



Report

High Level Conference

Building an Inclusive Gender-Sensitive Constitution: A Syrian Path Towards Democracy

30 May – 1 June 2016

Brussels



This project is co-funded by
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REPORT

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Prepared by the Euromed Feminist Initiative IFE-EFI

This report is a contribution to the on-going efforts to prepare a non-violent transition towards democracy in Syria with a constitution building process, inclusive of gender equality and women's rights. It serves at the same time as a reminder that women's rights are a cornerstone of all transitions and that it requests a common and relentless effort to secure them, starting from the Constitution.

The report sets out the aims of the conference, presents its participants, its proceedings and outcomes. During the three days' intensive discussions, the constitutional and legal experts enriched the ideas adopted by the CSWD on the gender sensitive constitutional principles, which will be the basis of the constitutional declaration in the transitional period, and a foundation for the future permanent constitution.

The report also provides useful background information, describing the broader project of which this event was part, and detailing the past activities of the Coalition of Syrian Women for Democracy (CSWD) with the support of Euromed Feminist Initiative IFE-EFI, towards this aim.

The conference was organized with the financial support of the European Union and Sweden. The content of this report reflects the deliberations during the conference and can under no circumstances be regarded as reflecting the position of the European Union or Sweden.

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List of acronyms used in the report and annexes

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CSWD	Coalition of Syrian Women for Democracy
EEAS	European External Action Service
EU	European Union
HR	Human Rights
IFE-EFI	Euromed Feminist Initiative
NGO	Non-Governmental Organization
OSE	Office of the Special Envoy
UN ESCWA	United Nations Economic and Social Commission for Western Asia
UNHCR	United Nations High Commissioner for Refugees
UNSCR	United Nations Security Council Resolution
WR	Women’s Rights

1. Background

The high level conference “Building an Inclusive Gender-Sensitive Constitution: A Syrian Path Towards Democracy” was organized jointly by the Coalition of Syrian Women for Democracy (CSWD) and the Euromed Feminist Initiative IFE-EFI. It took place in the framework of the program: “Supporting transition towards democracy in Syria through preparing for an engendered constitution building process” funded by the European Union and Sweden. The aim of the program is to contribute to a democratic transition in Syria inclusive of gender equality. Lessons learned have shown that an important step in a transition is preparing and drafting a new Constitution, and ensuring from the beginning that it is gender sensitive. It is also important that the process itself is inclusive of women’s rights and gender equality.

Euromed Feminist Initiative IFE-EFI is implementing the program in partnership with Syrian women’s rights and human rights organisations. About 650 Syrian civil society activists have been involved in consultations, workshops, and conferences. These actions have always been inclusive of a wide range of voices from Syrian civil society committed to promoting women’s rights and gender equality as founding principles of a democratic constitution, and as core issues for the transition. Many lawyers, legal experts and constitutionalists have engaged themselves and shared their expertise, considerably enriching and widening the debate.

Since 2012, IFE-EFI has been supporting the Coalition of the Syrian Women for Democracy and their work towards identifying the key principles to guide an engendered constitution-making process in Syria, with the first set being published in the booklet: **“Looking for a Democratic Constitution”**. In 2013 the first training for lawyers was held and gender entry points to inclusive constitution making were identified. In April 2014 IFE-EFI and the CSWD drafted **“Recommendations for Nonviolent Transition Towards Democracy Through Engendering Constitution Building Process”** as an outcome of the eponymous international conference they held in Brussels. That conference was attended by a broad range of Syrian women’s rights and human rights activists and representatives of civil society organizations from 21 countries of the Middle East, Mashreq, Maghreb, Europe and the Caucasus.

Later on same year, a report was issued titled: **“Gendered Constitution Building Process for Syria: Gender Entry Points to a Democratic Constitution in Syria and Lessons Learned from Constitution Making Processes in the Middle East and North Africa”**, featuring gendered principles for a new Syrian Constitution.

Beginning of 2016 IFE-EFI published the handbook for gender sensitive constitution making: **“ABC for a Gender Sensitive Constitution”**, the first of its kind. All the publications are available on the website: <http://www.efi-ife.org/publications>

2. Goals of the conference

The conference aimed to provide the space for constitution-makers, legal experts and researchers, as well as gender experts to reflect on the ongoing process of building and promoting a gender sensitive, democratic constitutional option for Syria.

The expected outcome was the drafting of gender-inclusive supra-constitutional principles. The conference sought to contribute to creating an environment favorable to building a future gender-sensitive democratic constitution and to elaborating means and strategies for addressing challenges and getting broad international support.

3. Participants

The conference was attended by a wide range of Syrian legal experts and researchers, representing among others the Syrian Center for Legal Researches & Studies, the Free Judicial Council, the Justice Center for Human Rights, the Free Syrian Lawyers, and the Equal Citizenship Center. Gender and human rights experts and activists, such as from the Syrian Civil Coalition, the Kawakibi Human Rights Organization and the Syrian Women’s Advisory Board, and

Civil Society Support Room were also present. Finally, the conference benefitted from the participation of international experts and observers, including the Gender Advisor to the UN Special Envoy for Syria, the Principal Advisor on Gender at the European External Action Service, the Swedish Ambassador to the EU's Political and Security Committee, the UN ESCWA, the Carter Center, the European Institute for Peace, the Shaikh Group and the Universities of Edinburgh and Tunis.

4. Conference proceedings and emerging themes

The conference was structured so as to give both informed background on means of engendering constitution-making and the opportunity for participants to reflect on, propose, debate, and agree upon gender-sensitive principles which should guide Syria's transition period.

4.1 Conference proceedings

The first day of the conference was geared towards emphasizing the importance of an engendered constitution-building process and the concrete means and strategies for achieving it. Thus, the morning session brought together Maya Alrahabi, General Coordinator of the Coalition of Syrian Women for Democracy (CSWD), Mara Marinaki, the European External Action Service (EEAS) Principal Advisor on Gender and on the implementation on UNSCR 1325 on Women, Peace and Security, Anna Jardfelt, Swedish Ambassador to the EU's Political and Security Committee, and Lilian Halls French, Co-President of the Euromed Feminist Initiative IFE-EFI. They emphasized the importance of engendering Syria's transition, from the ongoing peace negotiations up to and including a permanent constitution. The participants underlined the role of the international community in supporting Syria's peace process and transition. They also highlighted that engendering constitution and legislation remained a struggle within the European Union as well, and that discrimination against women and gender-based violence are persisting global issues.

A separate session during the first day focused on the substance and process for engendering constitution-making, with Ibrahim Draji, professor of international law, Damascus University and Silvia Suteu, constitutional researcher, Edinburgh University, who presented key points drawn from the *"ABC for a Gender Sensitive Constitution"*. This *ABC*, also elaborated in the frame of the program "Supporting transition towards democracy in Syria through preparing for an engendered constitution building process", is a comprehensive handbook for engendering constitution-making. The two speakers focused on the rights and principles a democratic gender-sensitive constitution must protect, on States' international obligations with regard to gender equality, women's rights and non-discrimination, and on the requirements for an engendered peace- and constitution-building process.

The second half of the day brought together representatives from the ongoing processes and visions for nonviolent political transition in Syria, namely:

- The Carter Center Conflict Resolution Program
- Syrian Center for Legal Researches & Studies
- UN ESCWA (United Nations Economic and Social Commission for Western Asia)
- The Shaikh Group
- Women Advisory Board to the UN Special Envoy for Syria
- The Civil Society Support Room in the Geneva Consultations

The session pursued three main aims:

- To present these processes together: it was for the first time,
- To identify the commonalities and differences between them,
- To discuss how they incorporate or ignore strategies and mechanisms for promoting gender equality and women's rights and curtailing discrimination against women during Syria's transition.

The **second day** of the conference began with a round-up of the constitutional principles suggested by participants as necessary during Syria’s transition. The suggestions were compiled into a list of ten headings, which were then open for plenary discussion:

1. Identity of the State and its affiliations	6. Women’s rights and gender issues
2. Nature and structure of the political and administrative systems	7. Human rights
3. Equality and non-discrimination	8. Separation of powers
4. Source of authority and hierarchy of the judicial body	9. Justice and the judicial authority
5. Citizenship	10. Role of the army and State institutions

The rest of the second day was dedicated to a discussion on the substance of principles falling into these headings.

The **third day** geared towards reaching agreement on their formulation and scope. The discussion was supported by lessons learned from the Tunisian experience shared by Salsabil Kelibi, a constitutional expert and a university professor from Tunisia. Mrs Kelibi addressed the traps of political choices that may be available after a period of dictatorship and how to deal with results of participatory processes and elections when the power in place threatens established social rights. Indeed, the elected majority, in charge of writing the new Constitution, may not believe in democratic values or in women’s human rights. Thus, civil society components have to be ready to face these forces with clear alternatives and strategies, gathering the support of wide segments and networks from the community.

