

Safe Environment Before Everything Else

WHY ELECTIONS IN SYRIA ARE ILEGITIMATE WITHOUT POLITICAL SOLUTION



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Syrian Association for
CITIZENS' DIGNITY

INTRODUCTION

The Syrian Association for Citizen's Dignity (SACD) continues to insist that a safe environment is an essential cornerstone of any political solution for the future of Syria. It is an indispensable prerequisite for fair, legitimate and inclusive elections, as well as any popular referendum on a future constitution. This vision is clearly reflected in United Nations Security Council (UNSC) Resolution 2254¹ and the underpinning documents, including the Geneva Communiqué,² although it is far from realized.

The Syrian people started their peaceful demonstrations back in 2011 with clear objectives—dignity, freedom and rights. The rights to vote and to run for office constitute a fundamental pillar of true citizenship for which Syrians strive but struggle to achieve. These rights form the foundation of a future country that will respect their fundamental human and citizenship rights.

This paper discusses the views of displaced Syrians (including internally displaced persons (IDPs), refugees, and diaspora) about future elections in the country, including presidential ballots. To be clear, this paper is **not** about the elections announced by the Syrian regime for 2021. Syrians perceive this election as an illegitimate exercise in entrenching the dictatorial rule of Bashar al-Assad. UN Special Envoy Geir Pedersen recently clarified that he only works under the framework of Resolution 2254, which requires promulgating a new constitution before elections can be held.³ Undoubtedly, securing a safe environment should precede any referendum or elections.

Instead, this paper discusses obstacles that need to be overcome for any future elections—which would follow a meaningful political agreement with strong international guarantees—to be seen as credible by the displaced Syrians. It also outlines some of the minimum conditions that need to be fulfilled in order for free and fair elections to be considered possible.

The views presented here incorporate the results of a survey of approximately 500 displaced Syrians—IDPs and refugees in Turkey, Lebanon and Europe. They also draw on previous SACD reports, three months of empirical data gathering from regime-held areas for an upcoming report, a public opinion survey of refugees and IDPs regarding elections, and continuous

¹ United Nations Security Council, Resolution 2254, December 2015, https://www.securitycouncilreport.org/atf/cf/%7B65BF99B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2254.pdf

² Final Communiqué of the Action Group on Syria, June 2012, https://peacemaker.un.org/sites/peacemaker.un.org/files/SY_120630_Final%20Communique%20of%20the%20Action%20Group%20for%20Syria.pdf

³ The UN Special Envoy for Syria remarks to the press, distributed on 29 November 2020.

engagement with displaced communities. The paper also reflects the opinions of some Syrian and non-Syrian experts on post-conflict and transitional elections in the midst of massive population displacement and systematic violations of human rights.

For the displaced Syrians, who make up the majority of the country's population before the start of the mass demonstrations in 2011, there are several insurmountable obstacles to accepting elections as possible and credible in the current circumstances. They include constitutional provisions that prohibit displaced Syrians from running for office, legal and logistical impediments that prevent a large majority of them from voting, and most significantly the absence of a safe environment in which people can stand for office or vote free of threat, intimidation and harassment. Notably, 97.2 per cent of participants in the survey conducted for this paper between September and December 2020 reported that elections will not be seen as fair and free unless the electoral process guarantees displaced people's rights to vote, and to run for office.

The paper discusses the viability of any future elections in Syria from four perspectives:

- Constitutional and legal conditions
- Security conditions
- Logistics and mechanisms
- Legitimacy

It outlines all four factors and concludes that the majority of Syrians will not perceive any elections held in the current environment to be credible; nor will they contribute to a lasting solution to the country's conflict. On the contrary, a comprehensive political agreement must guarantee the rights of displaced Syrians to freely vote and be voted for. Such an agreement must encompass a number of measures that could create a safe environment defined by the Syrians themselves, before any credible elections can take place.

CONSTITUTIONAL AND LEGAL CONDITIONS

The country's current constitutional and legal framework does not uphold displaced persons' basic rights guaranteed by the International Covenant on Civil and Political Rights (ICCPR), which governs international standards on free and fair elections.

