

SYRIA TRACK II DIALOGUE INITIATIVE

DRAFT Framework on Interim Arrangements for Constitutional Reform and Transition

April 2017

Executive Summary

Since May 2016, TSG has convened a series of workshops focused on the question of what immediate changes to Syria's current constitutional order would be required to establish and govern a successful political transition. The meetings tackled: (i) the overall framework for constitutional reform established by UN Security Council resolution 2254; (ii) the different options for interim legal frameworks under which transitional authorities would be established and operate; (iii) the inclusion of a set of guiding or constitutional principles as part of such an interim legal framework; (iv) the nature of transitional governance and institutions to be established by an interim legal framework; and (v) the process through which such an interim legal framework could be developed and ratified.

Against the backdrop of deadlocked Intra-Syrian Talks in Geneva, participants also developed recommendations for revisions to the timeframe and format of negotiations, designed to give more confidence to Syrian parties and their international backers in working toward a political settlement as outlined in the Geneva Communiqué (2012) and UN Security Council resolution 2254 (2015). Their belief is that a more gradual and inclusive approach to shaping and implementing a political transition, with firm backing of key international powers – particularly the United States and Russia – will be key to creating the dynamics that could help deliver both greater stability and meaningful political change.

These workshops brought together hundreds of influential Syrians from a range of political, military, legal, civil society, human rights, and business backgrounds. Together, they represented a broad spectrum of political beliefs and reflected the diversity of Syria's social components.

Key proposals agreed by participants include the following:

An interim constitutional declaration

- As implied in Security Council resolution 2254, an interim legal or constitutional framework would be required establish a new governance, ahead of the drafting of a permanent constitution. Rather than relying on amendments to the 2012 constitution, **an interim constitutional declaration should be agreed by Syrians. This declaration would establish and govern a transition period, defining and conferring legitimacy on transitional institutions.** It should draw heavily on both the 1950 and 2012 constitutions.
- **An interim constitutional declaration should contain a statement of guiding principles related to the character of the state and the protection of rights and freedoms.** These principles should constitute **legitimate and binding provisions for the transition period**, while deferring contentious issues to be debated during a national dialogue process or the drafting of a permanent constitution.
- **A longer-term process for drafting a permanent constitution (after a political agreement) must be inclusive, transparent, and Syrian-led, such that it consolidates and supports peacebuilding efforts.** Such a process may require between 18 months and three years.

A two-phased transition

- An overall process for peacebuilding and political transition should be composed of two phases. **A time-bound “pre-transition phase” of roughly one year should be adopted and endorsed**

through a Security Council resolution. During this period, a **renewed process of negotiation, driven by a broadened Syrian-Syrian dialogue**, would be established, alongside the consolidation of a ceasefire and implementation of confidence-building measures.

- While the powers of **the current governance would remain essentially unchanged in this period, initial reforms related to governance and the security sector – including the formation of a caretaker government – could be introduced or prepared**. Civilian stabilization initiatives would also be increased, and preparations made for economic recovery and reconstruction during a transition.
- At the end of this pre-transition period, there would be **a full transfer of powers, through a legitimate mechanism enacted by the president of Syria, to a transitional governing body** marking the start of a transition period.

A broadened Syrian-Syrian dialogue

- During this pre-transition phase – and in order to move beyond the deadlocked regime-opposition negotiations in Geneva – **a broadened Syrian-Syrian dialogue should be launched to allow for a discussion on the vision for a future Syrian state that includes all strands of Syrian society**. This dialogue would be mandated with central elements of the negotiations process, including the **elaboration of an interim constitutional declaration and the design and formation of transitional authorities and bodies**.
- Such a Syrian-Syrian dialogue must have **strong international backing and facilitation – building on the UN-led talks in Geneva – and must be as inclusive as possible, with the participation of Syrian independents alongside government and opposition representatives**. Selection of participants should be through a Syrian-led mechanism, under the oversight and with the support of the UN.

This document comprises the main points of consensus that have emerged from this series of workshops, as agreed by Syrian participants. Section A includes recommendations on the parameters for a process of constitutional reform. Section B sets out the process for the development of an interim constitutional declaration and the establishment of transitional authorities. An Annex to the document outlines elements of an interim constitutional declaration, indicating possible areas of consensus on the shape of transitional institutions, how they relate to each other, and the content of a statement of guiding principles, as agreed by participants in the Syria Track II Dialogue Initiative.