4.2 Emerging themes

While discussions were spirited, several themes emerged early on among participants’ concerns:

- **The significance of engendering the transition in Syria cannot be overstated**

The importance of engendering Syria’s transitional period, including the peace- and constitution-building processes, was highlighted from the very first session. The international representatives in that session emphasized that the participation of women in the peace process and transition period is “indispensable and non-negotiable”. This participation has to be qualitative, meaning ability to defend and insert women’s rights on board, not just quantitative (number of women present), and should be reflected on all matters: constitutional, delineation of borders, the formation of coalition governments, the allocation of portfolios etc.

Members of the CSWD and other participants in the conference echoed this view, explaining that Syrian women’s role in the transition should not be stereotyped but should be understood as geared towards the State’s democratic reconstruction into an equal citizenship State. They also expressed the view that a longer transition process would allow for more avenues for women’s participation and as such would be preferred.

- **The form of transitional legal arrangements**

The question of what legal document or legal regime will manage the transition in Syria preoccupied all participants. They considered the option of having either the 2012 constitution or the 1950 constitution, with amendments, be the governing document, or adopting a new set of constitutional principles or interim (provisional) constitution to govern the transition period.

It was agreed that resorting to the 2012 constitution posed many problems because it was symbolically tied to the dictatorship, and because it technically imposed an imbalanced system giving the President unmonitored and legally protected powers which no opposition or accountability body could limit. A revised version of the 2012 constitution was therefore considered, amended so as to give significant authority to a transitional body in the form of a council of ministers and a prime minister who would both share executive powers with the President. This was also viewed as an impractical solution, since it would be dogged by problems such as: the prospect of competence conflicts between the President and the interim governing body; structural problems related to the body's composition, which would have to include representatives of all warring parties; as well as trying to convince the opposition to sit side by side with representatives of the regime. This led to the suggestion of rethinking the entirety of the constitution and proposing new and temporary constitutional principles instead of wasting the same effort attempting to revise the 2012 controversial constitution.

The 1950 constitution was viewed as outdated and resorting to it as relinquishing the revolutionary element. It was also pointed out that that constitution referred to a number of institutions and entities that no longer existed.

Participants then entertained the prospect of adopting a provisional constitution or a set of temporary constitutional principles to govern the transitional period until a final draft of the new constitution could be agreed upon. This would allow for more time for the process of drafting the permanent constitution, and would raise the chances for the latter not to be the immediate result of crisis or reactionary, but rather be well-thought through, pioneering, and representative of the democratic values Syrians have strived for. It was also noted that these constitutional principles could form as well the framework for the permanent constitution.

Conference attendees entertained a number of examples of such interim constitutional arrangements adopted in post-conflict transitional settings, among others the successful case of South Africa. Based on these examples, the point was made that transitional periods were unpredictable and interim legal arrangements in certain instances lasted far longer than initially envisioned (e.g. Nepal being governed by an interim constitution for more than 8 years). It was argued that this makes engendering these provisional legal arrangements much more crucial, whatever the form they take—a full-fledged interim constitution, a set of constitutional principles, a restored older constitution, or something else.

- **The equal participation of women in transition decision-making bodies**

The need to ensure the equal participation of women during the transitional period in Syria was agreed upon by those present, first and foremost as a matter of democracy and fairness. Even beyond this, however, it was emphasized that women should be equal participants because of the importance of the transitional period in setting the tone for all future political interactions in Syria, as well as because of its unpredictable duration.

There was agreement that it is never too soon to ensure the participation of women during transitions, as it should translate into equal participation during peace negotiations, in the decision-making bodies set up to govern the transitional period, and in the institutions established by the final constitution. The point was made, however, that more than the participation of women, what should be pursued is the participation of women's rights advocates, be they women or men, as the latter will be those championing the cause of gender equality and non-discrimination at all levels. Based on examples from other post-conflict countries, the possibility of making mandatory the inclusion of women and women's rights organizations in the drafting of the permanent constitution

was also discussed—as an instrument to ensure that gains during the transitional period would not be lost once the final constitution was ratified.

- **The advancement of the principle of non-discrimination based on gender**

The discussion on non-discrimination led to mentioning affirmative action - persistently called “positive discrimination” - as a key tool in enforcing equality between women and men in a reality in which chances are not equal and in which misogynist customs and traditions prevail. Affirmative action, it was stressed, is an exceptional and temporary procedure that will remain functional only until actual equality is achieved, in which case it will not contradict the principle of non-discrimination, but in fact will be a tool in its implementation.

- **The advancement of the principle of equal citizenship**

Participants agreed on the need to explicitly protect gender equality in the constitution, as well as to mandate for equal citizenship between women and men. Equal citizenship was seen as having the potential to unify the country in the aftermath of conflict, of remedying past wrongs, and as a key building block for a fairer, more equal society. Equal citizenship between women and men would also represent an amelioration of the current status of Syrian women and would ensure they can pass their citizenship onto their children, inherit, acquire and dispose of their property, enjoy equal protection within marriage, as well as have access to education and employment on equal footing.

- **The State’s duty to combat gender-based violence**

The State’s duty in criminalizing and combating all forms of violence against women was raised, be it physical, psychological, sexual, or economic, and whether in private (family) or public sphere. It was emphasized repeatedly that combatting gender-based violence was also a strong international obligation incumbent upon the State, both during conflict and during its aftermath (as mandated by UN Security Council Resolution 1325 and its successor resolutions).

- **The nature of the Syrian State**

One area of vigorous debate concerned identifying the core characteristics of the State, as they would be enshrined in a new constitution. Participants agreed on defining the State as democratic, pluralistic, sovereign, and as based on the rule of law, the principle of the separation of powers, and the protection of the human rights of all its citizens, women and men.

- **The principle of the separation of powers**

The importance of enshrining the principle of the separation of powers in both an interim and the permanent constitution of Syria was one of the key points of agreement among participants. They identified unfettered executive power as one of the main ills of the dictatorship period and were keen to move on to a period when the branches of power are clearly delineated and abuse of power is prevented by way of strong accountability mechanisms.

- **The relationship between religion and the State**

One of the most ardently debated topics was the relationship between religion and the State. All those present agreed that establishing a theocracy would inhibit the establishment of a citizenship-based State, leading to sectarian and religious discrimination, and hinders the establishment of gender equality. It also undermines equality among women themselves, since they end up governed by different personal status laws depending on their different religious belonging. The point was also made that a new constitution should ensure that rights and freedoms would not be subject to limitations on religious (or cultural/ tradition) grounds, but would take precedence.

Nevertheless, participants differed on the wording to be adopted to express the need for the separation of religion and State. The majority of the participants called for declaring Syria a secular State to prevent any attempt at establishing a State and governmental body on religious foundations, and prevent the institutionalization of Sharia as one of the sources for legislation or its primary source. Some of the participants voiced opposition under the reason that some social sectors would reject secularism because of a lack of understanding of the concept which is then mistaken for enmity towards religion. These participants suggested using other words to stand for secularism, including separation of religion from State and legislation, and State neutrality towards religions, beliefs and national identities. The importance of adding that popular sovereignty is the source of all legislation was also emphasized. Participants largely agreed that the major issue was the terminology to use, and not the substance.

- **The role of international law**

International legal obligations were brought up throughout the discussion, with many of the participants viewing international law as providing the baseline for human rights protection in a democratic Syria. The full array of international legal duties on women's rights, gender equality, and non-discrimination (including temporary affirmative action measures) was highlighted as proof of the international community's strong commitment to these. Participants were keen to emphasize that the rights and freedoms stipulated in international conventions should be made directly applicable in the national legal system but that this should not be seen as limiting the expansion of those protections by national law. Participants also expressed the view that the State/s should be sanctioned when using limitations to international human rights treaties as a means to effectively undermine the protection those treaties would ensure to their citizens.

- **Engendering the language of the constitution**

Conference participants differed on their understanding of how far engendering constitutional language could go, but a majority of voices agreed that explicit gender-sensitive language could correct past assumptions about the holders of public office or the beneficiaries of constitutional protections. An example given was that of the office of the President, which has always been referred to in the masculine but which, in a new Syrian constitution, should be opened to all citizens irrespective of gender. It was also noted that there were some precedents in Syrian legislation which could be built upon, such as the electoral law stipulating that it was referring to citizens irrespective of whether women or men.

- **Decentralization**

Participants were keen to discuss decentralization as a means to ensure a fairer division of powers and distribution of resources in Syria, but it soon became apparent that a variety of options existed as to what type of decentralization was to be pursued. Options included political versus administrative decentralization, as well as expansive versus a more limited institutionalization of the division of powers at different levels. There was agreement, however, on the need to ensure that all future levels of decision-making are engendered. Examples given were the institution of gender equality bodies at the local level or gender quotas in local elections. The point was also made that women are often able to influence local decision-making to a greater extent than high-level decision-making, which would make it imperative that they are represented at the local level.