Article 25 of the ICCPR states that:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives.*
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.*
- (c) To have access, on general terms of equality, to public service in his country.*

Adhering to this requirement represents the most basic condition for holding future elections that displaced Syrians will perceive to be legitimate. However, the current Syrian Constitution⁴ and the Elections Law give the regime the authority to approve candidates; thus, Syrians abroad—especially those displaced by the regime—will not be able to run for the presidency.

Article 84, paragraph 5 of the current Syrian Constitution states that presidential candidates must be a “resident of the Syrian Arab Republic for no less than 10 years continuously upon being nominated”. This automatically excludes some six million refugees who were forcibly displaced outside Syria. Article 85, paragraph 3 states that “the candidacy application shall not be accepted unless the applicant has acquired the support of at least 35 members of the People’s Assembly; and no member of the assembly might support more than one candidate”.

Considering the make-up of the Syrian Parliament, which is under the complete control of the regime and Assad’s Baath Party (which has a guaranteed majority) and the regime’s intimidatory behaviour, this makes it virtually impossible for any candidates perceived to be opposed to the regime to participate in the elections.

In addition, the only option for voting outside Syria under the current Elections Law⁵ is through Syrian embassies and in accordance with the registration lists approved by the regime. Although the Elections Law provides for a National Voting Registry, some local officials use registration lists but in other locations anyone with an ID can vote, which allows significant manipulation of who can vote.

Embassy voting requires a valid Syrian passport with an exit stamp, which the majority of Syria's displaced do not possess and cannot access due to prohibitively high fees for passports, lack of access to embassies or fear of being targeted by the regime staff at embassies. In addition, the vast majority of Syrians had to flee their original homes due to persecution by

⁴ Constitution of the Syrian Arab Republic, 2012,
<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/91436/106031/F-931434246/constitution2.pdf>

⁵ Law no. 5 of 2014 on General Elections,
https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=98926&p_country=SYR&p_count=376

the regime's security forces and/or the constant bombing of their residential areas and civilian infrastructure by the regime during a time when the regime lost control of most key border crossing points. All these circumstances forced Syrians to flee without an exit stamp.

Amending the legal situation to allow displaced Syrians to vote in embassies would be very difficult for many reasons. For instance, decisions by embassy and consulate staff on personal legal settlements are based on the displaced persons' security and political background and how they exited the country.

More particular cases need to be taken into consideration to find a proper solution, since this issue affects a large number of Syrians who reached voting age while in displacement and thus have not yet registered to vote; the majority of them do not have legal documentation.

If elections are held under the current constitution and election laws, the choice will be limited to voting for the current president or candidates approved by the regime, which will deny the rights guaranteed in the ICCPR as quoted above.

A number of other measures also need to be taken to ensure the right of citizens to establish political parties or organizations and to seek political or public office. This includes a fair campaign atmosphere that is free of violence and intimidation, in which parties and candidates have unimpeded access to the media and are able to freely present their views and qualifications, and all Syrians are free to discuss and debate them.

SECURITY CONDITIONS

The SACD and other Syrian and international organizations have systematically documented⁶ the ongoing violence and repression against Syrians living in regime-held areas, which began prior to the conflict, escalated during it, and continue to date, including in the "reconciliation" areas.⁷ From Dara'a to Eastern Ghouta, and from Deir Ezzor to Homs, there have been arbitrary arrests, forced disappearances, harassment, extortion, beatings and torture of people even suspected of having anti-regime sentiments; attacks and military sieges against areas seen as anti-regime continue. People are disappeared for posting a critical Facebook status or for trying to reclaim their property.

The majority of Syrians living in regime-held areas do not feel safe. In a survey of 533 people across regime-held areas conducted during summer 2020, which will be published in a report

⁶ SACD, "Vengeance, Repression and Fear: Reality Behind Assad's Promises to Displaced Syrians", October 2019, <https://syacd.org/vengeance-repression-and-fear/>

⁷ SACD, "Reconciliation Agreement in Dara'a: Insecurity, Continued Repression and Collective Punishment", July 2020, <https://syacd.org/reconciliation-agreement-in-daraa-insecurity-continued-repression-and-collective-punishment/>

slated for February 2021, approximately 67 per cent of those who returned to regime-held areas from abroad (and 51 per cent of those who had remained in regime-held areas since the beginning of the conflict) responded that they did not feel safe.

