

## **SYRIA'S CONSTITUTIONAL DECLARATION AND INTERNATIONAL LAW:**

Article 12(2) as Normative Anchor  
to Guide Syria's Transitional Phase





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## 01 INTRODUCTION

The Constitutional Declaration, endorsed by President Ahmad al-Sharaa on March 13, 2025, seeks to lay a foundational legal framework for the country's governance during the transitional phase. Within this context, a Syrian future built upon rule of law and human rights demands a rigorous and principled legal interpretation and application of the Declaration, in accordance with international law obligations binding on Syria.

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This legal paper does not purport to offer a comprehensive, article-by-article exegesis of the Declaration. Rather, it clarifies the key normative obligations binding upon Syria arising from its ratifications of core international human rights treaties and customary international law, and to align those obligations with the principles enshrined in the Declaration itself.

In the current Syrian context, institutional and legal frameworks remain at best, underdeveloped, or fragmented; at worst, infringing on human rights. International law serves a crucial gap-filling and guiding role, and provides standards against which domestic law and governance can be evaluated, and improved. Therefore, ratified human rights treaties and other sources of international law can provide both substantive content and procedural safeguards that can be used to guide legal development, interpret rights expansively, and ensure coherence with Syria's international obligations.

Such a reading is justified by Article 12(2) which provides that international treaties ratified by Syria constitute an integral part of the Declaration, making international law a normative anchor within the Declaration.

### Article 12(2)



*“All rights and freedoms stipulated in international human rights treaties, charters and agreements ratified by the Syrian Arab Republic are considered an integral part of this Constitutional Declaration.”*

In practical terms, the integration of international law through Article 12(2) means that the Declaration must be interpreted in a manner consistent with treaty obligations binding on Syria. By doing so, Article 12(2) can offer reference to a principled framework through which ambiguities and inconsistencies within the Declaration can be resolved. For example, where the text grants expansive executive powers vis-à-vis the judiciary, or permits restriction on rights and freedoms, international human rights law provides clear criteria to hold accountable and monitor government actions.

Accordingly, the interpretative approach taken in this paper - grounded in international law standards - is legally required under the terms of the Declaration itself, with Article 12(2) clarifying where international law standards and binding obligations over Syria lie.

As Syria moves to complement the Declaration with further national legislation, Article 12(2) will need to maintain its normative purpose also within future legal and institutional reforms, serving as guidance to ensure coherence between domestic law and Syria's obligations under international law. Similarly, Article 12(2) will be particularly important to monitor that the exercise of presidential and executive powers remain firmly circumscribed by these international standards.

## AIM AND RECOMMENDED USE OF THE PAPER

This paper advocates for a systematic and cohesive reading of the Declaration vis-à-vis international law obligations as formally acknowledged by Article 12(2). Its objective is to illuminate the international legal standards that must inform the Declaration's interpretation and implementation. It also argues for an interpretative approach that considers the Declaration as a unified legal text rather than a disjointed compilation of standalone articles. By adopting an expansive reading, this paper aims to draw attention to latent contradictions and areas of legal ambiguity that could obstruct the effective protection and promotion of human rights across areas, from over-expansive executive powers, independence of the judiciary and restrictive approach to human rights protection.

In doing so, it addresses three central themes which function as cornerstone for Syria's transition from Assadist practices to a rule of law-based system:



**the protection and guarantees of  
human rights and fundamental  
freedoms**



**rule of law and the fair, equitable  
and independent administration  
of justice**



**truth, justice and remedy and  
guarantees of non-recurrence  
within the transitional justice  
framework**

Syrian human rights defenders should engage with the Declaration as a legal framework that can be strategically used to advocate for the enforcement of victims' rights, legal safeguards and human rights protection. Where the text is concerning, vague, or silent—such as on guarantees of non-recurrence, judicial independence, restriction on human rights or the limitations of executive power—human rights defenders should leverage international legal standards to push for progressive application. In doing so, the Declaration should be treated as an instrument to be shaped and challenged to promote accountability, protect fundamental freedoms, and contribute to the long-term reconstruction of a rights-based legal and institutional order in Syria.

Accordingly, this paper can serve as a resource to support efforts to reconstruct a Syrian legal order anchored in accountability, rule of law and human rights protection and guarantees. Specifically, it can be used as:

01

**An interpretative reference point**

for assessing the Constitutional Declaration's provisions, their application and any alleged violations, in a manner consistent with Syria's binding international legal obligations.

02

**A foundational tool for raising awareness**

to understand and engage with the interaction between international law and the Declaration, by offering practical entry points for a rights-based engagement with the new transitional legal framework, including new domestic legislation and government policies.

03

**A potential roadmap**

to identify normative gaps, implementation risks and opportunities to embed human rights protection and rule of law within the Declaration. It supports efforts to contest improper applications and violations of the Declaration and advocate for both immediate and long-term reforms in the context of transitional justice and broader legal reforms.

## 02 HUMAN RIGHTS PROTECTIONS AND GUARANTEES

**Article 12(2)** of the Declaration provides the two fundamental principles related to human rights protection and the fundamental rights of citizens.



**First**, it provides that the state protects human rights and guarantees the freedoms of citizens;

**Second**, that the international conventions and other recognised treaties ratified by Syria are considered an indivisible part of the constitutional declaration.

The consecration of ratified international conventions as part of the Declaration makes the current ratified conventions key legal instruments. For this reason, the International Covenant on Civil and Political Rights (ICCPR) is now even more central to the understanding of Syria's new legal framework, as it is the main treaty dedicated to civil and political rights as seen between Articles 13 and 22. Other treaties are also relevant, such as but not limited to the International Covenant on Economic, Social and Cultural Rights (CESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

## a. Equality and Non-Discrimination as Foundational Protection of Human Rights in the New Syria (Article 10)

**Article 10** of the Declaration provides that “citizens are equal before the law in rights and obligation, without discrimination in terms of ethnicity, religion, gender or lineage.”