- **Legal guarantees for the enforcement of the interim constitution or constitutional principles**

All participants expressed, from early on, fears that however well-drafted the principles or interim constitution governing the transition period, they would be vulnerable to abuse and could be undone. Instituting legal guarantees for the enforcement of these principles or interim constitution thus became a hot topic for discussion. There was a need for clarification that such guarantees do not preclude the possibility of engendering the constitutional principles governing the transition—that this was not an either/or option, but both could be pursued and in fact reinforced each other.

The principle of the separation of powers was seen as the starting point for ensuring the implementation of legal guarantees during the transition, as was the principle of judicial independence. The latter was necessary, participants argued, to ensure that the judiciary could exercise its proper democratic role once again. A high judicial council was seen as a possible guarantor of judicial independence during the transition period, with a newly empowered Supreme Constitutional Court capable of ensuring the implementation of transitional legal arrangements and of transitional justice mechanisms. Such judicial guarantees would also be vehicles for stronger gender equality protection, but the importance to also pursue the engendering of these judicial bodies themselves (at the level of their membership, hierarchical structure etc.) was highlighted.

It was also emphasized that clearly and strongly mandating for implementing legislation alongside the interim constitution or constitutional principles was a key step towards ensuring greater protection for women's rights. Many of the necessary measures on the path to gender equality and non-discrimination, such as gender quotas in official appointments and/or elections, the reform of personal status laws and adopting a gender equality law, the establishment of gender equality bodies on governmental and parliament level and more, would need to be detailed in such legislation. Therefore, it was argued, it was not sufficient to engender the highest level of law but efforts should be directed towards ensuring that future legislation was adopted to both implement and further constitutional protections for women.

- **The role of civil society organizations and the international community**

There was much preoccupation among participants about how to translate the discussion on constitutional principles into concrete action at grassroots level but also at the international level. It was acknowledged that there had been some fragmentation among the Syrian women's rights movement, but there was agreement that it continued to be united in its pursuit of a democratic Syrian State founded on equality between its women and men. The point was also made that it was important for Syrian women's rights organizations to be prepared to discuss constitutional matters, put forth their demands coherently, and be ready to fight for the desired outcomes. Nevertheless, it was also argued that women's rights organizations should not be seen as bearing the sole burden of engendering the transition and the future constitution of Syria. Instead, it was stated, they should form alliances with other civil society organizations, in particular human rights and democratic ones, as well as garner solidarity and support from international organizations and networks. The conference itself was given as an example of doing both these things.

Participants were also keen to highlight the crucial role which the international community can play in ensuring a peaceful and engendered transition for Syria. Pushing for gender equality as a substantive value to be protected in the transitional legal arrangements and in the permanent constitution, demanding the equal representation of women during peace negotiations and in all decision-making bodies, and providing solidarity and support for local initiatives which pursue these aims, are all concrete steps which international organizations and governments can take in this regard.

5. Conference Outcomes

5.1. Gender-sensitive principles to govern the transition period in Syria

GENDER SENSITIVE CONSTITUTIONAL PRINCIPLES

Developed by the Coalition of Syrian Women for Democracy
These principles are endorsed by the Euromed Feminist Initiative

1. Syria is a sovereign, independent, democratic republic based on political pluralism and administrative decentralization, and has the full right to retrieve its occupied territories within the context of the unity of the Syrian land.
2. All Syrian citizens, women and men, are united under one national identity encompassing their different ethnic, cultural, and religious belonging. The constitution guarantees respect, equality, gender equality, non-discrimination as well as the establishment of equal opportunities for all these social components.
3. The constitution guarantees the achievement of full equality between women and men in citizenship rights so that both women and men can enjoy their civil, political, social, economic, cultural, and educational rights in all areas of public and family life.
4. The constitution prohibits discrimination, whether direct or indirect, against any citizen on the basis of gender, and obliges the State to issue national laws that prevent, prohibit and criminalize any act of discrimination against women and all forms of violence against them in both private and public life; to annul all discriminatory laws and texts, to lift all the reservations posed on the CEDAW, and to endorse its optional protocol.
5. The Syrian constitution is a secular one and explicitly mentions the separation of religion, from the State and legislation.
6. The people are the source of power. The constitution guarantees representation of Syrian people through free and impartial elections, which are administered by just laws that ensure women's equal participation, achievement of parity between women and men through providing for affirmative action as gender quota, and fair representation of all groups.
7. The constitution protects the separation of powers and the establishment of regulations that ensure a balanced relationship among them.
8. The constitution ensures equal participation of women in public, political, economic, and social life; their equal right to employment and to holding any decision-making position, as well as their equal representation in all designated and elected bodies.
9. The sources of legislation are international human rights treaties and agreements, women's rights conventions and resolutions as well as international human rights law and principles of social justice and gender equality.
10. All international treaties and agreements ratified by the State have supremacy over national legislation. The constitution and national laws comply with international agreements and conventions ratified by the State that protect the political, economic, and social rights of women and men, on top of which is CEDAW.
11. The constitution guarantees the right to life and bans death penalty; it prohibits ill-treatment and abuse of women and men under any circumstances; it explicitly criminalizes all forms of gender-based violence and torture, including rape, and all other forms of abuse and inhumane treatment.
12. The constitution protects the independence of the judiciary and the equality of all citizens, women and men alike, before the law and in the law. The constitution also ensures equal access and women and men to legal entities, equality in treatment, and protection against sexual and physical violence, as well as providing compensations for victims of sexual violence within the system of transitional justice.
13. The constitution protects the right of women and men to transfer their citizenship to spouses and children.
14. The constitution protects the freedom of expression, thought and conscience, as well as the participation in decision making through political parties and civil society organizations, including women's rights organizations; publishing newspapers and other printed materials.
15. The constitution guarantees and protects women's and men's equal rights to education, work, property ownership, and inheritance.
16. The constitution ensures abolishing or amending all laws conflicting with these principles.

5.2. Mechanisms for the implementation of gender-sensitive principles during the transition period in Syria

MECHANISMS FOR THE IMPLEMENTATION OF GENDER SENSITIVE PRINCIPLES

- The constitution must be written in a gender-sensitive language. The words “women and men” must be clearly included after phrases like “all citizens” or “individuals” to emphasize that women and men are equal in worth, before the law and in the law.
- The constitution must prohibit the legislative authority from revising its articles in a way that negatively affect gender equality or any of the principles of freedom and justice. The constitution also must clearly state that the articles guaranteeing civil rights and freedoms, and equality between women and men are not subject to change, unless change was intended to emphasize or enrich, in case the legislative power needed to amend some articles.
- The constitution must include implementation mechanisms, such as articles and bodies for equality, to ensure it doesn’t remain a declaration of principles. A supreme national body is created to implement and protect women’s rights and establish gender equality in all ministries and local institutions and authorities, along with the gender equality committee in the parliament to monitor the implementation of gender equality law and related issues. The principle of gender equality is established clearly and through all governmental plans and programs.
- Current laws must be amended by the legislative authority to agree with all the rights and freedoms protected by the sought constitution. No article or law should stand in opposition to the spirit of the constitution. If any such contradiction is noted, laws must be amended to be compatible with the constitution, and therefore with international agreements on human and women’s rights. Feminist organizations and human rights activists must be involved in the process of revising laws and systems and developing civil and criminal laws to ensure justice and eliminate of all forms of discrimination and violence against women.
- The national policy focused on education includes all Syrian children in the educational process, especially those who were deprived from it in the past years, as well as focusing on literacy programs and the spread of knowledge and awareness on democracy, human rights, and gender equality in all educational stages and in all media.
- The national policies reflect a positive image of women and stand in opposition to social tolerance towards discrimination against women, and mechanisms guarantee the protection of women’s rights in reality. The constitution alone cannot protect women from cultural stereotypes and prejudices which continue to marginalize women in obvious or subtle ways.
- Independent civil records are provided for women, to further institutionalize the full citizenship of women.
- A clear work table is set for gender equality and all opportunities are sized to emphasize this issue.
- All social components in Syria are involved on establishing gender equality and raising awareness on women’s rights on a local level, since even the progressive forces in Syria hesitate on the subject of gender equality and women’s rights.
- All feminist and civil society organizations are engaged and actively participate in the preparation for negotiations and the creation of transitional governing bodies. Civil society organizations must have the freedom to work and be properly represented in committees that adopt programs and policies.
- The participation of women in negotiating delegations of Syrian political parties and powers is ensured at all stages.
- The discussions and negotiations pertain during the constitution building period, since it could change the balance of powers through the mobilization of democratic forces.
- Mechanisms must ensure the transparency and fairness of constitutional referendums and all stages of elections, as well the participation of civil society organizations in monitoring the elections.
- The electoral system is a proportional representative one in order to promote gender equality.
- This entire process is connected to democracy, since women’s rights are universal human rights.