Approximately 65 per cent of those who reported not feeling safe in regime-held areas attributed this perception to the regime's security policies and the repressive grip of its security apparatus. The survey further revealed that a staggering 40 per cent of participants or their relatives were arrested previously; 19 per cent of these detentions affected Syrians who were theoretically included in the regime's amnesty laws, while 26 per cent of all detainees had signed a "reconciliation" agreement.

These numbers provide a glimpse into the harsh security conditions that constitute a huge impediment to fair and free elections. Syrians living under regime control will not be able to vote freely, particularly for opposition candidates, in these circumstances.

The security situation is made more complex by the fact that Syria is currently divided into three main areas of control: regime-held areas, opposition-controlled areas and areas controlled by the Syrian Democratic Forces. Each has different security and governance situations.

The insecurity caused by regime policies goes beyond areas under its control. The year-long military campaign in 2019–2020 against Idlib and North Aleppo caused the displacement of approximately 1.25 million civilians and the death of hundreds, while low-level but deadly attacks on civilians in Afrin, North Aleppo and Idlib in the form of car bombs and assassinations carried out by the regime and other parties continue to take place daily. These conditions make it practically impossible to hold any elections or referendums in the vast majority of the country.

In a recent SACD report on the minimum conditions for return to Syria,⁸ 73 per cent of the 1,100 displaced Syrians from across the country and abroad who were surveyed for the study stated that the most important condition for any hope of a safe and dignified return was the reform of the current regime's security apparatus. This apparatus is directly responsible for the vast majority of abuses and crimes committed against the Syrian people. It is ludicrous to believe that free and fair elections can be held either in Syria or in displacement without restructuring and reforming the regime's security apparatus. As clarified in the previous section, campaigning for a pro-opposition or anti-regime candidate in Assad-held areas (or abroad, where they can be reached by the regime's intelligence services) represents a high level of risk for candidates and their families, some of whom are still in Syria.

⁸ SACD, "We Are Syria", July 2020, <https://syacd.org/we-are-syria/>

An International Institute for Democracy and Electoral Assistance (International IDEA) report⁹ on the participation of Syrian refugees in Lebanon in the 2014 presidential elections illustrates the Assad regime's reach beyond the country's borders:

The main reasons why Syrian refugees cast their votes was due to fear of a backlash from the Syrian regime for not voting for the incumbent (Haid 2014). Al Jazeera reported that 'several opposition activists claim that officials from the Syrian Embassy have toured refugee encampments threatening that the regime would keep a record of all those who did not cast their ballots' (Attassi 2014).

Another International IDEA report¹⁰ further examined the political participation of Syrians in Lebanon:

All the Syrian respondents interviewed and surveyed indicated that they had the right to vote in their country of origin. However, only one of them—a woman who said she was obliged to vote in the 2014 elections by her ex-husband—admitted that she had actually voted: 'I was married, and my husband was Alawite and I was forced to vote for President Bashar El-Assad' (Syrian female refugee 2, Tripoli, 2017).

It is clear from these reports, from SACD's own reports and ongoing monitoring of the situation on the ground that the regime regularly intimidates displaced Syrians in displaced communities, or in embassies and consulates when Syrians cast their votes. More than 82 per cent of the refugees surveyed for this paper who expressed interest in voting reported that they would not feel safe voting in Syrian embassies and consulates.