Please note that some of the ideas outlined in this paper still require further debate and elaboration.

A. Parameters for a process of constitutional reform

1. Security Council resolution 2254 (2015) called for, “within the target of six months,” the establishment of a “credible, inclusive and non-sectarian governance” and setting a “schedule and process for drafting a new constitution,” to be completed within 18 months and followed by “free and fair elections.” A summary of the round of Intra-Syrian Talks in Geneva ending 27 April 2016 made clear that the negotiating parties agree that Syria requires a new constitution, that its drafting should be overseen by the transitional governance, and that it should be endorsed through a popular referendum.

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2. During a transition on this model, an interim legal or constitutional framework would be needed to establish the new governance while preventing a constitutional vacuum. Rather than relying on an amended version of either the 2012 or 1950 constitution, **Syrians should agree on an interim constitutional declaration that would establish and govern the transition period, defining and conferring legitimacy on transitional institutions and processes.** This is seen as the best option for arriving at a negotiated settlement that could set a new political direction for the state and build support among a broad spectrum of Syrians for a stable and peaceful transition.
3. The options of using either the 1950 constitution or amending the 2012 constitution are rejected as being as unsuitable for governing a stable transition period; the former, because it is based on a parliamentary system and is seen by many as outdated in its provisions on rights and freedoms, the latter because it is too closely associated with the current regime and would require extensive amendments to the many provisions that concentrate power in the office of the presidency. **The interim constitutional declaration, though, should borrow heavily from the 1950 constitution and the 2012 constitution, drawing on the positive elements in each and channeling their symbolism in a way that could help build broad support for the transition.**
4. Proceeding too quickly with the drafting of a permanent constitution, while the country remains disunited and in a state of conflict, will risk sowing further divisions among Syrians and of distorting the results of such a process. An 18-month time frame, as called for by UNSCR 2254, may not allow for the sort of consultative and deliberative process that is needed to support a peaceful transition. **Rather, a time-bound process of 18 months to three years should be adopted to help ensure support for or compliance with the final outcomes of political negotiations. Any longer-term process for constitutional reform must be inclusive, transparent, and Syrian-led, such that it consolidates and supports peacebuilding efforts.**

Further discussion is required on elaborating a roadmap for the drafting of a permanent constitution for Syria, particularly on deciding whether the schedule and process for constitution drafting should be negotiated through a political agreement and determined in the interim constitutional declaration, or decided through a national dialogue process during the transition itself.

B. Process for the development of an interim constitutional declaration and the establishment of transitional authorities

1. In the current political environment, prospects for reaching a negotiated settlement between the regime and the opposition that would include the adoption of an interim constitutional declaration are extremely remote, as demonstrated at the latest Intra-Syrian Talks in Geneva and in the failures in implementation of even basic confidence building and humanitarian measures as outlined in UNSCR 2254.
2. In this context, establishing a new negotiation process driven by **a broadened Syrian-Syrian dialogue that is inclusive of the ‘civilian center ground’ – those openly aligned with neither the opposition nor the regime – could be a key step in breaking the current deadlock** and helping to build momentum for and protect a political transition and process of national reconciliation. Such a process will require strong international backing and facilitation, including by the United Nations, but must be driven by Syrian leadership and participation.

3. It is proposed to **adopt a “pre-transition phase” of roughly one year, through which to create the environment for a meaningful transition by establishing a sustainable ceasefire, implementing confidence-building measures as set forth in UNSCR 2254 and launching a broadened Syrian-Syrian dialogue.** As part of this initiative, the following steps should be implemented. It is critical that they are not implemented partially or selectively, and that they are binding to all parties. The implementation of the measures below must take place in parallel, not in the sequence indicated below.
 - i. Adopt a ‘pre-transition’ phase [for fixed duration of *c. 12 months*] from the date a decision is taken and endorsed through a **Security Council resolution under Chapter VI, including a provision enabling the UN Security Council to impose measures under Article 42 of the UN Charter (Chapter VII), in the event of non-compliance.**¹
 - ii. This ‘pre-transition’ phase ends with the **handing of full executive and legislative powers to the institutions of a transitional governing body**, upon which a transition period begins. During the pre-transition phase the current system of governance would remain essentially unchanged, but a new, largely technocratic government [with expanded powers] could be formed to lead on initial reform measures and help create the environment of a Syrian-Syrian dialogue.
 - iii. **The transfer of powers is to be carried out through a constitutional declaration that results from the political agreement enacted by the President of the Republic**, according to which the 2012 Constitution will be suspended, and all the President’s powers will be transferred to the transitional body (according to the mechanism for forming this body) and Parliament will be dissolved, and upon which the period of political transition begins.]²