Annex 1: Agenda



High Level Conference Building an Inclusive, Gender-Sensitive Constitution: A Syrian Path towards Democracy 30 May – 1 June 2016 Hotel Metropole, Brussels

Day One 30/05/2016	Opening session: Registration and Welcome
09:00 – 09.30	Registration
09.30 – 10.00	Introduction and Welcome: Maya Alrahabi – Coalition of Syrian Women for Democracy (CSWD) Mara Marinaki - The European External Action Service (EEAS) Principal Advisor on Gender and on the implementation on UNSCR 1325 on Women, Peace and Security Anna Jardfelt - Swedish Ambassador to the EU's Political and Security Committee Lilian Halls-French – Co-President Euromed Feminist Initiative IFE-EFI
10.00 – 11.00	Gendered Constitution Building Process for Syria: Report CSWD Since 2012, Women's rights Lawyers and Activists have been working to prepare the future of Syria and to build and promote a forthcoming constitution based on democratic, egalitarian principles and values. This session will highlight the achievements, lessons learned and the future steps. Maya Al Rahabi – General Coordinator of Coalition of Syrian Women for Democracy and Director of Musawa / Women's Studies Center Moderator: Omar Alshaar – Executive Secretary CSWD/MARATOUS
11.00 – 11.30	Coffee Break



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11.30 – 13.30 Engendering a Democratic Constitution and Legislation

The presenters are the co-writers of *ABC for a Gender Sensitive Constitution*, a handbook for engendering constitution-making. Drawing on examples from various constitutional texts and contexts, they will elaborate the complexities of normative legislative and constitutional processes and will propose tools and mechanisms that can be used to engender constitutional building processes and will develop people participation and support.

Presenters:

Ibrahim Draji [Syria] – Law Professor at Damascus University, Legal Expert for UNHCR & ESCWA

Silvia Suteu [UK] – Constitutional Law Researcher, University of Edinburgh

Moderator: Salsabil Kelibi – Professor of Constitutional Law – University of Tunis

13:30 – 14:30 Lunch Break

14.30 – 17.30 Visions for Syrian Constitutional Process during and after Transition

The different Consultations about the future Constitutional process in Syria include the following options:

- Amending 1950 Constitution
- Amending 2012 Constitution
- Interim Transitional Constitution
- Constitutional Declaration with Supra-Constitutional Principles

This session will present different on-going processes and visions for nonviolent political transition in Syria and will discuss how these visions incorporate strategies and mechanisms to curb discrimination against women and enhance their participation de jure and de facto during and after the transition, grounded in the international women's rights mechanisms and international humanitarian law.

Presenters:

Hrair Balian – Director of Carter Center Conflict Resolution Program

Anwar Albonni – Syrian Center for Legal Researches & Studies

Riad Sabbagh – ESCWA

Dima Naaman – Shaikh Group

Sawsan Zakzak – Women Advisory Board for the OSE

Omar Alshaar – Civil Society Supporting Room in Geneva Consultations

Moderator: Faek Hwajeh – CSWD and Director of Equal Citizenship Center (*The moderator would make a space for a coffee break within the session.*)



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Day Two
31/05/2016

Constitutional Declaration: Gender inclusive principles and content

09:30 - 17.00

The participants will present their feedback, ideas and thoughts, and will work on elaborating main Constitutional Principles to be included in the Constitutional Declaration for a transitional period.

Discussions will focus on engendering these principles.

Moderators:

Ibrahim Draji – Law Professor at Damascus University, Legal Expert for UNHCR & ESCWA

Malak Kasem – Lawyer and Women’s Rights Activist

Omar Alshaar – Executive Secretary CSWD/MARATOUS

(The moderators would make space for lunch and coffee breaks)

Day Three
01/06/2016
9:00 – 12:00

Challenges and Strategies for adopting a Democratic Constitution: From Draft to Implementation

This session will discuss internal challenges of adopting a Democratic Constitution and making institutional arrangements within a conservative social and political environment. It will also discuss strategies to advocate for extensive social approval of this Democratic Constitutional module which is inclusive of Women’s rights and Gender equality.

- Gender-sensitive Constitution: A foundation to amend discriminatory laws hindering women’s political participation

Lama Kannout – Member of CSWD Coordination Committee and Coordinator of the Syrian Feminist Lobby Study Group

- Lessons from the Tunisian experience.

Salsabil Klibi – Constitutional expert & University professor – Tunisia

Moderator: Ghazwan Koronful – Head of Free Syrian Lawyers

10:30 – 11.00

Coffee Break



This project is co-funded by
The European Union





11:00 – 13:30

International support for Syrian Democratic Gender-sensitive Constitution building

How would International institutions back a Gender-sensitive Constitutional process in Syria? What is the role of Democratic movement in Syria and World?

Speakers will discuss resources and strategies to evolve national and international solidarity and support for the demands of the Syrian Women's Rights Activists, Organizations and Coalitions.

Speakers and discussion:

Christina Shaheen – Gender Advisor to Mr Staffan de Mistura UN Special Envoy for Syria

Majdoline Hassan – CSWD and co-founder of MARATOUS (Syrian NGO for Citizenship and Human Rights)

Boriana Jönsson – Executive Director Euromed Feminist Initiative IFE-EFI

Moderator: Rim Salahi – Lawyer

13.30 - 14.30

Lunch Break

14:30 – 17:00

Wrap-up and next steps

Presentation of the constitutional principles that have been agreed upon

Maya Al Rahabi – General Coordinator of Coalition of Syrian Women for Democracy and Director of Musawa / Women's Studies Center



This project is co-funded by
The European Union



Annex 2: List of Participants

Syrian Experts

Abou Kheir, Atef

Lawyer & Legal Researcher

Albunni, Anwar

Lawyer, Syrian Center for Legal Researches & Studies

Alhlou, Khaled Odwan

Head the Free Judicial Council

Almousri, Marwan

Lawyer and Former Judge

Alrhabi, Maya

Head Coordinator CSWD

Alshaar, Omar

Journalist and HR Activist

Bashir, Farouk

Lawyer and Legal Advisor

Draji, Ibrahim

Professor of International Law, Damascus

Hamido, Rami

Director Kawakibi HR Organisation

Hassan, Majdoleen

Lawyer, Women Advisory Board for OSE

Hussein, Ibrahim

Director, Justice Center for HR

Hwajeh, Faek

Lawyer and Legal Expert

Ismail, Mustafa

Lawyer and HR Activist

Jabali, Nader

Civil Society and Political Activist

Kannout, Lama

WR Activist and Gender Expert

Kasem, Malak

Lawyer and WR Activist

Koronful, Ghazwan

Head Free Syrian Lawyers

Kouteiny, Essam

WR Activist

Masalmeh, Hesham

Lawyer and HR Activist

Rfaa, Hassan

Lawyer, Equal Citizenship Center

Sabbagh, Riad

Communications Expert, UN ESCWA

Salahi, Reem

Lawyer

Turkmani, Rim

TAMAS - The Syrian Civil Coalition

Zakzak, Sawsan

Gender Expert and WR Activist

International Experts and Observers

Alsalem, Reem

European Institute for Peace

Balian, Hrair

Head, Conflict Resolution - Carter Center

Halls-French, Lilian

Gender Expert, Co-President Euromed Feminist Initiative

Horelova, Eva

Policy Officer for Syria, European External Action Service

Jardfelt, Anna

Swedish Ambassador to the EU Political and Security Committee

Jonsson, Boriana

Gender Expert, Executive Director Euromed Feminist Initiative

Kelibi, Salsabil

Constitutional Law Professor, University of Tunis

Marinaki, Mara

Principal Advisor on Gender, European External Action Service

Naaman, Dima

Senior Political Officer, Shaikh Group

Shaheen, Christina

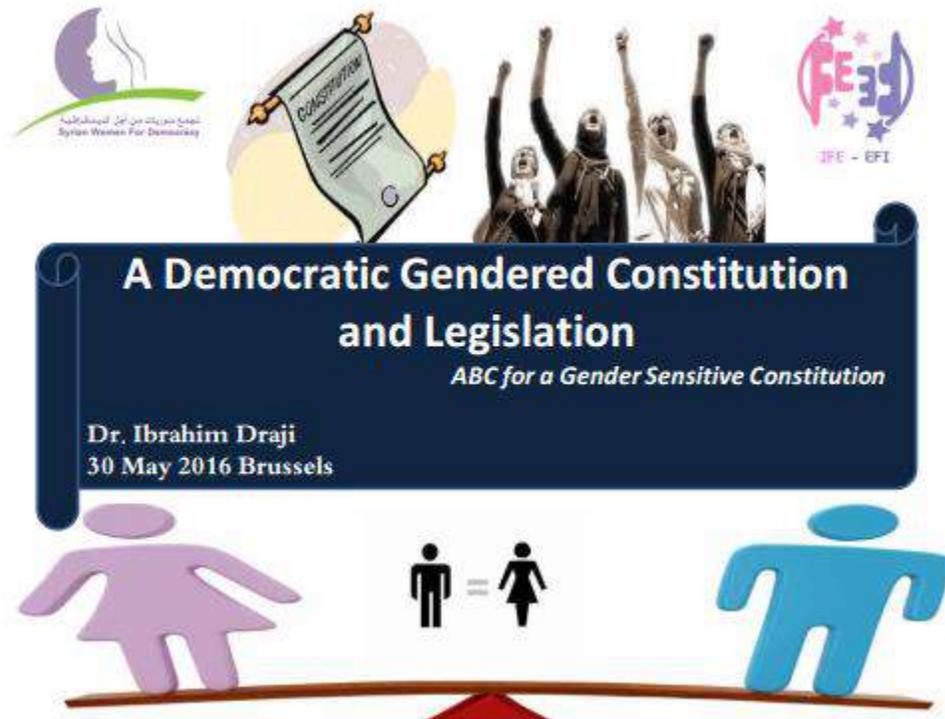
Gender Advisor to UN Special Envoy for Syria