This finding is not surprising, considering that the Syrian regime uses embassies as bases for its intelligence operations against Syrians abroad to monitor, intimidate and in some cases assassinate¹¹ dissidents. In September 2020, the Syria Justice and Accountability Centre revealed documents¹² that prove how the regime's intelligence agencies systematically monitor the activities of Syrians abroad, often punishing dissidents' families for any criticism of the regime. These documents demonstrate that host countries are unable to protect Syrian

⁹ International IDEA, "Political Participation of Refugees: Bridging the Gaps", 2018, <https://www.idea.int/sites/default/files/publications/political-participation-of-refugees-bridging-the-gaps.pdf>

¹⁰ International IDEA, "Political Participation of Refugees: The Case of Syrian Refugees in Lebanon", 2018, <https://www.idea.int/sites/default/files/publications/political-participation-of-refugees-the-case-of-syrian-refugees-in-lebanon.pdf>

¹¹ Yvonne Ridley, "Is Assad Trying to Silence Syrian Dissidents Based Overseas?" *Middle East Monitor*, 19 January 2019, <https://www.middleeastmonitor.com/20190119-is-assad-trying-to-silence-syrian-dissidents-based-overseas/>

¹² Syria Justice and Accountability Centre, "Shadows of Surveillance: Government Documents Confirm Syrian Embassies Monitored Syrians Abroad", September 2020, <https://syriaaccountability.org/updates/2020/09/24/the-shadows-of-surveillance-government-documents-confirm-syrian-embassies-monitored-syrians-abroad/>

refugees from the regime's retribution, and that embassies are being used as a key tool in this continued repression.

The ongoing repression of Syrians at home and abroad by Assad's security apparatus demonstrates that the regime is not only incapable but also ineligible to organize or oversee any electoral process in a fair and legitimate manner.

LOGISTICS AND VOTING MECHANISMS

With a level of forced displacement that is unprecedented in modern history, more than half of Syria's 2011 population is now either internally or externally displaced. Any future elections in Syria require a bespoke, robust, and comprehensive setup that guarantees the participation of all eligible voters, and addresses all special cases that have emerged due to the conflict.

The Syrian conflict is far from over, and the prerequisites for elections as defined in the Geneva Communique and Resolution 2254 have not been fulfilled or discussed. Looking at recent examples of IDP and refugee voting, such as the presidential elections in Afghanistan in 2004,¹³ Iraq's 2005 general election,¹⁴ or Bosnia and Herzegovina's first post-Dayton election in 1996,¹⁵ illustrates that a number of mechanisms need to be put in place to facilitate voting. For instance, displaced Syrians who have the right to vote must be allowed to register and vote remotely.

Although the contexts and scale of displacement are significantly different in all these scenarios, some important lessons remain. For example, the Dayton Peace Accords, which negotiated an end to the Bosnian war, contained a dedicated annex on elections in which all parties undertook to "ensure that conditions exist for the organization of free and fair elections, in particular a politically neutral environment; shall protect and enforce the right to vote in secret without fear or intimidation; shall ensure freedom of expression and of the press; shall allow and encourage freedom of association (including of political parties); and shall ensure freedom of movement". An independent election commission, supervised by the Organisation for Security and Co-operation in Europe (OSCE), was established to oversee the implementation of these commitments. Crucially, the commission introduced absentee voting from the places of displacement, for which the displaced needed to register and receive voting materials.

¹³ International IDEA, "Voting from Abroad, IDEA Handbook", 2007, <https://www.idea.int/sites/default/files/publications/voting-from-abroad-the-international-idea-handbook.pdf>

¹⁴ *Ibid.*

¹⁵ Lauren Prather and Erik S. Herron, "Enfranchising Displaced Voters: Lessons from Bosnia and Herzegovina", *Election Law Journal*, 6/4, 2007, <https://pdfs.semanticscholar.org/b66f/6d9cb487e73b7a279a19dfbf8c32f08a8d11.pdf>

The International Organization for Migration (IOM) played a significant role in the logistical and technical effort to allow displaced people to vote in Bosnia, Iraq and Afghanistan, either as a partner to the OSCE or the United Nations, which has a supervisory role in the implementation. IOM field offices facilitated voting in person in Afghanistan and set up collection points for Bosnians to send in their ballots. A similar mechanism and independent implementation body would be required for a future Syrian election.

