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# Opportunities and Challenges of the Constitutional Process and Awareness- Raising around a New Constitution in Syria

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This research paper is a contribution conducted by the participant, Ali Naser, at the end of the "Capacity Building in Policy Dialogue" course within the "Mediterranean Dialogue for Rights and Equality" programme. This paper deals with the political context of the constitutional process in Syria, the most prominent axes of this awareness, the opportunities and challenges facing this process and the move towards constitutional awareness for wide popular sectors. This paper also presents a number of recommendations on this subject.

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This contribution is within the framework of the Mediterranean Dialogue Programme's publication of contributions made by five participants at the end of the "Capacity Building on Policy Dialogue" course. This course is focused on experiences of policy dialogues, assessment of opportunities and constraints, and analysis of the mapping cases of the policy dialogue in the Med-space countries, concerning the topics of economic and social inequality, as well as democracy and local governance.

\*Note: These contributions do not necessarily reflect the opinion of the programme; they only express the views of the participants.



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## Introduction

It can be said that the importance of the constitution stems from being the basic determinant of the principles on which the state is based, as it includes the basic rules that define the form of the state, in terms of its nature whether it is a monarchy or a republic, and determines the form of the system of government, whether it is presidential, parliamentary or mixed. It also regulates the formation and competencies of the authorities of the state, the executive, legislative and judicial as well as the relationship between them. Ultimately, the constitution is a social contract between the state and the people, according to which the process of balancing the mutual rights and duties between the two parties of this contract takes place.

Stemming from the reality of the utmost importance of the constitution's position in the country, the significance of adopting appropriate methods and procedures for drafting it or even amending it by the constituent assembly, the National Assembly or the committees charged with writing and drafting the constitution emerge, for reflecting the sound and clear procedures and the accompanying discussion as well as the community awareness that have an impact on the process of political stability in the country, and for not leaving important constitutional issues for the future, which leads to protests and societal objections against the existing regime. Therefore, it entails the existence of a broad constitutional awareness, which is summarised in the popular knowledge of the constitution, in terms of its importance for being the basis for all laws and legislation, and the rights and duties it contains, in addition to its expression of a merger between the reality and aspirations of the people for a new form of the state, which is twice as important in the post-periods war and conflict.

Speaking of Syria, after more than ten years of anti-regime protests, and the intervention of regional and international parties that made Syria a theatre of conflicts and settling accounts, what might be called a “partition” of Syria occurred between the spheres of influence of major countries, which resulted in the displacement of millions of Syrians, the damage to education and the increase in poverty levels and crimes, in light of the absence of any prospect - until the very moment of writing these lines - to stop the conflict. This makes it difficult to exercise any pressure to launch a political dialogue to impose a transitional rule, releasing detained opponents, and establishing an international court to prosecute those involved in war crimes, in addition to seeking a new constitutional process that aims to draw the features of a new state, with a new relationship between the authority and the people.

In 2019, the United Nations formed a committee to oversee an agreement on a new constitution in Syria<sup>1</sup>, which was not successful for several political reasons, including the lack of proper representation of all segments of the people in this committee, and the Syrian regime's attempt to obstruct any political dialogue, as the former Syrian

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<sup>1</sup> France 24. The United Nations announces the formation of the Syrian Constitutional Committee  
<https://bit.ly/2YlhtL7>



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Foreign Minister famously said “We will flood them with details,”<sup>2</sup> in addition to the weak constitutional awareness, which highlights the importance of performing pressure to reach a constitutional awareness that includes all members of the people, to avoid part of these problems until the emergence of a political solution.

The bottom line is that the process of moving to approve a new constitution must be preceded by several steps, the most important of which is constitutional awareness, and the people’s knowledge of what the constitution is, which ensures the production of a version that meets the aspirations of all segments of the people. This is what the paper seeks to discuss closely by addressing the political context of the constitutional process in Syria, the most prominent axes of this awareness, the opportunities and challenges facing this process, and the move towards constitutional awareness of broad popular sectors. This paper also presents a number of recommendations concerning this subject.

## The Political Context of the Constitutional Process in Syria

### A brief history of constitutions in Syria

In 1919, after the separation of Syria from the Ottoman Empire, King Faisal convened a representative council that included a group of notables in Damascus headed by Fawzi Pasha al-Azm and drafted a document to form the constitutional committee headed by Hashem al-Atassi. Moreover, the new constitution was accepted by the Syrians, and in 1920 the constitution of the Kingdom of Syria was issued, but it was implemented for only two weeks because of the French colonisation of Syria. After the departure of the French, several military coups took place in Syria, starting with Hosni al-Zaim and passing through Sami al-Hinawi and then reaching Adib al-Shishakli. Additionally, each government tried to draft and implement its constitution, but these constitutions did not last due to the state of political instability.

