullify it. Under current Syrian administrative law, it is theoretically possible to challenge certain presidential decisions—if they are purely administrative in nature, such as the appointment or dismissal of a public employee, or the granting of a license. In such cases, administrative courts may hear appeals, though these challenges are tightly restricted by law. Moreover, even when appeals are allowed, the filing of a challenge does not automatically suspend the implementation of the presidential decision—unless the court explicitly orders a stay of execution. This limitation further weakens judicial oversight and reinforces executive predominance.

The transitional framework outlined in the Constitutional Declaration fails to institute a functioning balance of powers, leaving the system vulnerable to authoritarian drift. Without meaningful legislative or judicial checks, the executive's dominance remains unrestrained, undermining both democratic legitimacy and institutional accountability during a critical historical moment.

## **B. The Judiciary Is Not Independent**

In any presidential system, judicial independence is of paramount importance. It serves as a key safeguard for protecting public rights and freedoms—especially in contexts where the president simultaneously holds the positions of head of state and head of government. This concentration of power in a single office amplifies the need for an autonomous judiciary capable of acting as a counterweight to executive authority.

### **1. The Supreme Judicial Council**

According to Article 51 of the Constitutional Declaration, the current Judicial Authority Law—specifically, Legislative Decree No. 98 of 1961 and its amendments—remains in force. This law entrenches full executive control over the judiciary. It empowers the Ministry of Justice to propose the appointment, promotion, transfer, disciplining, dismissal, retirement, and secondment of judges and members of the Public Prosecution.

Judges of the Judicial Inspection Directorate report directly to the Minister of Justice and the President of the Supreme Judicial Council, while all key decisions relating to the judiciary are issued via decrees signed by the Minister of Justice. These include decisions on judicial appointments, promotions, transfers, disciplinary actions, dismissals, retirements, secondments, and acceptance of resignations.

Moreover, the executive branch has the authority to refer judges to disciplinary proceedings before the Supreme Judicial Council by presidential decree, based on a recommendation from either the Minister of Justice or the President of the Council—thus placing disciplinary oversight of the judiciary firmly un-





der executive control.

Under the amended Article 65 of the Judicial Authority Law (as revised by Legislative Decree No. 24 of 1966), the composition of the Supreme Judicial Council is as follows:

- The President of the Republic, represented by the Minister of Justice, as President of the Council
- The President of the Court of Cassation, member
- The two senior vice presidents of the Court of Cassation, members
- The Assistant Minister of Justice, member
- The Attorney General, member
- The Head of the Judicial Inspection Department, member

It is important to note that in recent practice, the Minister of Justice in the caretaker government appointed the majority of the Council's members in violation of the Judicial Authority Law, and in many cases, from individuals outside the judicial institution itself. This practice raises serious concerns about the erosion of judicial independence and the politicization of the judicial institution.

## 2. The Supreme Constitutional Court

The independence of the Supreme Constitutional Court is especially critical in a presidential system, where the court plays a central role in upholding the constitution, safeguarding fundamental rights, and maintaining the separation of powers—particularly in the face of broad presidential authority.

Despite this, Article 47 of the Constitutional Declaration grants the President of the Republic unilateral power to appoint all seven members of the Supreme Constitutional Court.

### C. A Dependent and Weakened Legislative Authority

The appointment of a parliament or People's Assembly in the aftermath of a regime change—whether by military coup or popular uprising—is not without precedent. It has occurred in various contexts, both regionally and globally. However, when the members of the legislative authority are appointed by the ruling power, the result is a fundamentally non-independent legislature—one that cannot serve its role as a check on executive authority.

The Constitutional Declaration grants the President of the Republic direct and indirect authority over the composition of the People's Assembly:

- **Direct appointment:** The President directly appoints one-third of the Assembly's members.
- **Indirect appointment:** The President appoints the members of a committee tasked with selecting the remaining two-thirds.

In a functional presidential system, the legislature serves to maintain the balance of power—providing oversight of the executive and ensuring that the president and ministers remain accountable through legislative scrutiny and procedural checks.