This implies that no provision of the Declaration should result in direct or indirect discrimination in accordance with international law standards. This applies to all provisions that clarify human rights protected by the Declaration, as well as those referring to the official language of the Syrian Arab Republic, the religion of the President and the reference to Islamic jurisprudence being the primary source of legislation - which may directly contravene Article 10.

Indeed, beyond reference to international law obligations, the Declaration asserts that Islamic jurisprudence constitutes the principal source of legislation. While it is unclear how this will be considered in practice, alongside other provisions of the Declaration and the presumed incorporation of international human rights norms; once again, international human rights standards can provide a lens of interpretation to ensure coherence with international law and its binding obligations over Syria.

Under international law, non-discrimination is a fundamental element of all major civil and political rights and is present in all key human rights conventions, along with equality before the law and equal protection. Article 2(1) of the ICCPR requires States to respect and uphold the rights recognized in the Covenant for all individuals within its territory and jurisdiction, without distinction based on race, color, sex, language, religion, political or other opinions, national or social origin, property, birth, or any other status. Similar rights are found in Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women. On this point, the Human Rights Committee notes that the term "discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference.”<sup>1</sup>

Additionally, Article 26 of the ICCPR guarantees not only equality before the law and equal legal protection, but also, prohibits discrimination and ensures all individuals receive equal and effective protection against discrimination on any grounds. According to the Committee, Article 26 of the ICCPR specifically prohibits both legal and factual discrimination in any area governed and safeguarded by public authorities. Beyond the protection of all individuals from discrimination, the Human Rights Committee emphasizes that the principle of equality may sometimes require States Parties to implement affirmative measures to reduce or eliminate conditions that lead to or sustain discrimination prohibited by the Covenant.<sup>2</sup>



### Article 10 of the Declaration

*States that citizens are equal before the law in rights and obligation, without discrimination in terms of ethnicity, religion, gender or lineage.*

### Article 2(1) of the ICCPR

*Requires States to respect and uphold the rights recognized in the Covenant for all individuals*

### Article 1 of CEDAW

*Clarifies prohibition of discrimination against women, and framework of full equality between men and women*

### Article 26 of the ICCPR

*Prohibits discrimination and ensures all individuals receive equal and effective protection against discrimination on any grounds.*

1-Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 26 (1994), para. 7.

2- Ibid. para 10.



## b. Ensuring Adherence to International Law Standards

### (Articles 13-22)

**Articles 13 to 22** of the Declaration serve as the foundation for identifying the fundamental rights it seeks to protect. These provisions reflect core international human rights, encompassing essential civil, political, social and economic rights. Among them are: the prohibition of torture and enforced disappearance (Article 18(1)); freedom of opinion, expression, and press (Article 13(1)); political participation and work of associations and unions (Article 14); private life (Article 13 (2)); and property (Article 16); freedom of movement, (Article 13); right to work, (Article 15); and women's, (Article 21) and children's rights, (Article 22).

However, certain fundamental rights are notably absent from the Declaration, such as the right to privacy and the right to peaceful assembly - both of which constitute core civil and political rights protected by Articles 17(1) and 21 of the ICCPR, respectively.<sup>3</sup> The absence of Article 20 of the ICCPR (prohibiting advocacy of racial, religious or national hatred) is particularly significant, as its constitutional incorporation could have served as a critical safeguard for the protection of human rights. Other rights are addressed only in limited or incomplete manner. For instance, Article 21, concerning the status of women, may fall short of international legal standards. Under instruments such as the CEDAW, States are required to ensure women's full and equal enjoyment of all human rights and fundamental freedoms - regardless of marital status and on a basis of full equality with men - in the political, economic, social, cultural, civil or any other field.<sup>4</sup> Additionally, Article 3 of the Declaration recognises the right to freedom of religion and belief; however, it falls short to adapt to Article 18 of the ICCPR and its non-derogable nature, which contradicts the justification of public order present in Article 3 of the Declaration. These examples underscore the critical role of international law, through Article 12(2) in filling normative gaps, guiding the interpretation of vague or underdeveloped provisions, and ensuring that human rights are fully respected and protected—even where the Constitutional Declaration is silent, ambiguous, or insufficiently articulated.



#### Article 17(1) of ICCPR

*Protects from unlawful or arbitrary incursions into privacy, home, family and correspondence*

#### Article 18 of ICCPR

*Recognises right to freedom of conscience, religious belief and its manifestation without restrictions*

#### Article 21 of ICCPR

*Recognises freedom of assembly as fundamental human rights for public expression of one's views and opinions and indispensable in a democratic society*

Additionally, while the Declaration recognises several key human rights, their effective protection can only be judged when implemented— an issue of ongoing concern in light of serious reports of arbitrary detention, torture and enforced disappearance in contravention of the Declaration. Additionally, effective promotion of such rights will also depend on the adoption of clear, detailed and enforceable domestic legislation. For example, enforced disappearance is a complex and continuing crime that will require the enactment of national criminal legislation that also formally recognizes the right to the truth under national legislation. Crucially, Article 12(2) must be understood as extending beyond the interpretation of the Declaration itself, and also to be used to ensure that (1) future national legislation is developed in a manner consistent with the broader body of international law and human rights jurisprudence and (2) ongoing abuses are monitored, remedied and prevented in accordance with the Declaration, and further supported by international law standards

3-The HRC Committee provides that: "The right of peaceful assembly protects the non-violent gathering by persons for specific purposes, principally expressive ones. It constitutes an individual right that is exercised collectively. Inherent to the right is thus an associative element"

4-Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

## c. Interpreting Restrictions to Human Rights Protections and Guarantees (Articles 23 and 41)

While the Declaration recognises several rights, it also dedicates many exceptions where those rights can be altered. Indeed, the Declaration also stipulates a series of derogations, limitations (Article 23) and emergencies (Article 41(2)) where those rights can be found reduced.