Bilateral protocols and memorandums of understanding will also need to be signed to allow Syrian refugees to vote in special arrangements from countries that do not permit external voting except in embassies; these were required to allow Afghan refugees to vote from Pakistan and Iran. Other issues facing refugees would need to be resolved, such as the form of ID to be used for registration. For instance in Lebanon, hundreds of thousands of Syrian refugees are not registered with the UNHCR or the state and are legally prevented from (or feel unsafe) doing so. Many refugees do not possess valid ID documents, and their ability to access them varies wildly between host states.

The situation of the IDPs—both within and outside regime-held areas—is further complicated by a host of unresolved issues, including where are they eligible to vote (original place of residence or current location), registration of those who became eligible to vote while displaced, and the lack of voting infrastructure in displacement camps.

Overcoming these barriers requires a credible, legitimate, internationally led and supervised elections administration body to run the entire process from registration to implementation.

The process and infrastructure must first be agreed upon and operationalized. As the previous UN Special Envoy to Syria Staffan De Mistura pointed out in 2017, it will take at least three years to prepare for the elections. No work has been done since then. So even with all the ad hoc solutions that could be logistically applied, it will not only be impossible to make voting available, free, and transparent for all Syrians abroad and internally displaced without a sound, comprehensive political agreement that guarantees the right of all Syrians to vote freely; it will also take time to enact.

POPULAR AND POLITICAL LEGITIMACY

The most important factor to consider in discussions of elections in Syria is their popular and political legitimacy. The vast majority of Syrians—especially the displaced—would not perceive any elections held in the current security and political climate as legitimate.

Another challenge facing any future elections is the country's political culture and how Syrians have historically perceived elections under the current regime, which could dramatically impact the level of participation.

In the SACD survey about elections, 53.5 per cent of participants reported that they had voted in the past, before they were displaced, because “they had to or were forced to do it”; only 4.8 per cent voted out of “full conviction”. The vast majority (84.8 per cent of all participants) stated that they believed all elections held by the regime prior to 2011 were “rigged”.

The majority of all displaced Syrians surveyed for this study asserted that they had not taken part in any local, parliamentary or presidential elections since their displacement unless they had been forced to do so. Although various obstacles would prevent many from voting even if they wanted to, the main reason was a lack of trust.

Displaced Syrians are clearly sceptical of the notion that the current regime could be involved in running any future elections. Only 1.8 per cent of participants trusted the Syrian government to hold elections in the current circumstances. By contrast, 42.4 per cent believed a Syrian government could only be entrusted to run elections after a “political settlement”, and 41.4 per cent only after a full “political transition”. The majority of people surveyed for this paper indicated that future elections should be administered by local election bodies, under international supervision, rather than the central government. Any future independent elections commission charged with organizing elections following a political agreement should take this finding into consideration.

When asked about the three most important changes that need to happen in order to generate trust in the election process and outcome, respondents replied:

- 1- Fundamental changes in the security conditions
- 2- Local elections bodies to be given the lead role in implementing elections, under international supervision
- 3- Constitutional and legal changes

The findings of this survey, combined with those of other SADC reports and data collected on the ground, demonstrate Syrians’ high level of scepticism about (and lack of trust in) future elections. Their main concerns and fears need to be addressed to ensure future elections are perceived to be legitimate.

The lack of trust resulting from decades of dictatorial rule by the Syrian regime, which has made elections a farce that serve only to legitimize the regime’s rule, is the key obstacle to overcome if elections are to produce any tangible social changes. All individuals involved in designing the elections process after a political agreement has been achieved must be aware of these sentiments to ensure that all necessary steps are taken to safeguard the integrity of the process and instil trust among displaced Syrians that their vote matters.

Syrian detainees are often overlooked, yet their rights and freedoms have been violated on a daily basis for the last 10 years. At least 130,000 Syrians are currently being detained for

opposing the regime, and many more have been forcibly disappeared. Indeed, 82 per cent of the 1,000 individuals surveyed asserted that the unconditional release of detainees and revealing the fate of forcibly disappeared individuals were fundamental conditions for their return.¹⁶ If elections are conducted without addressing the most significant breaches of rights—which, as our survey clearly indicated, are causing a huge majority of displaced Syrians to be deeply mistrustful of the process—and without addressing the situation of detainees and displaced people, then Syrians will not consider any future ballots to be legitimate.