However, the Constitutional Declaration adopts a model of severe separation between powers, which in practice results not in independence, but in the deliberate weakening of the legislative branch. This is







evident in several key areas:

- **Lack of oversight over major appointments:** In presidential systems, the President typically nominates candidates for senior posts—such as ministers, judges, heads of independent bodies, and public prosecutors—but the appointments usually require the approval of the legislature. However, under the Constitutional Declaration, the People’s Assembly is granted no such authority. The President holds exclusive power over these appointments, without any requirement for parliamentary confirmation.
- **Inability to form investigative committees, withdraw confidence, or initiate impeachment procedures:** According to the Constitutional Declaration, the People’s Assembly lacks any genuine oversight powers over the executive. Its role is confined to directing questions to ministers, with no authority to establish parliamentary inquiries, initiate votes of no-confidence, or carry out removal procedures against ministers or the President. This renders the legislative body functionally subordinate to the executive.
- **Deficiencies in financial oversight of public funds:** In presidential systems, legislatures typically hold full authority to approve the national budget, which prevents the government from spending or reallocating funds without legislative consent. This financial oversight is twofold: it includes both the approval of the general budget and the review of final accounts, which document how public funds were actually spent.

The final accounts constitute a financial report that details the implementation of the approved budget—presenting actual revenues and expenditures in comparison to projected estimates. While the Constitutional Declaration retains the People’s Assembly’s authority to approve the general budget, it strips the Assembly of its oversight role over the final accounts. The executive branch is thus exempted from the obligation to submit final accounts for legislative review and approval.

This marks a clear departure from the 2012 Constitution, which, under Article 75, paragraph 4, explicitly charged the People’s Assembly with the authority to approve both the general budget and the final accounts. The removal of this provision represents a significant weakening of legislative financial oversight and further entrenches executive dominance over public spending.

#### D. Broad Powers of the President of the Republic

While presidential systems typically endow the head of state with significant powers—especially in comparison to parliamentary systems—the Constitutional Declaration goes beyond standard presidential norms, granting the President of the Republic even broader powers than those provided under the 2012 Constitution.

According to Article 50, only the President holds the right to propose amendments to the Constitutional Declaration. The People’s Assembly is entirely excluded from the amendment process, effectively centralizing constitutional reform in the hands of the executive.

Article 33 assigns to the President the task of “entrenching noble values and virtuous morals.” Given the expansive powers already vested in the presidency, this vague and undefined responsibility raises concerns about how such a mandate might be interpreted or enforced. The lack of clarity leaves it open to subjective or ideological use. Other broad powers of the presidency include:





- **Sole authority to declare war and general mobilization:** As per Article 41(1), the President may declare a state of war or general mobilization with the approval of the National Security Council—whose members are entirely appointed by the President without any legislative oversight. In comparative constitutional practice (e.g., Turkey, the United States), the President may only take such steps in cases of emergency or self-defense, and always with parliamentary involvement in war powers. The lack of legislative input in Syria’s declaration process creates a dangerous concentration of military authority.
- **Power to declare a state of emergency:** Article 41(2) authorizes the President to declare a partial or total state of emergency for up to three months, following the approval of the National Security Council and mere consultation with the Speaker of the People’s Assembly and the President of the Constitutional Court. The declaration may only be extended once, and only with parliamentary approval. Nonetheless, the initial declaration process lacks adequate institutional checks, particularly given the President’s control over the Security Council.
- **Control over international treaties:** According to Article 37, the President holds the power of “final signature” on international treaties. Normally, the President’s signature is preliminary, with final ratification vested in the legislature. However, the language of the Constitutional Declaration implies that even after parliamentary ratification, a treaty is not legally effective without the President’s final approval. Thus, even if the People’s Assembly exercises its ratification powers under Article 30(t), the treaty remains null unless signed by the President—who may simply withhold signature without recourse. This renders legislative ratification procedurally hollow.
- **Extensive regulatory and decree powers:** While the Constitutional Declaration does not permit the President to issue laws, Article 37 grants him authority to issue executive and regulatory decrees, control regulations, presidential orders, and decisions, ostensibly in accordance with existing laws. Yet the strict separation of powers outlined in the declaration means that neither the legislature nor the judiciary has oversight over these presidential instruments. Their scope is left undefined, raising serious concerns about unchecked regulatory power.