### Article 23:

*“The State shall protect the rights and freedoms set forth in this Chapter, and they shall be exercised in accordance with the law. Their exercise may be subject to limitations that constitute necessary measures for national security, territorial integrity, public safety, the protection of public order and the prevention of crime, or the protection of public health or morals.”*



### Article 41(2):

*“If a serious and immediate danger arises that threatens national unity or the integrity and independence of the homeland or hinders state institutions from carrying out their constitutional duties, the President of the Republic may declare a state of emergency, partially or completely, for a maximum period of three months in a statement to the people after the approval of the National Security Council and consultation with the Speaker of the People’s Assembly and the President of the Constitutional Court. It shall not be extended for a second time except after the approval of the People’s Assembly.”*

Within this context, the ICCPR and its application under international law should be seen as a major source of law to understand how those rights shall be implemented and what are the derogations applicable. Most importantly, it is important to note that under international human rights law, no restrictions or limitations should result in the total erosion of rights, but rather a simple limitation in their exercise, which should not lead to affecting the overall meaning of the right.<sup>5</sup> Under international law, the derogations to rights are limited to the following criteria:



### Necessity

Necessity means that every legislation or measure adopted should be conditioned to the achievement of an objective: one that still should find a legal basis in national legislation, in line with international standards.<sup>6</sup> The passed legislation would have to aim at achieving a permissible objective under norms edicted by law.



### Proportionality

As to the principle of proportionality, the use of any limitation on rights present in the Covenant must be restricted to a scope of a permissible objective within a legal framework and be strictly necessary to achieve a certain goal. This means that proportionality should only limit rights initially granted by law, and not lead to their total erosion.

<sup>5</sup>-Siracusa Principles, para. 2; and Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights, Human Rights: A Uniting Framework, UN Doc E/CN.4/2002/18 (2002), Annex entitled Proposals for “further guidance” for the submission of reports pursuant to paragraph 6 of Security Council resolution 1373 (2001), para. 4(c), (d), (g) and (h).

<sup>6</sup>-Siracusa Principles, para. 10(b) and (c).





**Temporality**

Derogations of the ICCPR should always be limited in time; therefore, the restoration of the derogated rights - due to any circumstances - is the predominant objective.<sup>7</sup>



**Legality**

For derogations of rights to be lawfully implemented, two main requirements are needed: a public emergency in which the life of the nation is threatened and a state of emergency officially proclaimed. This is fundamental for the respect of the principle of legality, which requires for derogations to be based on publicly accessible and understood legislation.

Additionally, any limitations or derogations to the rights conferred must be exempt from discrimination,<sup>8</sup> in some instances, treating people differently according to differences in situations can be applicable; however, for any distinctive application of a measure, there needs to be an objective and a reasonable justification.<sup>9</sup> The principle of non-discrimination applies to the implementation of all rights, whether these are related to the dignity of the person, liberty, security, equality before the law, courts and due process.<sup>10</sup>

This principle is also reflected in the way public morals are regulated under international law. Indeed, while it is accepted that public morals can be a justification for derogations on certain rights, it requires the fulfilment of the requirements above. Furthermore, the Human Rights Committee has also noted that: “the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations... for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition”<sup>11</sup>. The Committee therefore notes that limitations “must be understood in the light of the universality of human rights and the principle of non-discrimination”.<sup>12</sup>

Finally, the ICCPR recognises certain rights that cannot find derogations or limitations according to international law. These rights touch upon civil and political rights, both present in the Declaration and the ICCPR. Some of these rights are stipulated in Article 4(2) of the ICCPR, as non-derogable rights; they include, the right to life (Article 6 of the ICCPR), the right not to be subjected to torture (Article 7 of the ICCPR), but also Articles 11, 15, 16 (recognition of any person before the law) and 18 (freedom of conscience, religious belief and its manifestation) of the ICCPR.<sup>13</sup> Furthermore, according to the Human Rights Committee, the list of non-derogable rights found under Article 4(2) is non exhaustive, indeed, according to the Committee, for instance, the procedural safeguards related to judicial guarantees should never find derogations when they can be linked to rights already mentioned as non-derogable under Article 4(2).<sup>14</sup> Those rights cannot find derogation, even during a time of state emergency.



#### Article 6 of the ICCPR

*Stipulates the right to life*

#### Article 7 of the ICCPR

*Stipulates the right not to be subjected to torture*

#### Article 16 of the ICCPR

*Stipulates recognition of a person before the law as foundational to the enjoyment of all Covenant rights, and inseparable from recognition of inherent dignity of human person*

#### Article 18 of the ICCPR

*Recognises right to freedom of conscience, religious belief and its manifestation without restrictions*

7-Human Rights Committee, General Comment 29, para. 1

8-Siracusa Principles, para. 9.

9-Human Rights Committee, General Comment 18 (Non-discrimination), para. 13.

10-Report of the Committee on the Elimination of Racial Discrimination, Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 18 (A/57/18 (2002)), chap. XI, sect. C, Statement on racial discrimination and measures to combat terrorism, paras. 5–6.

11-Human Rights Committee, General Comment No. 34.

12-Human Rights Committee, General Comment No. 34, note 4, para 32.

13-Article 11 (imprisonment for failure to perform a contractual obligation); 15 (no punishment without the law); 16 (recognition before the law); and 18 (manifestation of religious belief).