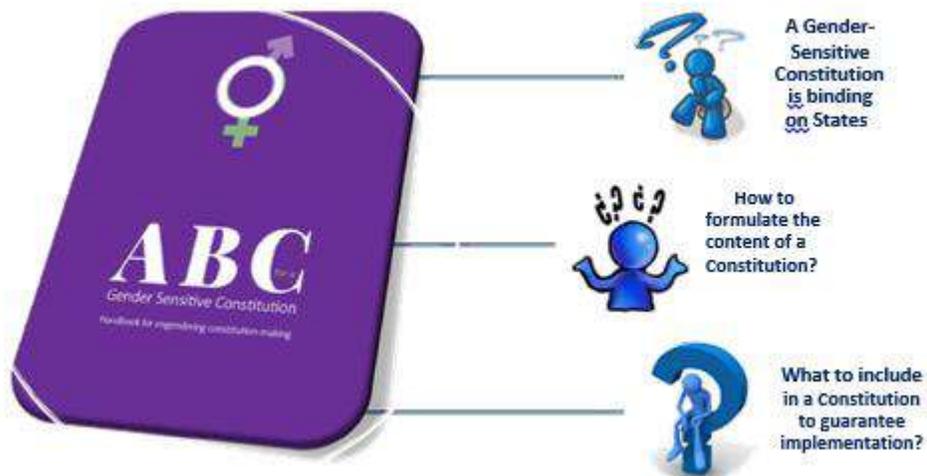
Suteu, Silvia

Researcher, Edinburgh University School of Law

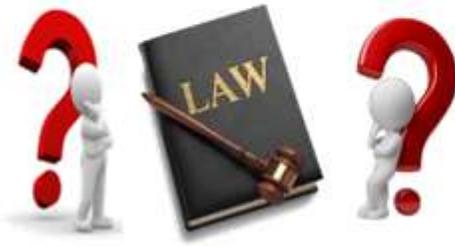
Tindall-Ghazal, Sara

Carter Center





A Gender Sensitive Constitution is legally binding on States



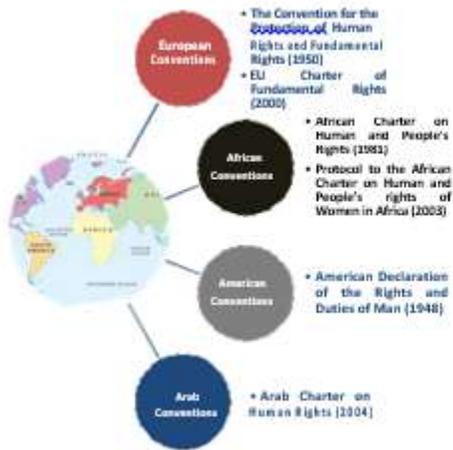
“Source of Obligations” and not “Obligations”



Today, many people, women and men, support gender equality from different perspectives:

People believe in and adopt gender-equality for different reasons; some consider it integral part of human rights, others consider it for ethical, religious, ideological, political reasons, or based on intellectual and philosophical reasons. Some consider gender equality a manifestation of progressive civilization. Others as universal right.





Equality (for example)



- **International Covenant on Civil and Political Rights (1966) Article 3:** "The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant."
- **Charter of Fundamental Rights of the European Union (2000) Article 23:** "Equality between men and women must be ensured in all areas, including employment, work and pay."

Non-Discrimination



- **Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (1979) Article 2:** "States Parties condemn discrimination against women in all its forms..."
- **Protocol on the Rights of Women in Africa (2003) Article 2(1):** "States Parties shall combat all forms of discrimination against women..."



A Gender Sensitive Constitutionfor example:

- Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (1979) Article 2 (a) Member States undertake "To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation"
- Protocol on the Rights of Women in Africa (ZUW3) Article 2(1)(A) "Include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application."

Five (5) issues to be highlighted

1- States' obligation to adopt compatible legislations and implement in accordance with Vienna Convention on the Law of Treaties 1969

Implement Obligations in "Good Faith"

Not to use existing domestic legislation as an excuse

No fundamental reservations to the spirit of the Convention

2- Constitutions that include reference to the Status of International Instruments in Domestic Legislative Framework



- **Tunisian Constitution Section 20:**
"International Agreements endorsed and ratified by the Representatives of the People are superior to that of domestic legislation and are considered inferior to that of the Constitution."
- **German Constitution, Article 25:**
"The general rules of public international law form part of the federal law. They take precedence over the laws and directly create rights and duties for the inhabitants of the Federal territory."

3- Constitutions that consider certain Human Rights Conventions as reference in terms of interpretation and implementation



- **Argentinian Constitution:**
The Constitution granted certain human rights instruments status equal to the Constitution, "and are considered at the same level, and shall be treated as complementary to the recognized rights and guarantees".
- **Constitution of the Republic of Benin, Art. 7:**
"The rights and duties proclaimed and guaranteed by the African Charter on Human and People's rights and ratified by Benin in 1986 shall be an integral part of the present Constitution and of the Beninese law."

4- Disparity



- It must be noted that the continents are not equal in terms of their recognition of these rights.
- There is an obvious lack of recognition of equality between women and men in Asia, especially in the Arab region. This is partly attributed to the lack of ratification of international relevant conventions, and placing reservations many of which are considered fundamental to the objective of the convention.

5- Provisions "Discriminatory"



- The Arab Charter on Human Rights (2004)
- Article 3(3) states: "Men and women are equal in respect of human dignity, rights and obligations within the framework of the positive discrimination established in favor of women by the Islamic sharia, other applicable laws and legal instruments."
 - Article 44: "The States Parties undertake to adopt, in conformity with their constitutional procedures and with the provisions of the present Charter, whatever legislative or non-legislative measures that may be necessary to give effect to the rights set forth herein."

How to design the content of a Constitution?



It is not our role to state (it should be)
But to present (how it could be)

WARNING



What must a Gender- Sensitive Constitution Contain?



Principles of a Democratic Constitution



1 - Freedom



- "Venezuela constitutes itself as a democratic and ... State ... which holds as superior values of its legal order and actions ... those of ... liberty..."
- Venezuelan constitution, Article 2



What a Constitution must contain "Freedom"



- Recognizing a number of rights and freedoms (such as the freedom of thought, religion and conscience; the freedom of speech and expression; the freedom of assembly and the freedom of association etc.)
- The Constitution should stipulate that it guarantees rights as universal and inalienable; indivisible; interdependent and interrelated.
- The list of rights included in the Constitution should not be exhaustive. In that way, when necessary, the protection of the Constitution could be extended to more rights than those listed explicitly in its text.

2 - Dignity



"Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority."

German constitution, Article 1(1)

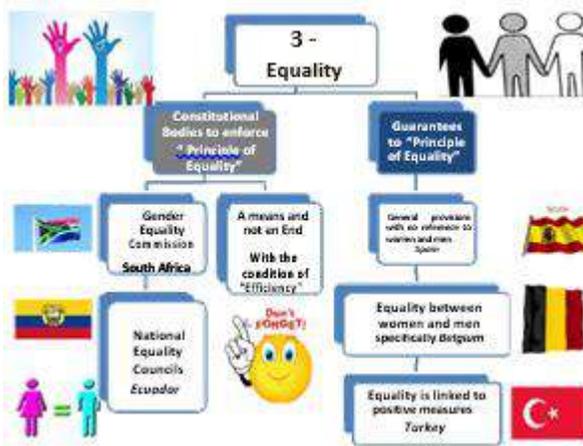


"Slavery" and "Women's Dignity"



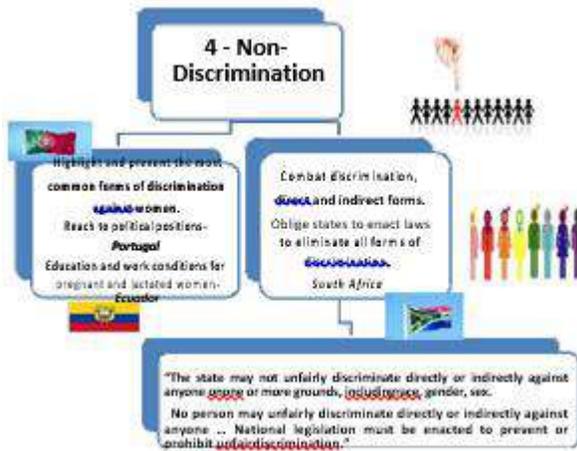
Slavery, in its traditional image, no longer exists in the majority of countries, but slavery-like practices still exist and affect women's rights, dignity and freedom. These take multiple and renewed forms and practices. For example:

- "Servile marriages" result from situations where women, with no right to refuse, are given in marriage in exchange for payment of money or kind;
- Or are transferred by the husband or family to another person for value received;
- Or are inherited 'upon the death of her husband' by another person.



