

# Who is drafting The constitution



Position paper on  
the process of drafting  
a new Syrian constitution



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### about FFHR-Birati

The Fraternity Foundation for Human Rights ( FFHR – Birati ) a non – governmental and independent organization founded in 2013. registered in accordance with German law for non-profit associations ( Birati Foundation for human rights e.V ) FFHR seeks to promote political freedom and focuses its effort on promoting and protecting the rights of Syrian people to freedom of peaceful assembly and of association in Syria and in the neighbouring countries. It also endeavours to raise awareness of political and civil freedoms to help Syrian communities recover from the effects of the conflict.

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### Aims and goals of the paper

In order to bridge the gap left by the communication between the participants in the special Syria talks and the components of the Syrian society all mechanisms to ensure that the information on the process of drafting the Constitution, which is the Syrians right all in the access and circulation and processed under the hardships imposed by the country's conditions and the inability of citizens to learn to write their constitution and in any form will be their future and their homeland.



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Fraternity Foundation for Human Rights (FFHR), follows with great attention the consultations and deliberations of the Constitutional Committee under the umbrella of the United Nations represented by its envoy to Syria pursuant to Security Council resolution 2254. FFHR hopes that the UN Envoy will pay close attention to its observations included in this paper as long as we are keen to expedite the formation of the Constitutional Committee to start its work in drafting a constitution that meets the ambitions and aspirations of Syrian people.

### **First: the way in which the Constitutional Committee is formed:**

\*Formation of a Constitutional Commission requires, first of all, renouncing the political allocation policy, and the subsequent policy and distribution of roles and portfolios to those have connection with either international or regional parties.

\*Ensuring legal and equitable representation of all elements and components of Syrian people both in Syria and in the diaspora, and ensuring maximum involvement in that process by all political and social groups, trade union, professionals, religious, cultural, and all components of the Syrian state.

\*Ensuring equitable representation of women, youth, people with disabilities, and Syrians abroad.

\*The work of the Constituting Committee must be transparent and appropriate time frames for its tasks must be agreed upon. Moreover, the Committee must issue a list of its working mechanisms, including foundation, the technical secretariat of the Committee, controls and procedures of the Committee including the decision-making

process and voting mechanism within the constitutional reference and frameworks that will to assist the Committee in its work.

\*Difference in population diversity in urban and rural areas in addition to different component of age, gender, race, and ethnicity groups should be taken into account to ensure acceptable level of representation of these components and avoid imposition of one component on another and allowing all parties to participate in the constitutional process.

\*Taking into consideration participation of trade union and professional components, workers, representatives, representatives of agricultural associations and other professional associations.

\*Ensuring the involvement of representative of civil societies, particularly development and human right organisations.

\*Ensure the participation of the scientific and academic community, especially in the field of law and political science.

## **Second: Status of international conventions in the constitutional document:**

FFHR hopes that the Committee will be guided by international and regional experiences in dealing with the constitutional status of international conventions at the top of the Syrian legislative pyramid. FFHR views the constitutional legislator in Egypt, Tunisia, and Morocco as a positive achievement for the protection and promotion of human rights because the constitutional document contained recognition that human rights are protected by the State and ranked the international conventions ahead of domestic law which is reflected in enhanced protection and promotion of human rights.

## **Third: Constitutional principles to ensure the effectiveness of the rule of law:**

- o Ensuring the consolidating the principle of the rule of law and separation between legislative, executive and judicial authorities.
- o Ensuring the principle of equality and non-discrimination in all its forms in the enjoyment of rights, and guaranteeing equitable representation of women's participation.
- o Judicial oversight of the executive branch.
- o Limiting the theory of the work of state sovereignty by judicial oversight of the administration.

- o Constitutional control of the law and regulations.
- o Enshrining the supremacy of the international human rights law over the national law so that the national law will not be invoked to evade the international obligations.
- o Prevent invoking parliamentary, judicial, military or diplomatic immunity to escape legal accountability for crimes and gross violations of human rights or serious crimes under international humanitarian law.
- o Establishing controls and restrictions on imposing a state of emergency, in line with the provisions of article 4 of the International Covenant on Civil and Political Rights and ensuring that the president's power in declaring the state of emergency is subject to a parliamentary oversight.
- o Ensure legal accountability for the security and armed forces, and parliamentary oversight of their work.
- o Enshrining the right of Syrian people to hold public office and guarantee fair and free elections.
- o Ensure that all State institutions meet their commitment in respecting and promoting human rights
- o Establishment of a national human rights body for the protecting and promoting human rights that is established in accordance with the Paris Principles and enjoys independence, neutrality and impartiality.

#### **Fourth: the constitutional principles of protection of human rights:**

- o Guarantee that Syrian state respect human rights under international human rights law and universally recognized human rights standards.
- o Ensuring the right to citizenship by birth and blood.
- o Prohibition of all forms of discrimination and violence against women.
- o Ensuring State protection of the rights of the child and fair criminal treatment.
- o Ensuring State protection of the rights of people with disabilities and providing them with access.
- o Protect the rights of minorities, ensure their empowerment and respect for their cultural, religious and linguistic specificity.
- o Respect for the protection of the right to life and impose strict limitation on death penalty and ensure that the death penalty would only be applied in the most serious and heinous crimes, in preparation for the society to accept its abolition.
- o Prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and defining torture in accordance with article 1 of the convention against torture and ensure appropriate penalties for the crime of torture to ensure no impunity for perpetrators and ensure the rehabilitation and reparation of victims of torture.
- o Ensuring the existence of a law that provide witnesses and victims with protection especially in corruption and human right violations cases.
- o Ensuring the right to personal liberty and security and prohibiting arbitrary arrest and detention, and ensuring the right to appeal against detention.
- o Finding alternatives to pre-trial detention as a precautionary measure in criminal investigation, prohibition of pre-trial detention of children, and ensuring compensation in case of arbitrary pre-trial detention or in case of acquittal.
- o Adopting alternative sentencing in case of less serious crimes.
- o The provision of ensuring fair trial and the associated equality before the law, recognition of legal personality, independence of the judiciary, guarantee the right to a defence, providing legal assistance to the incapables, the right to appeal and challenging judicial decisions and the illegality of statements obtained under torture. Establishing a specialized justice system for children, providing justice facilities that consider the situation of people with disabilities.
- o Guaranteeing the right to freedom of opinion and expression, the right to information, the freedom to issue newspapers, electronic platforms and other means of expression in accordance with article 19 of the International Covenant on Civil and Political Rights.



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