The same **Security Council resolution stipulates that all parties should commit to:**

1. End all hostilities and the targeting of civilians (while establishing effective mechanisms for monitoring and verifying ceasefire violations and for enforcing punitive measures against violators);³
2. Release all detainees and abducted people, end the practice of arbitrary arrest, and seek information on the disappeared;
3. Lift all remaining sieges on civilians across the country;
4. Increase humanitarian aid and allow aid convoys to access all affected areas, with no exception;
5. Removal of all foreign fighters and foreign militias from all Syrian territory;

¹ Syrian participants who put forward this proposal stressed the importance of establishing clear enforcement mechanisms by which international powers would commit to uphold the process, and many called for the inclusion of provisions/mechanisms under Chapter VII. However, Syrian and international legal experts recommended adoption of a resolution under Chapter VI with a paragraph enabling the Security Council to decide, in the event of non-compliance, to impose enforcement measures under Article 42 of the UN Charter. Such measures (all short of the use of force) could include economic sanctions and travel bans on individuals; an arms embargo; the severance of diplomatic, consular, cultural and/or economic ties.

²A majority of participants supported a transfer of powers according to such a mechanism, but some disagreement remained over the timing of the President’s departure, and whether this should take place at the start or by the end of a transition phase.

³ Some participants recommended consolidating a comprehensive ceasefire through an international stabilization or peacekeeping force to oversee, monitor, and verify a ceasefire put in place, and enforce punitive measures against violators. This would be implemented in accordance with a binding UNSC resolution (see footnote 1).

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6. Countering terrorist organisations as designated by the UN, and taking measures to tackle extremism;⁴
 7. Create the economic and social conditions - including relief and stabilization projects on health, education and public services - for the return of refugees and the internally displaced people. End all enforced displacement;
 8. Allow freedom of expression and freedom of assembly.
- iv. **Launch a Syrian-Syrian dialogue that allows for a discussion on the vision for a future Syrian state, includes all strands of Syrian society, and works toward an agreement on an interim constitutional declaration and formation of transitional authorities and bodies.** Measures must be taken to ensure the representation of women in this dialogue and in any future governance structures, [perhaps through adoption of a 30 percent quota of women participants].
- v. **In the lead up to and during the Syrian-Syrian dialogue, a new technocratic or mixed (i.e. including political figures) government would work to improve the environment for a meaningful transition by enacting initial reform initiatives which will act as incentives to parties in negotiations.** These could include reform initiatives/programs in the following areas:
1. **Governance:** measures related to formally recognizing and empowering local administrations;⁵ working toward administrative reform (e.g. of the civil service) to improve competencies, establish transparency, tackle corruption, and ensure the full representation of social components; judicial reform, including providing technical assistance and expertise.
 2. **Security:** measures for improving security at the local level and preparing for initial reforms of the security apparatus during transition. These measures could include reasserting central control over pro-regime paramilitary groups and militia (particularly those most involved in criminal activity); freezing the activities of and reasserting central control over certain security agencies; redefining the mandate and function of other security agencies; and the removal of security chiefs most associated with atrocities. A consultative Security and Stabilization commission could be formed, including representatives of the government and opposition, to develop proposals on issues related to security arrangements and security governance in support of Track I process⁶
 3. **Economy:** increase civilian stabilization programs (as put forward in the London and Brussels Conferences), especially those that support social cohesion; rehabilitate or improve basic services (especially in health and education) and infrastructure; increase livelihoods opportunities; and rehabilitate abandoned agricultural areas. Initiate planning for economic recovery – with a focus on initiatives promoting peacebuilding, social reconciliation – and investments in areas most affected by the conflict⁷; devise early plans for the return of refugees and ensure their active role in the recovery process, particularly in their hometown areas. Develop measures to address the unintended impact of “unilateral disruptive measures”

⁴ A disagreement remains on which armed groups to list as terrorist entities, with some armed opposition groups arguing for a discussion that would arrive at a “Syrian definition” of terrorism before automatically labelling some armed groups as terrorist organisations.