"Woman are the sisters of men. They have rights and duties, which are guaranteed and assigned by Sharia and stipulated by law."

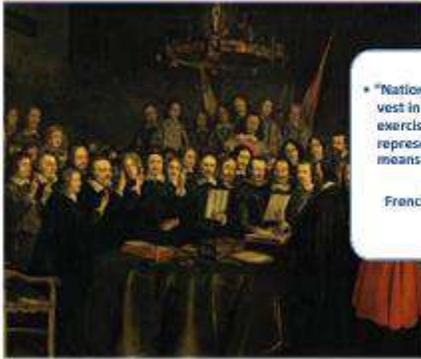
"All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria."



5 - Separation of powers

- "The Portuguese Republic shall be a democratic state based on the ... and the separation and interdependence of powers..."
 - Portuguese constitution, Article 2
- "No proposal of amendment shall be considered which is aimed at abolishing III - the separation of the Government Powers."
 - Brazilian constitution, Article 60(4)

6 - The source of sovereignty



• "National sovereignty shall vest in the people, who shall exercise it through their representatives and by means of referendum."

French constitution, Article (3)



7 - Secularism



• "France shall be a ... secular ... It shall respect all beliefs..."

French constitution, Article 1 of the Preamble

"1. The Russian Federation is a secular state. No state or obligatory religion may be established.

2. Religious associations shall be separate from the State and shall be equal before the law."

• Russian constitution, Article 14

Not every Secular and Democratic Constitution is necessarily Gender-Sensitive

Secularism Importance...Risks



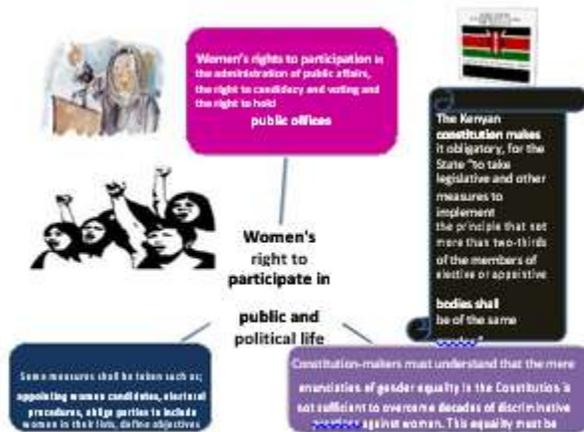
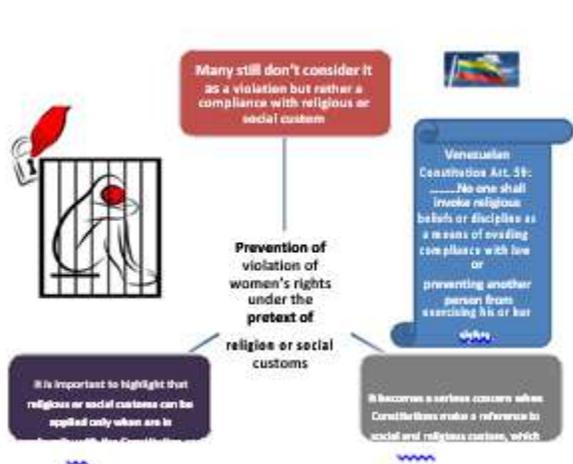
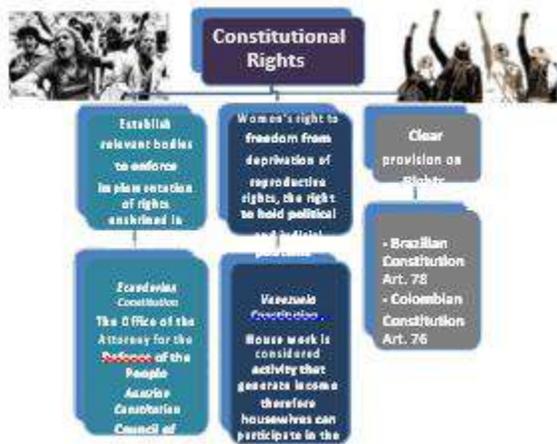
- This issue is very important and has serious repercussions for women's rights and freedoms. Women also differ in terms of religion and beliefs, which makes them subject to different, and sometimes contradictory legal systems in countries where religious or traditional authorities also exercise legal and political power.
- Iraqi constitution, Article 41: "Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs or choices, and this shall be regulated by law."
- Article 14: (Iraqis are equal before the law without discrimination).

Notice:

- There is no unified secular system.
- We shall not substitute "Democracy" with "Secularism"



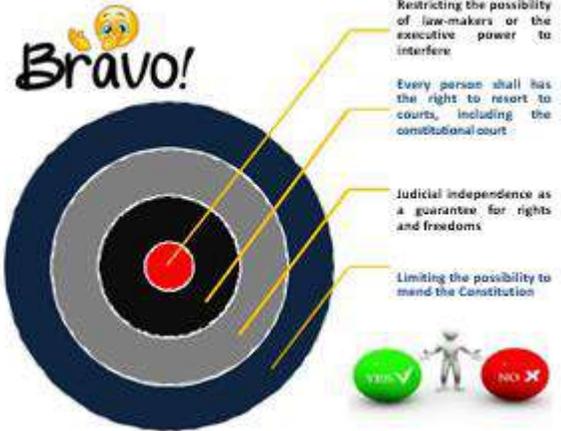
rights



What a Constitution must contain to ensure its implementation and fulfillment?



The reality of international practices reveals that many women's constitutional rights **قوانين** "link on paper;" they are frozen or desolated by restricting texts. In any times the situation is even worse because **القضاء** n's capability to defend their rights is desolated, either by complicated judicial **القضاء** or because reaching constitutional courts as the highest judicial authorities is restricted by texts and conditions that are designed in a way which limits their accessibility, especially by women.



Restricting the possibility of law-makers or the executive power to interfere



1- Preventing legislation which restricts rights



German constitution, Article 19:

1. "Insofar as, under this Basic Law, a basic right may be restricted by or pursuant to a law, **such** law must apply generally and not merely to a single case. In addition, the law must specify the basic rights affected and the Article in which it appears.
2. In no case may the essence of a basic right be affected."



Portuguese constitution, Article 42:

1. "Intellectual, artistic and scientific creation shall not be restricted."

2- Regulating “State of Emergency”

1 Place restrictions and controls on the authority that declares a state of emergency.



2 Place limitations on the military or civil regime that assumes responsibility during the validity of the state of emergency.



3 Provide legal & juridical guarantees enabling the need for duration, scope, implementation of state of emergency to be challenged before courts, with redress.

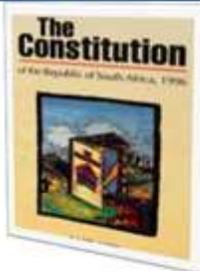


A. Place restrictions and controls on the authority that declares a state of emergency



- South African constitution, Article 37:
 1. A state of emergency may be declared only in terms of an **Act of Parliament**, and only when—
 - a. The life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and,
 - b. The declaration is necessary to restore peace and order.
 2. A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only—
 - a. **Prospectively**; and
 - b. For no more than **21 days** from the date of the declaration, unless the National Assembly resolves to extend the **declaration**. (---)

B. Place limitations on the military or civil regime that assumes responsibility during the validity of the state of emergency



- South African constitution, Article 37:
 - (5) No Act of Parliament that **authorises** a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration, may permit or **authorise**:
 - (a) **Incumbent** on the state, or any person, in respect of any unlawful act...

C. Provide legal and juridical guarantees enabling the need for scope and duration, and implementation of the state of emergency to be challenged before courts, with redress



- Kenyan constitution, Article 58:
 - (5) The Supreme Court may decide on the validity of:
 - (a) a declaration of a state of emergency;
 - (b) any extension of a declaration of a state of emergency; and
 - (c) any legislation enacted, or other **action** taken, in consequence of a declaration of a **state** of emergency.

Right to resort to courts, including the Constitutional Court

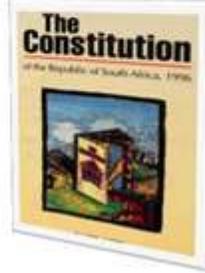
Ecuadorian Constitution
Art. 161

- The Office of the Attorney for the Defense of the People is an autonomous body of the Judicial Branch, aimed at guaranteeing full and equal access to justice by persons who, because of their situation of vulnerability or economic, social, or cultural status, cannot hire legal services for the protection of their rights.
- The Office of the Attorney for the Defense of the People shall provide technical, timely, effective and free-of-charge legal services to support and legally advise the rights of persons in all matters and institutions...