14-Human Rights Committee, General Comment 29 (States of Emergency) (hereafter General Comment 29), para. 15

## 03 RULE OF LAW AND FAIR, EQUITABLE AND INDEPENDENT ADMINISTRATION OF JUSTICE

Rule of law and fair, equitable administration of justice are fundamental pillars enshrined by international human rights treaties, which should serve as a compass guiding the realization of Syria's international obligations. The Declaration outlines a set of guiding principles that can shape the future of rule of law and right to litigation in Syria. Chief among these are independence of the judiciary, which the Supreme Judicial Council is tasked with guaranteeing. The Declaration also provides that the establishment of all courts must occur by virtue of law and explicitly prohibits the creation of exceptional courts. The interpretation of such provisions need, nevertheless, to be firmly rooted in international standards concerning rule of law and fair trial, particularly as enshrined by Article 14 of the ICCPR – thereby ensuring that the judiciary is fully empowered and equipped to fulfill its constitutional function as an effective check on the exercise of power

### a. Ensuring Institutional Guarantees for Judicial Independence (Article 43)

**Article 43(2)** of the Declaration affirms the independence of the judiciary within the duties of the Supreme Judicial Council. Nevertheless, such affirmation needs to be accompanied by robust guarantees that ensure and protect true judicial independence. This, additionally, necessitates the adoption of legal amendments or the enactment of new laws governing the judiciary in a manner that is consistent with the Declaration and international standards on judicial independence and separation of powers — whether in regard to the presidency and structure of the Supreme Judicial Council or the composition of its membership.



#### Article 43 (2) of the Declaration

*Recognises the independence of the judiciary within the duties of the Supreme Judicial Council.*

#### Article 14 of the ICCPR

*Enshrines the independence of courts and the judiciary and their protection from interference.*

In this regard, unlike the 2012 Constitution, the Constitutional Declaration does not designate the President of the Republic as the head of the Supreme Judicial Council. This represents alignment with international standards, particularly Article 14 of the ICCPR, which emphasizes the independence of courts and the judiciary and their protection from interference. Nevertheless, it is particularly important considering that the current Judicial Authority Law — Legislative Decree No. 98 of 1963, still in force — stipulates in Article 65 that the members of the Supreme Judicial Council include the President of the Republic, who is represented by the Minister of Justice or the Deputy Minister of Justice, in addition to the President of the Court of Cassation and its two most senior deputies. This composition is in direct and explicit conflict with both the principles of the Declaration and international standards, and therefore necessitates amendment along with other related provisions.

Additionally, the Constitutional Declaration does not specify the mechanism for forming the Supreme Judicial Council, nor does it prohibit the legislature from granting such authority to the executive branch. Accordingly, and from the perspective of international standards on the rule of law and in line with the Declaration, the law must clearly define the structure and formation of the Council in order to ensure compliance with the principle of separation of powers, the rule of law, and the independence and impartiality of the judiciary as a constitutional principle consistent with international standards.

## **b.Ensuring Effective Exercise of Judicial Oversight Powers by the Constitutional Court (Article 47)**

The Constitutional Court bears the significant responsibility of safeguarding the supreme law of the land and must be endowed with exceptional powers and guarantees enshrined in the Declaration. It is the judicial body tasked with reviewing the constitutionality of acts and practices by other branches of government and with reinforcing constitutional principles across legislation, executive actions, and practical implementation.

The Declaration dissolved the existing Constitutional Court, which was established during the rule of the former regime, and established a new court composed of seven members of integrity, competence, and experience, appointed by the President of the Republic. The court's work is to be regulated by a special law, which will need to align with international law standards pursuant to Article 12(2) of the Declaration. It would have been preferable for the Declaration to define the nature of the Constitutional Court itself, thereby conferring constitutional immunity (e.g., stating that it is an independent judicial body), and to explicitly outline its powers within the Declaration in accordance with international law standards. This would protect the court's structure from being altered by a simple legislative majority, which is insufficient for an institution of such paramount importance.

Ensuring that the Constitutional Court will be able to effectively exercise its judicial oversight powers is of further importance in relation to the work of the newly-established Supreme Fatwa Council which, according to one of its members, has a mandate to monitor laws and other decisions issued by public officials and to correct those that violate Islamic jurisprudence, including administrative and judicial matters. This raises the potential for jurisdictional overlap or conflict between the Constitutional Court and the Supreme Fatwa Council.

While the Constitutional Court is responsible for reviewing the constitutionality of laws and decisions — determining whether they comply with the Constitution — the Constitutional Declaration identifies Islamic jurisprudence as the primary source of legislation. Accordingly, the determination of whether a law contravenes Islamic jurisprudence, as a constitutional source of law, arguably falls within the jurisdiction of the Constitutional Court. It is therefore essential to ensure that the Constitutional Court maintains exclusive power over post-enactment judicial or constitutional review, and remain fully independent in safeguarding constitutional order, in accordance with international law standards.

## **c. Defining Legal Exceptionalism within the Declaration vis-à-vis Executive Overreach (Article 44, and Articles 39(1) and 42(3))**

**Article 44** of the Declaration abolishes the establishment of exceptional courts. Restricting the establishment of courts to those created by law, and prohibiting the formation of exceptional courts, constitutes a critical safeguard for ensuring fair trials and upholding the rule of law. However, the Declaration is silent on what constitutes an “exceptional court” — whether it refers to the method of establishment, the purpose, the temporal nature, or the procedural rules and practices before such courts.

Similarly, there is no clear classification of what constitutes “exceptional legislation”: is it defined by its intent, the process of enactment, or the powers conferred under it? A notable example is the military judiciary, which is formally part of the ordinary judicial system and not classified as exceptional. Nevertheless, the Military Trials Procedure Law violates key international law standards (see section below for more details).

Therefore, based on international standards, the term “exceptional courts,” whose creation is prohibited, should refer to those that are established outside the normal judicial framework, but also to those that operate under restrictive and exceptional procedures that fail to meet the guarantees of fair trial as required by international law. Simultaneously, it is imperative to re-examine and reform the procedures followed in ordinary courts to eliminate and amend any practices that contradict fair trial guarantees or impose undue restrictions on those rights.