⁵ These include the amendment and implementation of Legislative Decree 107, Syria’s Decentralization Law.

⁶ Such a commission would work at an informal (Track II level) Syrian-Syrian forum with the aim of advising and informing the Astana and Geneva tracks in order to help such processes move forward on security-related issues.

⁷ This work could be undertaken by an economic planning commission involving technocrats, engineers, economists, and other experts be formed to develop a set of more comprehensive strategies and policies for economic recovery.

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on the population.⁸ Crucially, no major reconstruction projects can be embarked upon until a political settlement is reached.

Establishing and facilitating a broadened Syrian-Syrian dialogue

4. **The UN and international community must play an essential role in supporting and legitimizing this process of Syrian-Syrian dialogue.** The dialogue must build on the UN-led Intra-Syrian Talks held in Geneva, but would fundamentally differ from that process in being driven not by negotiation between regime and opposition delegations, but by a broadened, extensive negotiation and discussion among a wider set of Syrian participants, including political and/or social figures not directly associated with either the regime or opposition.

5. **Selection of participants for this dialogue should be undertaken in a spirit of inclusiveness, focusing on criteria of integrity and competence, as well as political or social weight and influence.** Representatives of the regime, opposition, and center-ground must take part as essential participants, but individuals directly responsible for serious crimes should be excluded. A number of proposals for possible mechanisms through which this Syrian-Syrian dialogue would be organized have been discussed. All such proposals have included the following elements of commonality:
 - a) The importance of establishing a dialogue that is legitimate, representative, and approved by the majority of Syrians.
 - b) A phased selection process that would start with the establishment of a steering committee or organizing body of 20-30 Syrians with the responsibility of nominating representatives for such a dialogue, [and that these be approved by a two-thirds majority vote].
 - c) That any steering committee or organizing body for such a dialogue be formed, supported, and mandated by the United Nations.
 - d) That the United Nations play a key role in sponsoring and facilitating such a dialogue.

As set out here, these measures represent only the outline of a process, which will require further clarification and agreement on a number of points, including: the enforcement mechanisms to uphold such a proposal; the selection process for participation in the Syrian-Syrian dialogue; the use of a quota for women's participation; reconciling the position of a small number of participants who maintain that the president should retain a function for a limited period at the start of a transition, or possibly retain the presidency until 2021.

⁸ It has been stressed that these measures must be addressed to alleviate the suffering of the population and must not include any economic windfall that would directly benefit the regime itself. These measures would be undertaken in consort with a long-term economic policy supported by the international community.

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ANNEX

C. Elements of an interim constitutional declaration

The central purpose of a constitutional declaration should be to establish mechanisms for governing a transition period – clarifying the mandates of different transitional authorities – while ensuring the protection of rights and the rule of law. The content of this constitutional declaration and the shape of institutions of transitional governance are to be negotiated and agreed through the process of Syrian-Syrian dialogue referred to above.

The recommendations made below, as agreed by participants in this series of TSG dialogues, may provide some guidance on possible areas of consensus regarding key issues to be addressed.

Transitional governance institutions

- 1. It is uniformly agreed that an interim constitutional declaration must ensure a separation of powers among institutions of transitional governance – the notion of a unitary transitional authority that holds executive, legislative, and judiciary powers is roundly rejected.**
2. Following the political agreement, it is proposed that a constitutional declaration confers executive and legislative authority on a Transitional Governing Body (TGB). It is recommended, however, that the TGB’s legislative powers be limited and/or reduced over time. Such powers should be restricted to the implementation of the necessary measures for establishing and running the transition period – such as the suspension of exceptional laws and courts – while all other legislation is frozen.
3. The TGB should be composed of roughly 20-30 individuals from both the regime and opposition, as well as independents, whose **selection should be driven by the process of Syrian-Syrian dialogue referred to above**. They should be personalities of honest character, who should have expertise and technical skills required for administering the transition period and who have not committed crimes in the preceding period. Those with a criminal record, blood on their hands, or terrorist/*takfiri* affiliations should be ineligible. While technocratic credentials will be important for inclusion in the TGB, this should not prevent the inclusion of political personalities who will be critical in ensuring support for the transition. Furthermore, in order to prevent a state of deadlock and mutual veto, selection by quota (i.e. from the regime, opposition, and independents) is to be avoided.
4. The TGB should **form a technocratic caretaker government responsible for maintaining and managing state institutions and ministries**. The TGB would oversee the work of this council of ministers, and may establish committees to advise on a range of transitional issues, such as institutional reform or restructuring – including of the security apparatus – and processes of transitional justice.

