

## **Workshop on Syria's Constitutional Options Under U.N. SC Resolution 2254 Jan. 26-29, 2016**

The workshop, which brought together 29 Syrian academics, lawyers and activists from Damascus and abroad, and across political divides, was organized by The Carter Center in partnership with the Syrian Civil Coalition, the U.N. Economic and Social Council for West Asia, Noref and swisspeace. This was the 12<sup>th</sup> workshop since June 2013 in the context of the Center's Options for Syria's Transition project. Unlike previous occasions, this workshop was limited to Syrian participants and did not include international experts and diplomatic representatives.

U.N. SC Resolution 2254, the Geneva Communiqué of June 2012 and the Vienna Communiqué of November 2015, call for an “inclusive transitional governing body with full executive powers,” interpreted by the Syrian opposition and its supporters to mean President Assad must relinquish power from the outset of the transition or early in the transition. The regime and its supporters interpret this clause to mean at most a power-sharing arrangement for the transitional period. SC Resolution 2254 also calls for a new constitution to be developed within 18 months and internationally supervised elections to be held under the new constitution. However, Resolution 2254 is silent about the constitutional arrangements required for the 18-month transitional period until a new constitution is developed and approved.

The Beirut workshop addressed the lacuna in the SC Resolution and the preceding two communiqués – what is meant by “inclusive transitional governing body with full executive powers,” and what constitutional and legislative changes are necessary for the transitional period to be able to implement the SC mandate? The participants agreed that, if the current constitutional order is kept unchanged and the transitional “governing body with full executive powers” is left on its own without checks and balances, the transitional powers are likely to be abused and the transition is likely to fail. The group agreed that, at the very least, some of the 23 constitutional articles granting the president unchecked powers must be amended, and more than 20 emergency decrees repealed, as well as emergency security courts abolished.

Preferably, a declaration of supra-constitutional principles would be adopted to ensure that transitional Syria is set on a new course, and those principles must apply to those who would be mandated to develop the longer-term constitution. Two other options were discussed. Some participants urged that instead of amending the current constitution, Syria's 1950 constitution could serve as an interim constitution for the 18-month transition period. Others urged that an entirely new constitution could be developed for the interim transition period. Both options were dismissed as unrealistic.

The workshop participants agreed that the constitutional declaration of principles should ideally address the following main categories of concerns (the meeting focusing on the issues underlined):

1. Supremacy of principles over current constitution and legislation in case of contradictory provisions, binding on all state organs – must restate international human rights obligations of Syria, gender consideration throughout.
2. Nature of state – sovereignty, territorial integrity; unitary or federal state (Kurdish demands); level of decentralization.
3. Purpose of transition period: end violence, heal wounds of the war (account for disappeared), return the displaced, release political detainees, draft a new constitution in line with these principles, organize free/fair elections under new constitution.
4. Fundamental rights, freedoms, and liberties, including freedom of assembly, association, thought, conscience, culture of human rights.
5. Equal rights (including gender equality), concept of citizenship (diversity of Syria's citizens must be respected and protected).
6. The role of religion, separation of state and religion.
7. State institutions must be preserved, including reformed and restructured security institutions; civil servants must continue in office; all must serve the interest of the state and not a political party or other grouping.
8. Separation of powers, checks and balances.
9. Accountable governance – freedom of information, access to information, transparency.
10. Independence of judiciary; the role of the Constitutional Court.
11. Free, fair, transparent elections organized by an independent election management body.
12. Economic policies, distribution of national revenues to provinces.

The group urged The Carter Center to elaborate these general categories into more comprehensive supra-constitutional principles in a new report, including under each category a listing of problematic constitutional and legislative provisions that impede those principles. The report will be developed collaboratively with the workshop's organizing partners and participants, making use of closed social media tools for remote collaboration, and meeting frequently in individual and group consultations during the months ahead, taking into account the urgency of the matter.

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