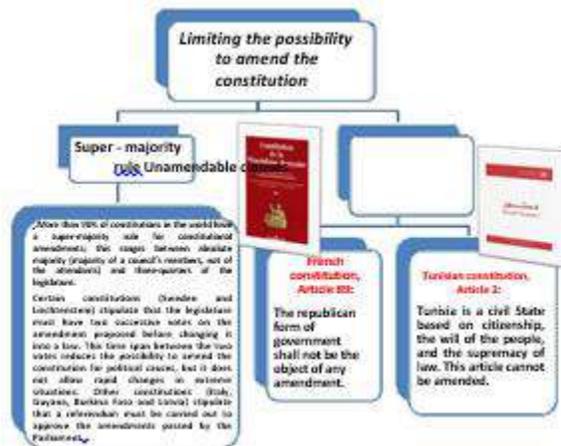
Venezuelan Constitution
Art. 28

- Everyone has the right to access the organs comprising the justice system for the purpose of enforcing his or her rights and interests, including those of a collective or diffuse nature to the effective protection of the aforementioned and to obtain the corresponding prompt decision.
- The State guarantees justice that is free of charge, accessible, impartial, suitable, transparent, autonomous, independent, responsible, equitable and expeditious, without undue delays, superfluous formalities or useless reinstating.

Judicial independence as a guarantee for rights and freedoms



- South African constitution, Article 165:
 - (1) The judicial authority of the Republic is vested in the courts.
 - (2) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.
 - (3) No person or organ of state may interfere with the functioning of the courts...



WARNING

IMPORTANT

Not a priority !!
Why? and When?





Building an Inclusive, Gender-Sensitive Constitution: A Syrian Path Towards Democracy

High Level Conference
30 May – 1 June 2016
Hotel Metropole, Brussels



This project is funded by the European Union



Engendering the constitution-making process

ABC for a Gender Sensitive Constitution

Brussels, 30 May 2016

Dr Silvia Suteu
Researcher and
Associate Director for Research Engagement



Edinburgh Centre for
Constitutional Law



Why a gender-sensitive process?

- A matter of fairness and equality
- A model for future political interactions
- More likely to result in a more inclusive constitution
- More likely to be sustainable
- Complying with international obligations

Gender-sensitive process: Key moments

- **Before drafting**
 - peace negotiations
 - negotiations for an interim constitution
- **During drafting**
 - Draft-writing by constituent assembly or other body
 - civic education, awareness raising, and public consultations
- **During ratification**
 - in the constituent assembly/the parliament/other decision-making body
- **After ratification**
 - implementing legislation
 - monitoring the enforcement of the constitution, including by courts

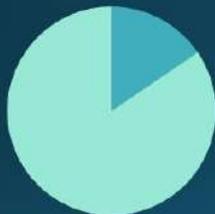
Options for post-conflict constitution-making

- Peace agreements
 - Peace agreement which includes final constitution
Bosnia and Herzegovina (1995)
 - Peace agreement that includes interim constitution
Rwanda (1993), Democratic Republic of the Congo (2003)
 - Amendments of existing constitutions, whether preceded or not by peace agreements
Liberia (2011), Sierra Leone (forthcoming)
- Interim arrangements
 - Peace agreements that include/represent interim arrangements
Cambodia (1991), Afghanistan (1993), Liberia (2003)
 - Interim arrangements separate from peace agreements
Angola (1992), East Timor (2002), Yemen (2011)
- Permanent constitutions
 - Interim constitutions separate from peace agreements
Somalia (2004), Sudan (2005), Nepal (2007), South Sudan (2011) etc.

Source: International IDEA, *Interim Constitutions: Peacekeeping and Democracy-building Tools*, Oct 2015

Peace agreements and interim constitutions

Peace agreements



- 18% of peace agreements concluded between 1990-2015 reference 'women'
- On the rise following adoption of UN Security Council Resolution 1325 (from 11% before Resolution to 27% after)

Interim constitutions



- 75% of 30 interim constitutions analyzed include references to women and gender

Sources: Christine Bell, "Text and Context: Evaluating Peace Agreements for their 'Gender Perspective'", *Political Settlements Research Programme*, Oct 2015 and International IDEA, *Interim Constitutions: Peacekeeping and Democracy-building Tools*, Oct 2015.

Interim constitutions: Examples

South Africa: Constitutional Principles, Interim Constitution 1993

I. The Constitution of South Africa shall provide for the establishment of one sovereign state, a common South African citizenship and a democratic system of government committed to achieving **equality between men and women** and people of all races.

III. The Constitution shall prohibit racial, **gender** and all other forms of discrimination and shall promote racial and gender equality and national unity.

V. The legal system shall ensure the equality of all before the law and an equitable legal process. Equality before the law includes laws, programmes or activities that have as their object the amelioration of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, colour or **gender**.

Interim constitutions: Examples

Afghanistan, Agreement on Provisional Arrangements 2001 (‘Bonn Agreement’)

III.A.3) 3) The Chairman, the Vice Chairmen and other members of the Interim Administration have been selected...on the basis of professional competence and personal integrity..., with due regard to the ethnic, geographic and religious composition of Afghanistan **and to the importance of the participation of women**.

IV. 2) [...] The Special Independent Commission will ensure that due attention is paid to the representation in the Emergency Loya Jirga [‘Grand Assembly’] of a **significant number of women** as well as all other segments of the Afghan population.

Interim constitutions: Examples

South Sudan interim constitution, 2011

Preamble: Committed to establishing a decentralized democratic multi-party system of governance in which power shall be peacefully transferred and to upholding values of human dignity and **equal rights and duties of men and women...**

Among the rights explicitly provided for in the constitution:

- Participation in public life, including gender quotas in the executive and legislative
- 'Substantial representation' of women in the judiciary
- Property and inheritance rights

National Constitutional Conference to draft permanent constitution will specifically have to include women's organizations

Gender-sensitive process: During drafting

Inside the drafting body

- Membership selection
- Rules of procedure
- Expertise available
- Facilities available

Outside the drafting body

- Civic education and awareness raising
- Public consultations

Gender-sensitive process: Ratification



Tunisian National Constitutional Assembly vote on new constitution 2014



Kenya popular referendum on new constitution 2010

Source: BBC

After ratification: Examples of implementation mechanisms

- Adopting an annex in the constitution dealing with transitional matters
- Adopting an annex containing a list of legislative and other steps necessary for implementation and deadlines for action
- Creating an independent commission with responsibility for the supervision and implementation of the constitution
- Adopting a constitutional provision that principles should be implemented by executive authorities so far as possible, even if no legislation has been passed

Source: *Interpeace, Constitution-making and Reform: Options for the Process, 2011*

After ratification: Examples of implementation mechanisms *(continued)*

- Adopting a provision that courts should be able to give orders within the same framework
- Empowering civil society to participate in the implementation and mobilization of the constitution
- Making the implementation of certain principles a condition, e.g., for the assumption of specified powers by the executive or the legislature

Source: Interpeace, *Constitution-making and Reform: Options for the Process*, 2011

Gender-sensitive process: Strategies

Building coalitions, alliances, and networks	Strategic advocacy	Strategic lobbying and boycotts
<p>Building broad-based and representative women's coalitions already before constitutional drafting begins and having them influence the constitution making process both formally and informally</p> <p>Building local networks</p> <p>Building international solidarity and networks</p>	<p>Advocating for women's rights as democratic rights</p>	<p>Strategic lobbying of influential actors</p>
<p>Building alliances with marginalised groups</p> <p>Building alliances with broader human rights groups, trade unions and other groups</p>	<p>Advocating for women's rights as an international obligation of the state</p>	<p>Boycotts of elections, legislative sessions, public functions etc.</p>

Source: EFI, *ABC for a Gender Sensitive Constitution*, 2016

Gender-sensitive process: Conclusions

- The constitution-making process is an opportunity
- Engendering constitution-making begins *now*
- Concrete tools are available for engendering the constitution-making process at every stage
- Tested strategies and comparative lessons learned can guide and inspire those committed to engendering constitution-making

Further resources

- ABC for a Gender Sensitive Constitution, IFE-EFI <http://www.efi-ife.org/>
- Other constitution-making handbooks
 - International IDEA <http://www.idea.int/>
 - Interpeace <http://www.interpeace.org/>
 - Democracy Reporting International <http://www.democracy-reporting.org/>
- Political Settlements Programme, University of Edinburgh <http://www.politicalsettlements.org/>
 - Database on Women and Peace Agreements
- Academic literature
 - Susan H. Williams, ed., *Constituting Equality*, Cambridge University press, 2009
 - Helen Irving, *Gender and the Constitution*, Cambridge University Press, 2008
 - Georgina Wayland, *Engendering Transitions*, Oxford University Press, 2007
 - Alexandra Dobrowolsky and Vivien Hart, eds., *Women Making Constitutions*, Palgrave Macmillan, 2003

Thank you!