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5. The TGB should **establish a joint security council** that brings together elements from the Syrian army, armed opposition groups and police services in all areas, to work toward maintaining security during the transition. Such a council should work under the oversight of civilian authorities and should be accountable to the TGB.
6. **The interim constitutional declaration must also guarantee the establishment of an independent judiciary and reformed Supreme Constitutional Court**, to be appointed by the TGB, which should be mandated to oversee the implementation of the constitutional declaration and to adjudicate on matters where the executive and legislative would be seen as overstepping.

There remains a need for more clarity on the shape of these institutions and the relationship between them. A number of further proposals have been put forward and remain under discussion, including: whether participants in the Syrian-Syrian dialogue should be ineligible as members of the TGB; the procedure for decision-making within the TGB; whether there is a need for a “presidential council” or individual leader of the TGB; whether there is a need for a national assembly or legislative body to function alongside the TGB, stemming from (or as a continuation of) the Syrian-Syrian dialogue.

Guiding Principles for the Transition

7. In order to achieve a clear break from the past, help build trust among Syrians, and set the conditions for the drafting of a permanent constitution, **any interim constitutional arrangement should contain a statement of guiding principles related to the character of the state and the protection of rights and freedoms**. Such principles should provide key headlines for the transition period while deferring contentious issues to be debated during a national dialogue process or the drafting of a permanent constitution. These principles should be built on popular consultation and backed up by regional and international guarantees, such that they constitute **legitimate and binding provisions for the transition period**.
8. Below are different categories of issues to be included in a future statement of guiding principles, as agreed by participants in the Syria Track II Dialogue Initiative.
 - i. The sovereignty and territorial integrity of the Syrian state; adoption of a democratic, pluralist, civil state; the Syrian people as the source of legislation and authority.
 - ii. Protection of fundamental rights and freedoms, including freedom of assembly, belief, association, thought and expression, as well as political rights (including as related to the formation of political parties), rights of ownership, rights to information and freedom of the media.
 - iii. Equality of rights under a state based on citizenship; gender equality; recognizing equality of and preventing discrimination among diverse components of Syrian society.
 - iv. Separation of powers, the independence of the judiciary, and ensuring the rule of law.
 - v. Civilian control of a reformed/restructured security apparatus and military, including criminalization of practices such as torture; neutrality of the security apparatus and army.

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- vi. Good governance: transparency, fighting corruption, accountability, ensuring the peaceful transfer of powers.
- 9. It is proposed that any statement of guiding principles should provide a framework and guidance for the transition phase and present a message of reassurance to all parties, including on contentious issues such as decentralization and the role of the religion and the state.**
- 10.** On the issue of decentralization, for example, it is recommended that the following formulation be adopted:
 - The establishment of a system of (administrative) decentralization with expanded powers in a gradual way (whereby the details and shape of such a system would be determined through an inclusive national dialogue process).
 - Recognition that the Syrian people are multi-cultural and multi-ethnic and that Syria is a country of citizenship which grants equal rights to all components of Syrian society.
- 11.** On the issue of the role of religion in the state, it is recommended that the following formulation be adopted:
 - The Syrian state is one of citizenship, which protects the state's (positive) neutrality toward all religious and sectarian components of Syrian society.
 - Islamic principles are among the sources of legislation, wherein this does not contradict the rights of citizenship and the personal status laws of different sects are protected.
 - Preserving the current legal framework, while abolishing all laws that obstruct the democratic transition, violate human rights, or are unjust toward a particular component of Syrian society.

Details surrounding such matters, including other disputed issues, such as the question of Arabism, for example, should be further discussed and elaborated during a future process of dialogue and/or during the drafting of a permanent constitution.