A key issue related to the concept of “exceptionality” may result from the over-expansive powers on the President of the Republic to propose and object laws, and overall in the implementation of its powers. Indeed, Article 39(1) of the Declaration provides that the President has the right to propose laws. Furthermore, Article 42(3), which outlines the powers of the executive branch, includes among the President's powers the preparation of draft laws to be proposed to the People’s Assembly.



#### **Article 39 (1) of the Declaration**

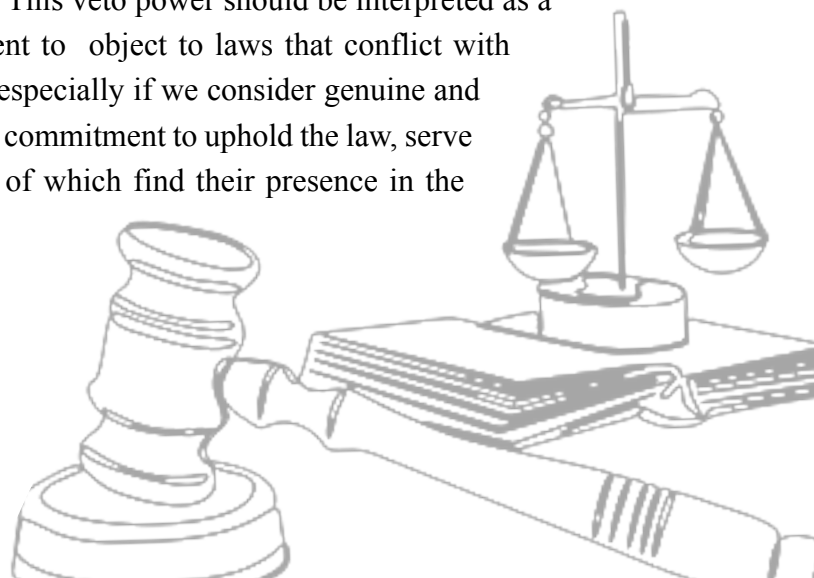
*Stipulates that the President has the right to propose laws.*

#### **Articles 42 (3) of the Declaration**

*Outlines the powers of the executive branch*

In this context, there is a legitimate concern that laws drafted by the executive may include provisions that do not conform to fair trial standards, compromise the independence of the judiciary, or diminish the authority of one branch in favor of another – in addition to infringing of other human rights. Therefore, it is imperative that specialized committees within the People’s Assembly exercise prior oversight in reviewing such proposals to ensure alignment with constitutional principles. In parallel, the Constitutional Court must conduct a posterior constitutional review to assess the conformity of such laws — particularly regarding the guarantees of the rule of law — with the Declaration, and by default with international law standards highlighted in this section.

The Declaration also grants the President of the Republic the power to issue a reasoned objection to laws passed by the People’s Assembly. However, if the Assembly re-approves the law with a two-thirds majority, the President is obligated to promulgate it. This veto power should be interpreted as a positive and constructive tool, enabling the President to object to laws that conflict with international standards related to the rule of law — especially if we consider genuine and honest the presidential oath which includes a solemn commitment to uphold the law, serve the interests of the people, and achieve justice, all of which find their presence in the international treaties ratified by Syria.



## d. Ensuring Enforceability of Fair Trial Guarantees

### (Article 45, and Articles 23 and 41)

The right to fair trial is a fundamental principle protected by numerous international treaties. These instruments often allow states to impose restrictions in times of public emergency, where public order is at stake. **Articles 23 and 41** of the Declaration grant the authority to restrict rights enumerated in Section Two of the Declaration — including those related to litigation and due process found in Article 17 — under such circumstances.

This raises essential questions about how the right to fair trial and associated guarantees may be lawfully restricted under Articles 23 or 41 for purposes such as protecting public order, safety. In the Syrian context, and consistent with its international treaty obligations, Article 23 of the Declaration must be interpreted as prohibiting restrictions on the guarantees enshrined in Article 17 except in narrowly defined cases in accordance with international law standards. In this regard, the Arab Charter on Human Rights provides an unequivocal safeguard for the right to a fair trial, establishing that, even in the context of exceptional or emergency circumstances, States Parties are under a binding obligation not to restrict or suspend fair trial guarantees.<sup>15</sup> This includes both substantive rights—such as access to legal representation and the right to be heard by an independent tribunal—and procedural safeguards that underpin the administration of justice.



#### Articles 23, 41 of the Declaration

*Grant the authority to restrict rights enumerated in Section Two of the Declaration under such circumstances.*

#### Article 4(2) of the Arab Charter on Human Rights

*Prohibits derogations of fair trial guarantees even in circumstances of exceptional emergency situations*

#### Article 4 of the ICCPR

*Prohibits derogations from specific rights and procedural judicial guarantees linked to such rights*

The Constitutional Court, as the ultimate legal authority safeguarding constitutional rights, must be empowered to interpret and clarify the terms used in Article 23 and in any subsequent legislation that seeks to impose such restrictions. It should determine what constitutes a legitimate public order, safety, or morality concern, and under what conditions the executive may restrict rights and freedoms — in accordance with international law. Any such referral must come from the executive branch or the judiciary and must be accompanied by justifications substantiating the necessity of invoking Article 23. Moreover, the Constitutional Court should have the authority to identify which rights and freedoms may be subject to restriction, and to what extent.

Another provision that may limit rights to fair trial is the jurisdiction of the military judiciary. Indeed, Military Procedures Law undermines the rights to due process, defense, and appeal. It grants military personnel immunity from prosecution unless prior authorization is obtained from military superiors — even in cases of personal complaints. While the ICCPR does not explicitly prohibit the trial of civilians before military or special courts, it requires that such courts adhere to all fair trial guarantees under Article 14. The military or special character of a court must not limit or alter these safeguards. The Human Rights Committee has also noted that the trial of civilians before military courts may present serious problems in ensuring impartial, fair, and independent justice. As such, all necessary steps must be taken to ensure that trials conducted in such settings provide the full protections of Article 14.