Silvia Suteu
s.suteu@sms.ed.ac.uk

The Edinburgh Centre for Constitutional Law
School of Law
University of Edinburgh
Old College, South Bridge
Edinburgh EH8 9YL
United Kingdom

The Role of Civil Society in Constitution-Making during Transitional Periods

The Tunisian Experience

Dr. Salsabil Kelibi - Constitutional law professor, University Tunis

1. The Timeframe and Constitution-Making

Periods of democratic transition are usually very dangerous because they open up the horizon for all possibilities. Indeed, if a democratic transition relies on the re-establishment of the social contract in both of its constituents – governance and the nature of the political system, and the societal model to be established – the common belief of most activists and influencers in the transition period is that all possibilities and choices will be posited and that the rebuilding process will start from scratch.

This belief can pose a threat, as first it can justify compromising between all possibilities, as well as give the impression that the social body invested in this democratic transition has no past, history, or previous gains to support and build on.

Such was the case in Tunisia, following the revolution of 17 December – 14 January 2011, when a number of political parties pursued, within the framework of participation in the constitutive path, the aim of destroying the gains of the independent state, especially in the fields of women's rights and the family law, considering – in complete disregard of the historical and societal accumulation and the values it was built upon – the dispensing of everything inherited from the old regime, institutionally and legally, an absolute necessity.

All of which informs us that social gains in the fields of freedoms, equality, and non-discrimination are under constant threat, especially in turbulent political climates and during crises any society could face.

2. The Political Framework and the Constitution-Making Process

Democratic transition can happen in two different ways. Either the transition is initiated and led by the existing authority, which independently decides to democratize governance, after facing a social backlash in the shape of protests which differ in size or importance, or pressure from the international community, or both, which forces the government to enter a period of political reform while being the main actor – and such was the case in Morocco, which resulted in re-drafting the constitution on 29 July 2011. Or, the transition is initiated democratically by political activists who are elected in a direct, independent, and secret manner through general elections characterized by transparency and plurality and the actual representation of the people, followed by the eradication or removal of the existing government – as was the case in the Tunisian and Egyptian revolutions of 2011.

In the latter case, organizing elections to allow people to choose the political parties who will lead the democratic transition is a political adventure whose outcomes are unexpected in terms of which parties will gain power due to it, since societies in political transition are societies which have been oppressed and governed by undemocratic regimes that didn't leave any room for political activity or expression beyond its grasp or control, all resulting in

deserting political and partisan activity. Accordingly, political parties and factions that were established following the overthrow of oppressive regimes are new and not yet organic parts of society; parties which, in other words, have not yet been able to establish electoral bases in society and are still unknown to the average citizen. This opens the door for all possibilities and potential results, and allows the interference of political money to affect the political and electoral climates, which does not necessarily serve the progressive and democratic powers in society and hence may lead to the granting of power to reactionary or conservative parties and factions in decision-making during the constitutive path.

That is why civil society should be prepared for all those possibilities and ready to present alternative proposals to those which some political powers in the constituent assembly might present, which also might aim to weaken the democratic project by denying human rights and their related values, represented in equality and non-discrimination.

As for the Tunisian experience, the first step was announcing the elections for a constituent assembly responsible for drafting a new Tunisian constitution in March 2011. Elections were promptly organized in October 2011, only ten months after the fall of the oppressive regime and the escape of the former president Zine El Abidine Ben Ali, which resulted in the inability of the hundreds of different political parties that boomed at the time, from introducing themselves and informing citizens on their programs and leaderships.

And although the party that won the biggest number of seats at the time was a religious one (Ennahda Movement, a.k.a. Renaissance Party), which didn't need massive engagement to secure votes due to the depth of religious foundations in society, the second most voted party was a new intruder party (the Current of Love, previously the Popular Petition for Freedom, Justice and Development), causing a massive shock after declaration of results.

Right after announcing the final results of the elections, the Tunisian civil society realized that the efforts of the constituent assembly in drafting a new constitution could take an opposite direction to democracy and human rights. Since then, the Tunisian civil society has formed and recruited networks that closely monitored the activities of the assembly.

The Tunisian constituent assembly was elected freely, and directly; Tunisian and international observers testified to the transparency and integrity of the elections; and the constituent assembly announced from its inception, that preparing the constitution will be participatory and all members of the assembly will travel around the entire country to present the first draft in public meetings designed for this exact purpose, with representatives from the most important relevant organizations present to discuss opinions and alternative suggestions, all of which did take place.

However, many components of Tunisian civil society, especially the more progressive and democratic ones, saw in this participatory method a process prompted and controlled by the assembly, due to the lack of time and ability to allow all forms of rhetoric and discourse – including those of organizations which don't believe in democracy, freedom, or equality; in fact, including some which called for the establishment of a caliphate – to be presented, as freedom of speech and expression doesn't only allow for anti-tyrannical forms of rhetoric and discourse which affirm the universality and comprehensiveness of human rights, but also those which disagree and call for the direct opposite of those values.

That is why progressive and democratic factions in civil society organized field activities using all sorts of media, as well as protests and sit-ins in front of the constituent assembly, at every instance in which the assembly included

constitutional articles that opposed the aims of the democratic project upon which the revolution was started. An example on that was the decision pushed by the majority member of the constituent assembly – which was controlled by a religious party – to replace, in the article on equality between men and women, the phrase “equality between men and women” with “the complementarity of men and women,” which is radically different in its legal ramifications. Once word spread, a big protest was organized to inveigh against the regression of the legal status of women manifested in the adoption of the above proposition, and to announce ‘no retreat’ from the principle of equality between women and men in rights and freedoms.

The activities carried out by organizations that believed in freedom and equality between men and women forced the constituent assembly to revise its decision and to include the principal of ‘equality’ between all citizens, women and men alike, in rights and responsibilities and without discrimination before the law (chapter 21 of the Tunisian constitution) in the draft, which was ratified soon afterwards.

But this incident drew the attention of those organizations to the fact that discussing the constitutional project could open the door for all possibilities and provide leverage for political and social powers that don’t believe in women’s rights or the principle of equality. That is why those organizations assembled again and introduced a proposal endorsed by all progressive parties in the constituent assembly, which demanded the state’s protection of the gains of women’s rights movements since independence, and that those gains do not form a ceiling which will restrict women in the future, especially regarding their presence in the public sphere and their participation in politics. Hence the proposal also included a demand for State support and development of the aforementioned gains, and was later included in chapter 46 of the current Tunisian constitution.

Along the same lines, and to ensure that the State carries fully the responsibility of supporting the gains of women’s rights, civil society along with progressive, modernist parties demanded for the principle of parity between women and men in elected councils to be upheld. This was approved in the same chapter (46) of the constitution, which stated that ‘the state aims to achieve parity between women and men in elected councils’.

Tunisian civil society, in addition, played a very important role in settling the issue of the role of religion in the State. After it was agreed that the constitution will open with the same article of the 1959 constitution, which states that “Tunisia is a free, independent and sovereign state. Its religion is Islam, its language is Arabic and its type of government is the Republic.” it was also agreed that a second article will be added stating “Tunisia is a civil state based on citizenship, the will of the people, and the supremacy of law.” This caused the religious Ennahda Movement to push for the inclusion of an article under the chapter on constitution amendment, saying that a number of issues are beyond amendment including the one about Islam being the religion of the state. This proposition faced grave opposition from members of the civil society, who emphasized that the opening article of the constitution doesn’t imply that Islam is ultimately the religion of the state, since that would reduce the second article to meaninglessness, and that it instead posits that Islam is the religion of the majority of Tunisian society, and therefore the sovereignty of the Tunisian people as properly represented remains the only source of legislation. Consequently, the constituent assembly retreated from their proposition.

What can be inferred from the Tunisian experience is that the constitutive path which a State might undergo in a transitional period can be sudden (*revoking the old constitution and introducing a new one wasn’t even a topic of discussion at the beginning of the revolution and after the escape of the former president. As according to chapter 57 of the 1959 constitution, what only took place was that the Speaker of Parliament became acting president at the time, presumably until another president is elected within 60 days of presidential vacancy.* It was the Tunisian

people, however, who exerted pressure to abandon this approach and to go into a constitutive stage, which is why in every case a society enters a transitional period they must be prepared to manage or at least monitor it. Civil societies must therefore have a clear visualization of the desired political system, especially the model of society is support. Civil societies must also have clear propositions that ensure the implementation of equality and non-discrimination, as well as secularism which is the best guarantor of equality and freedoms of conscience and belief.

Offering those clear alternatives endorsed by wide segments and networks of society can counter elected political powers represented in the constituent assembly, which society might elect to be responsible for the constitution-making process, who may turn to be disapproving of the values of democracy. Or they might only utilize its procedural aspects like in organizing elections and using voting for decision making, which in turn will result in adopting the will of the majority, but without embracing the tangible aspects of democracy. These aspects include the universality and comprehensiveness of human rights which deem democracy a system under which the majority rules indeed but one that also ensures the rights of the other, i.e. the rights of minorities and opposition, as well as the equal right of all components of society in discussing public affairs and to jointly participate.