If the international community plays a role in supporting future elections in Syria without addressing the root causes of the conflict, this will be perceived as an attempt to legitimize the current head of the regime, and to deprive Syrians of some of their inalienable rights.

¹⁶ SACD, “We Are Syria”, July 2020, <https://syacd.org/we-are-syria/>

CONCLUSIONS

- Several security, legal, constitutional, and logistical obstacles and challenges will impede the conduct of free and fair elections in Syria. Addressing the root causes of such obstacles can only be achieved by implementing a safe environment as part of a comprehensive and sustainable political solution with international guarantees and monitoring mechanisms, in accordance with the aspirations of the Syrian people, and taking into account their concerns and historical view of elections.

- The Syrian regime cannot be trusted to allow free and fair elections. In order to be accepted as legitimate by the Syrian people, elections must be internationally implemented and supervised, from registration to implementation to counting.

- Surveys and opinion polls amongst displaced Syrians and direct outreach to displaced communities confirm Syrians' negative view of any presidential elections that allow the participation of Bashar Assad or any regime figure who took part in committing war crimes or crimes against humanity in Syria. The participation of such figures will jeopardize the credibility of such elections and the parties supporting it.

- To instil a sense of trust in the process, the international guarantors and supervisors of the elections must demonstrate to displaced Syrians that there have indeed been dramatic changes in the security and political circumstances. They must present strong international guarantees and supervision of the overall security situation and the elections themselves.

- Syrians will view any attempt by the international community—through the UN or other international actors—to push for elections before a safe environment has been achieved as a move to legitimize the current head of the regime.

- *Ad hoc* measures cannot overcome the practical and legitimacy impediments to fair and free elections in Syria. Surpassing these obstacles requires international support and a comprehensive framework that Syrians perceive to be legitimate. Such a framework can only be implemented as part of a comprehensive and sustainable political solution that guarantees a safe environment for all Syrians, including the displaced. Such a safe environment should include fundamental security, constitutional and Elections Law reforms.

RECOMMENDATIONS

- International efforts to hold credible and legitimate elections in Syria should be focused on first achieving a political solution in accordance with the Geneva Communiqué and UNSC Resolution 2254 and in line with the aspirations of the Syrian people. Such a solution should include a section on free and fair elections, which details the changes that must take place before credible elections can be held—including, but not limited to, those detailed in this paper.
- The political agreement must incorporate international human rights instruments that stipulate the fundamental criteria for assessing whether elections are free, fair and democratic, including the ICCPR and the European Convention for the Protection of Human Rights.
- The political agreement must ensure the right to vote in secret and without fear or intimidation; freedom of expression and the media; freedom of association; freedom of movement; and a politically neutral environment in the lead-up to election day. This last requirement will bind the signatories to create a climate of security, comply with human rights provisions and create a safe and calm environment.
- After a safe environment is secured, an independent electoral body, under the strict supervision of the international community, must be established to implement and oversee the entire election process. The electoral body should certify that the conditions exist for elections to be held, especially regarding security and the right of all Syrians to vote (and be voted for) regardless of their political, religious or other affiliation.
- The election body must promulgate comprehensive and detailed requirements for the conduct of the electoral proceedings, outline the rules for campaigning, register voters including displaced Syrians, design codes of conduct for the media and governments, and oversee voting day events, counting procedures, and the announcement and certification of the final results.
- Displaced Syrians must be allowed to run in free and fair elections and to ensure that a number of measures are enacted, including: universal and equal suffrage for all adult citizens; secret balloting and honest and public counting and reporting procedures; respect for the right of citizens to seek political or public office; respect for the right to freely establish political parties or organizations, as well as legal guarantees to compete in elections on an equal basis; a fair and free campaign atmosphere in which administrative actions, violence and intimidation do not prevent parties or candidates from freely presenting their views and qualifications, deter citizens from learning about and discussing them, or stop voters from casting their ballot free of fear of retribution; unimpeded access to the media on a non-discriminatory basis for all political participants; and free access for international monitors of the electoral process.



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