<sup>15</sup>See, Article 4(2): "In exceptional emergency situations, it is not permissible to derogate from the following articles: Articles 5, 8, 9, 10, 13, 14(6), 15, 18, 19, 20, 22, 27, 28, 29, and 30. Nor is it permissible to suspend the judicial guarantees necessary to protect these rights."; see Article 13: "Everyone has the right to a fair trial that affords adequate guarantees before a competent, independent, and impartial court established by law, in the face of any criminal charge or for determining his rights or obligations. Each State Party shall ensure legal aid for those financially unable to defend their rights."



## 04 TRANSITIONAL JUSTICE AND RIGHT TO REMEDY BEYOND TRANSITIONAL JUSTICE FRAMEWORK

Human rights violations give rise to clear legal obligations for States that derive from the general duty to respect and guarantee human rights and are contained in treaty provisions and other secondary sources of international law. Within this context, **Article 12(2)** of the Declaration reaffirms the Syrian State's duty not only to protect and respect human rights, but also to actively fulfil them – particularly the obligation to provide effective remedies in case of human rights violations, a core principle under Article 2(3) of the ICCPR. This obligation serves as a key guideline to ensure an interpretation and implementation of provisions related to, or linked to, transitional justice in Syria in accordance with international law obligations, to which the Syrian state is bound to.



### Article 2(3) of ICCPR

*Binds States to respect and ensure human rights, including by providing access to an effective remedy for violations of human rights*

### a. Non-Discrimination in Access to Justice and Remedy (Article 10)

When looking at the codification of transitional justice in the Declaration from the lens of international law it is important for this reading not to be confined to **Articles 48 and 49**, which are the only provisions explicitly referencing transitional justice. Rather, these articles must be read in light of other provisions – particularly those guaranteeing equality before the law, non-discrimination, and international law obligations – to ensure a cohesive and legally coherent interpretation. This approach aligns with international guidance, including that of the UN Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, which emphasises the need for transitional justice frameworks to be grounded in broader human rights protections.<sup>16</sup>



### Article 10 of the Declaration

*Ensures equality of all citizens in terms of rights without discrimination*

### Article 2(1) of ICCPR

*Ensures rights recognised in the Covenant to that all individuals within State's territory and subject to its jurisdiction - without distinction of any kind*

### Article 26 of ICCPR

*Enshrines a general right to equality before the law and, without discrimination, to the equal protection of the law*

In accordance with this reading, **Article 10** of the Declaration, which guarantees equality of all citizens in terms of rights without discrimination is key in providing further details to the implementation of Article 49. This protection reflects a cornerstone principle of international human rights law, enshrined in Articles 2 and 26 of the ICCPR which requires not only formal equality but also substantive equality in the enjoyment and exercise of rights, including access to justice, truth and remedy. In this regard, the right to equal access to justice includes equal recognition of all victims; fair and impartial investigations of all alleged violations; inclusive reparation and truth-seeking efforts, and equal participation of all groups.

The transitional justice provisions in the Declaration must be therefore interpreted in light of the guarantee of non-discrimination in Article 10. A discriminatory or selective approach to transitional justice would contravene both the Constitutional Declaration and Syria's international obligations. Therefore, Article 10 should be treated as an interpretative lens through which Article 49 is read and applied, ensuring that transitional justice mechanisms are inclusive and accessible to all, without discrimination.

<sup>16</sup>-Human Rights Council, International legal standards underpinning the pillars of transitional justice - Report of the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, UN Doc A/HRC/54/24, July 2023



## b. Normative Invitation to Advocate for Victims' Rights in Expansive Manner (Article 49(1))

The transitional justice provision in **Article 49(1)** represents an initial framework to guide the future transitional justice efforts in the country. Article 49(1) may offer a legal entry point for the development of comprehensive transitional justice - if approached in accordance with international law obligations. Its language overall reflects core State obligations under international law, including the duty to investigate and prosecute violations, the obligation to fulfil the right to truth, and the duty to provide effective remedy to victims and survivors. Importantly, the explicit reference to both victims and survivors aligns with international human rights standards. This is supported by the requirement of adopting a victim-centered approach, where the right of participation serves as foundation and requirement for the effective exercise of the rights to truth, justice and remedy.



### Article 49(1)

*"A transitional justice commission shall be established, adopting effective, consultative, victim-centered mechanisms to determine accountability mechanisms, the right to know the truth, and redress for victims and survivors, in addition to honoring martyrs."*

Within this context, the full text of Article 49 must be read as an integrated whole, with Article 49(1) providing the overarching mandate and Articles 49(2) and 49(3) offering specific measures. However, the implementation of these provisions must remain consistent with the broad guarantees of 49(1), which de facto guarantee access to remedy to all victims and survivors. Overall, the provision is broad and has an open-ended formulation. This encompasses not only substantive obligations—including the duty to provide an effective remedy, the duty to prevent violations, and the duty to investigate alleged abuses—but also procedural obligations. In particular, it requires adherence to the duty to ensure public participation in political affairs and the right to participation, both of which necessitate an inclusive, participatory approach by the Commission.

Such an approach must be fully consistent with applicable international legal standards, ensuring that the process of transitional justice is Syrian-owned in its entirety, by remaining firmly grounded in Syria's binding international legal obligations. In this light, it is critical that the Transitional Justice Commission must be established in full compliance with international law standards, ensuring its independence, impartiality, transparency, accountability and inclusive participation – all of which are essential to guarantee legitimacy, effectiveness and the protection of victims' rights. Thus, Article 49 should be viewed by Syrian human rights defenders, particularly civil society organizations and legal practitioners, as a normative invitation - one that Syrian justice actors should seize to push for a principled interpretation of the Article in a way that centres the entirety of state obligations and victims' rights.