A striking example is Presidential Decree No. 5, which established the National Security Council, defined its powers, and appointed its members—all by executive order. Similarly, the authority to issue “control regulations”, traditionally understood in legal doctrine as tools of the executive to maintain public order, morals, and health, rests exclusively with the President. The lack of clarity or limits on these powers leaves wide room for discretionary rulemaking without institutional restraint.

## Chapter Four: Final Provisions

The inclusion of transitional justice in Article 49 of the Constitutional Declaration reflects an alignment with the priorities of the current phase—namely, fostering national reconciliation and rebuilding trust among the various components of Syrian society. Transitional justice, however, must be rooted in principles of comprehensiveness and impartiality, particularly with regard to accountability for human rights violations committed by all parties to the conflict.

While the Assad regime bears responsibility for the majority of atrocities committed in Syria, the de-





claration's decision to assign criminal responsibility exclusively to the defunct regime, while ignoring crimes committed by other actors—including the terrorist organization ISIS and other armed groups—risks turning transitional justice into selective justice. Such a partial approach undermines both the credibility and legitimacy of any future accountability process.

The declaration's exemption of war crimes, crimes against humanity, and genocide from the principle of non-retroactivity is consistent with international law and jurisprudence. However, the problem lies in its exclusive attribution of these crimes to the former regime, despite the fact that multiple parties to the conflict have committed acts that meet the threshold of international crimes. Some, like ISIS's atrocities against the Yazidis, may constitute genocide. To single out one actor while overlooking the culpability of others constitutes a significant breach of the universality required in transitional justice frameworks.

This issue is further compounded by the declaration's emphasis on criminalizing the glorification of the Assad regime and its symbols, as well as the denial, justification, or trivialization of its crimes, while making no mention of similar accountability for other perpetrators who were involved in gross human rights violations throughout nearly 14 years of conflict.

Regarding the duration of the transitional period, the Constitutional Declaration sets it at five Gregorian calendar years, beginning on the date of its entry into force and concluding only after the adoption of a permanent constitution and the organization of elections accordingly. However, the declaration fails to establish a clear timeline or mechanism for drafting the new constitution, nor does it clarify what would happen in the event of delays. The declaration provides no safeguards against the potential extension of the transitional phase. Under Article 50, the Constitutional Declaration may be amended with the approval of two-thirds of the People's Assembly, based on a proposal from the President of the Republic. This provision raises legitimate concerns about the possibility of indefinite extension, effectively prolonging the transitional state without democratic accountability or constitutional certainty.

#### IV. What the Declaration Failed to Say

Despite its expansive scope, the Constitutional Declaration contains notable omissions—gaps that weaken its credibility and underscore the limitations of its rights framework. These absences touch on fundamental democratic principles and recognized international human rights standards, and reflect a broader tendency toward executive centralization and restricted civic space.

- **Popular sovereignty:** Nowhere does the declaration affirm the foundational principle that “sovereignty belongs to the people”, long enshrined in previous Syrian constitutions. This omission is significant. The people, through democratic elections, are the legitimate source of authority for both the executive and legislative branches, and constitute the constituent power from which any constitution draws its legitimacy. This principle is explicitly articulated in Article 21 of the Universal Declaration of Human Rights. In its absence, sovereignty remains effectively suspended, contingent upon the outcome of the transitional phase and the process by which the permanent constitution is drafted—whether that process restores sovereign authority to the people, or consolidates it in the hands of the current ruling authority.