## c. Absence of Reference to Guarantees of Non-Recurrence and Linkage to **Article 9**

**Article 49(1)** does provide a broad framework for transitional justice. However, it does not contain an explicit reference to guarantees of non-recurrence, which constitute a central pillar of transitional justice, – linking the commitment to addressing past crimes with present obligations and a forward-looking approach to strengthening the rule of law and safeguarding human rights. Several human rights treaties provisions refer to guarantees of non-recurrence obligations, including the ICCPR, and CAT.<sup>17</sup>

The absence of a direct reference to guarantees of non-recurrence is a notable gap in the transitional justice architecture of the Declaration. Nevertheless, **Article 9** of the Declaration refers to the armed forces' duty to act “in accordance with the rule of law and the protection of human rights”. While not directly embedded within the transitional justice provisions, this Article should serve as a key entry point to operationalise guarantees of non-recurrence, particularly in relation to reforming and ensuring compliance of armed forces with human rights obligations; an issue of significant importance following ongoing human rights abuses by State agents across Syria.



To address this current omission, Syrian authorities must take a holistic and interpretive approach to Article 9 of the Constitution, and leverage this article as a constitutional foundation for initiating or advocating for structural reform across the military and security sectors, in a proactive and reactive manner to past and ongoing serious human rights violations. At the same, the transitional justice framework under Article 49 must be interpreted to include these measures as well, in order to be in accordance with international law obligations. Syrian human rights defenders should advocate for a framework that links remedy for victims and survivors for past abuses with structural transformation to address ongoing abuses and avoid future ones.



### **Article 9 of the Declaration**

*Refer to the armed forces' duty to act “in accordance with the rule of law and the protection of human rights*

## d. Need to Ensure Non Selective Approach to Prosecution of International Crimes (**Article 49(2)**)

**Article 49(2)** affirms that the principle of non-retroactivity shall not apply to crimes against humanity, war crimes, genocide and all crimes committed by the Syrian regime. International law is unequivocal on this point: under customary international law, the non-retroactivity principle does not apply to crimes jus cogens (ex. genocide, crimes against humanity, war crimes, international crimes such as torture and enforced disappearance). This principle is reaffirmed by Article 15(2) of the ICCPR.<sup>18</sup>

17- See for example, Convention against Torture, Article 2; Human Rights Committee, General Comment No. 31: The nature of the general legal obligation imposed on State Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13, May 2004

18-ICCPR, Article 15(2): “Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by the community of nations.”



#### Article 49(2)

*"War crimes, crimes against humanity, genocide, and all crimes committed by the former regime are excluded from the principle of non-retroactivity of laws"*

While this provision aligns in part with international law – which recognises that the prohibition on retroactive criminal law does not apply to international crimes – there is potentially selective phrasing. Indeed, it could be interpreted to suggest that only crimes committed by the Syrian regime are exempt from the non-retroactivity principle. Such a reading would be inconsistent with the principle of equal accountability under international law and would result in a failure by the State to provide effective remedies to all victims, and in its duty to investigate and prosecute.

International law does not allow for the selective prosecution of international crimes. We therefore argue that the text should be read as referring to war crimes, crimes against humanity and genocide committed by all perpetrators and all crimes, whether national or international, committed by the Syrian regime. Legislation implementing Article 49(2) should avoid ambiguous language and provide legal clarity that upholds international norms and avoids political misuse.

## e. Prohibition of Amnesty for International Crimes (Article 41)

Article 49(2) has de facto opened the door for a possible selective approach to the duty to investigate and prosecute of the Syrian Arab Republic. Another Article to address in this regard is **Article 41** that provides the Syrian President with the right to provide special amnesties and pardons. Nevertheless, such powers must be exercised in accordance with Syria's international obligations.



#### Article 41

*Provides the Syrian President with the right to provide special amnesties and pardons.*

International law affirms that States cannot use amnesties to shield perpetrators of international crimes from accountability. Doing so would constitute a breach of Syria's obligations to investigate, prosecute and punish serious violations, as mandated under the CAT (Article 7), the ICCPR (Articles 2 and 14) and customary international law. Amnesties for serious international crimes also violate the rights of truth, justice and effective remedy of victims. Nevertheless, in some specific cases, amnesties may be viewed as legitimate where they are primarily designed to require specific individual offenders to engage with measures to ensure truth, accountability and reparations.

Overall, any attempt to utilise presidential amnesties as blanket impunity tools to favour individuals allegedly responsible for human rights in disregard of victims' rights will constitute a direct violation of international law obligations of the Syrian Arab Republic and be in contradiction with Article 12(2). Any future legal framework governing amnesties must include judicial oversight mechanisms to review their legality vis-à-vis international law and victims' rights.

## f. Respect of Freedom of Expression to Ensure Truth and Historical Narrative (Article 49(3))

Lastly, Article 49(3) provides that:



*“the state criminalizes the glorification of the former Assad regime and its symbols, the denial or praising of its crimes, justifying or downplaying them, all of which are crimes punishable by law.”*

While this provision is intended to prevent the resurgence of impunity and revisionism, it raises some concerns regarding the right to freedom of expression as recognised by Article 13(1) and protected under Article 19 of the ICCPR.<sup>19</sup> First and foremost, it is important to clarify that Article 19(1) requires protection of the right to hold opinions without interference; the ICCPR permits no exception or restriction to this right.<sup>20</sup> Limitations on freedom of expression are instead permitted under Article 19(3) but must meet strict criteria: any restriction must be provided by law, serve a legitimate aim and be necessary and proportionate in a democratic society. These restrictions must not be overly broad, vague or used to repress political dissent, critical discourse or legitimate public debate about historical or political issues.<sup>21</sup>



### Article 19(1) of ICCPR

*Recognises right to hold opinion without interference*

### Article 19 (2) of ICCPR

*Stipulates right to freedom of expression*

### Article 20 of ICCPR

*Mandates that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law*

The broad language of Article 49(3) which criminalises not only glorification but also “downplaying” of crimes associated with the former regime lacks sufficient precision and risks being interpreted or applied in overly broad manner, leading to unnecessary or disproportionate interference with freedom of expression.<sup>22</sup> While States may criminalise incitement to violence or hate speech under Article 20 of the ICCPR, this does not extend to blanket bans on political or historical discourse, which are overall incompatible with the obligations under Article 19.<sup>23</sup> Moreover, criminal penalties for vague terms like “downplaying” could easily be used to stifle inquiries, journalist reporting or transitional justice dialogue aimed at acknowledging and understanding competing truths and all experiences of the whole Syrian society – thus undermining transitional justice and reconciliation efforts.

Based on the above, Article 49(3) should be narrowly interpreted and implemented in a manner consistent with Syria’s obligations under Article 19 of the ICCPR. It should not criminalise legitimate historic debate, including by actors involved in transitional justice process;<sup>24</sup> and any implementing legislation must include clear definitions, procedural safeguards and proportionality requirements.

Most importantly, Article 49(3) should be read in light of Article 10 of the Declaration on non-discrimination and equality, to ensure that restrictions on freedom of expression are not applied in a politically or ideologically selective manner. Moreover, it would have been more appropriate to accompany Article 49(3) with an explicit criminalisation of any form of advocacy of national, religious or racial hatred that constitutes incitement to violence, discrimination or hostility as pursuant to Article 20 of the ICCPR. This would have allowed for a more comprehensive protection of all citizens across Syrian society, rather than limiting the criminalisation of specific form of advocacy to Assad's regime crimes.

19-Human Rights Committee, General Comment No 34: Article 19: Freedom of Opinion and Expression, UN Doc CCPR/C/GC/34, September 2011

20-Ibid, para.9

21-Ibid, paras. 22-36

22-Ibid, para. 46

23-Ibid, para.49. See, “The Covenant does not permit general prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events. Restrictions on the right of freedom of opinion should never be imposed and, with regard to freedom of expression, they should not beyond what is permitted in paragraph 3 and required under Article 20”

24-Human Rights Council, Memorialization processes in the context of serious violations of human rights and international humanitarian law: the fifth pillar of transitional justice - Report of the Special Rapporteur on truth, justice, reparation and guarantees of non-recurrence, UN Doc A/HRC/45/45, July 2020

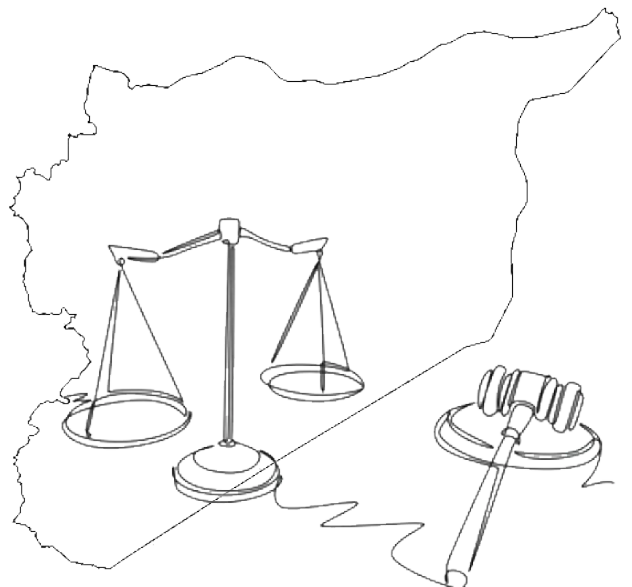
## 05 CONCLUSION

In the transitional context of Syria, the Constitutional Declaration serves as a foundational - albeit interim - instrument for governance and protection of rights. Its ability to function as a meaningful rights-protective framework during this phase, however, is contingent on how its provisions are interpreted and applied. In this regard, Article 12(2) establishes a clear mandate for alignment with Syria's international law obligations. It requires that all rights and freedoms under the Declaration be interpreted in good faith and in compliance with international human rights standards. This interpretation is not merely aspirational, but it is a binding legal requirement vis a vis international law obligations on Syria.

In the short term, it will be crucial to ensure that the substantive provisions included in the present Constitutional Declaration and its gaps are interpreted and addressed in accordance with international law standards. Additionally, given the need to operationalise and clarify certain provisions through the enactment of specific laws, we argue that Article 12(2) must be understood as extending beyond the interpretation of the Declaration itself. It should also set a legal standard that should guide the development of all legislation enacted under this transitional legal framework, with international treaty obligations functioning as normative benchmarks for legislative drafting. Similarly, the exercise of executive powers during the transitional period must be strictly aligned with international legal standards, ensuring that any actions taken by the executive are subject to the same normative benchmarks and respect the overarching principles of legality, accountability and the protection of fundamental rights.

In the longer-term, as Syria moves towards drafting a permanent constitution, it is imperative to acknowledge that legitimacy of a Constitutional instrument not only originates from its substantive content but also from the integrity of the process itself. The development and enactment of the current Declaration was not inclusive, participatory nor transparent. Accordingly, international legal standards must guide not only the interpretation of the current Constitutional Declaration and the drafting of its successor, but also the future process through which a permanent constitution will be developed, ensuring the right to participation of society into political affairs.

Overall, the Constitutional Declaration, while transitional, may offer an opportunity to set a trajectory to rule of law, human rights guarantees and transitional justice. However, this purpose will only succeed if its interpretation and application remains anchored in international law and its eventual successor is forged through a participatory, rights-based constitutional process.





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