- **Absence of Syrian Nationality as a Condition for Presidential Eligibility:** The constitutional declaration does not include any provision requiring the President of the Republic to be a Syrian national. This absence is highly unusual, as nationality is widely recognized in comparative constitutional law as a fundamental prerequisite for eligibility to the office of the presidency. Moreover, omitting any reference to the President's nationality marks a departure from Syria's constitutional tradition, which has consistently and explicitly included such a requirement. For example, Article 84 of the 2012 Syrian Constitution stipulates that the President must be "Syrian by birth, born to Syrian parents who are also Syrian by birth." Similarly, Article 83 of the 1973 Constitution required that the presidential candidate be "an Arab Syrian." The 1950 Constitution also provided in Article 72 that the President must have held Syrian nationality for at least ten years. Therefore, the absence of this fundamental condition in the current constitutional declaration raises serious legal and political questions regarding national sovereignty and the potential for non-Syrians to assume the office of the presidency.
- **Protection of communications:** The declaration makes no reference to the right to private communication, a core component of the right to privacy. This includes the confidentiality of personal correspondence and communications, such as phone calls, postal mail, and electronic messages, as well as protection from arbitrary surveillance or interception without judicial oversight. In contrast, the 2012 Constitution recognized this right in Article 42(2), which states: "The confidentiality of telephone calls, postal correspondence, and electronic communications is guaranteed, and may not be violated except by judicial order." The absence of a similar provision in the current declaration weakens privacy protections at a time when surveillance concerns are at their peak.
- **Right to access information:** Despite the central importance of access to information as a pillar of transparency, accountability, and civic engagement, the Constitutional Declaration contains no explicit guarantee of this right. The right to access public information is essential for enabling citizens to monitor government activity, and for ensuring that freedoms of expression and the press have practical effect. Its omission reflects a closed and paternalistic conception of the state, in which citizens are excluded from public oversight and denied the tools necessary to participate meaningfully in governance.
- **Right to peaceful assembly, demonstration, and strike:** The declaration also fails to acknowledge the right to peaceful assembly, public protest, or labor strike—cornerstones of political and social participation. These rights are central to the expression of opinion, the mobilization of civil society, and the defense of collective interests. Their absence raises serious concerns about the declaration's alignment with international standards for civil and political rights.

## V. Conclusion

While transitional periods that follow the forcible overthrow of authoritarian regimes—particularly after prolonged and bloody conflict—often fall short of democratic standards due to structural and security constraints, many of the shortcomings found in the Constitutional Declaration could have been avoided. This is especially true in the Syrian case, where the possibility of organizing genuine democratic elections under current conditions remains exceedingly complex and fraught.





Yet the flaws, gaps, and inconsistencies that accompany the declaration are not all the result of contextual limitations. Rather, they reflect avoidable design choices that have consolidated executive power and excluded participatory mechanisms from the very start of the transitional phase.

There is growing concern that the impact of the Constitutional Declaration may extend beyond its stated five-year term, serving not merely as a framework for interim governance but as a tool for restructuring the state and reconstituting power according to individual will and a unilateral vision held by the current administration. Absent a genuine commitment to inclusive, participatory processes, the risk is not just a failed transition—but the reproduction of authoritarian patterns Syrians have endured for over six decades.

The use of ambiguous language, devoid of clear mechanisms, measurable criteria, defined timelines, and delineated powers, entrenches the possibility of executive overreach, and leaves the path open to authoritarian entrenchment rather than democratic transformation.

Nonetheless, the Constitutional Declaration itself offers a potential avenue for reform. Article 50 allows for the amendment of the declaration—based on a proposal by the President of the Republic and the approval of two-thirds of the People’s Assembly. If approached sincerely, this mechanism could be used to address some of the most critical gaps and weaknesses in the current framework.

Such amendments could open the door to a more balanced and legitimate transitional process, laying the groundwork for a future political system based on the rule of law, the separation of powers, and the protection of human rights—a system that would reflect the aspirations of the Syrian people and their long and painful struggle for freedom and dignity.