In 1950, the Constitution of Independence was issued, which is the first civil constitution of its kind obtained by Syria whereby the committee reviewed 15 European and Asian constitutions intending to reach the best possible standards. Furthermore, the constitution stipulated reducing the powers of the President of the Republic, increasing the powers of Parliament by preventing it from ceding its legislative powers to the government, and strengthening the judiciary's authority by creating the Constitutional Court. However, it also stipulated in the Constitution in its third article that: “The religion of the President of the Republic is Islam, and Islamic jurisprudence is the main source of legislation,” which will be maintained in subsequent constitutions. This constitution also stipulates guaranteeing freedom of opinion and the press, assembly, and demonstration, a fair trial, the prevention of arbitrary arrest and detention without trial for long periods together with the preservation of the right to

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<sup>2</sup> Zanolbia. Walid Al-Moallem: If we are going to flood the expedition with details, they should learn how to swim [https://zanolbia.com/archive/index.php?page=show\\_det&select\\_page=2&id=10352](https://zanolbia.com/archive/index.php?page=show_det&select_page=2&id=10352)



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property and participation in economic life, framing public ownership of the state, as well as protecting the rights of farmers and workers.

In 1958, after the establishment of the union between Syria and Egypt and the formation of the United Republic headed by Jamal Abdel Nasser, a new constitution was drafted that overthrew the parliamentary system, transformed the system of government into a republican system, in addition to giving the President of the Republic wide powers and placed the legislative authority - the National Assembly at the time - in the hands of the President; however, the situation did not last for long because of the separation. Then, a new government was formed in Syria which restored the 1950 constitution and amended some of its content, such as returning the executive authority to the presidency of the Council of Ministers and granting the President of the Republic the powers to dissolve the Parliament<sup>3</sup>.

With the arrival of the Baath Party to power, several constitutions were drawn up, but the most durable one was the constitution established by former President Hafez al-Assad after he assumed power. The 1973 constitution gave the Baath party the authority to lead the state and granted the President of the Republic absolute powers, including the imposition of customary provisions and a state of emergency. In addition, after the death of al-Assad in 2000, some articles of this constitution were amended including the paragraph concerning the age of the president of the republic to reduce it from 40 to 34 years to allow the inauguration of Bashar al-Assad as president, which did not encounter any international opposition. It continued in force until 2012 when the Syrian revolution erupted and Al-Assad implied to suggest political reforms; however, these amendments did not differ in practice from the 1973 constitution, especially with regard to the sovereign laws and procedures, with the difference that he abolished the article which stipulated the leadership of the Baath Party of the state and allowed - in theory - political pluralism. Despite all of the mentioned amendments, the constitution is not fully implemented on the ground, with the expansion of the gross violation of rights and freedoms, which made the articles of the constitution theoretical and excluded from the application, in addition to being non-consensual.

Looking at the current Syrian constitution, amended in 2012, we find that it is distinguished by the concentration of the most important political powers in the hands of the President of the Republic. Far from the difference between the text and its practical application, the constitution witnesses conflict between articles; for example, the constitution states: "All citizens are equal in rights and duties before the law." However, there is another article in the constitution that states: "The religion of the head of state is Islam," meaning that a non-Muslim person has no right to be the president of the country, which highlights a paradox that lies in the fact that the constitution prohibits the election of a non-Muslim person to the position of president, even if this is the will of the majority of the people and although the constitution equals

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<sup>3</sup> Successive constitutions in Syria analysis and comparison. Perception Center for Studies is published on the Gulf Online website. Gulf Pulse November 5, 2019



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everyone in rights and duties. Also, while Article 88 of the Syrian Constitution states that: “The president has the right to run for two constitutional terms only,” Article 155 gives the president the right to run indefinitely<sup>4</sup>. Moreover, with regard to religious freedoms, the constitution stipulates the existence of a state religion, Islam, which raises questions about the presence of other religions in the state together with the rights of minorities that pose a real problem inside Syria, especially with regard to the nature of their relationship with the state.

## **Evaluating the societal dialogue about the constitution in Syria**

The failure of the Constitutional Committee, which consisted of 150 members, can be analysed as being due to reasons related to the existence of deep differences between the regime and the opposition, the dispute over the Sochi and Geneva tracks along with the implementation of Resolution 2254. The Constitutional Committee’s decisions also lacked an implementation mechanism, in addition to the intervention of other parties, especially Russia and Iran. At the conclusion of the fifth session of the Select Committee of the Syrian Constitutional Committee, Mr. Pedersen said: "I know through my interactions with the members of the committee... that it is possible to identify what I call common denominators, but we need to implement this mechanism, and this is what I demand. You also know that this is not a dialogue committee, where you can talk forever. We have to move the process in a way that enables members to determine which areas they agree on and those they disagree with, and then we will be able to move to the drafting stage. This is what we lack at the moment<sup>5</sup>".

Looking at popular participation in the constitutional process in Syria, we find that historically, from 1919 to 2012, most of the Syrian constitutions were originally drawn up by the political class in the state with the absence of popular participation, to prioritise their interests over the interests of the masses of people. This is in the absence of societal constitutional awareness about the constitution. Even in the fifties, and despite the growing constitutional awareness among the political and educated class, such awareness did not rise to include the rest of the people.

Articles 88 and 155 of the Syrian Constitution - last amendment in 2012

In light of the current Syrian crisis, and the fact that a large segment of the Syrian people has become among refugees and displaced population, the need for constitutional awareness arises today, including a call for general popular conferences to raise awareness of the importance of the constitutional process in contributing to a solution to the Syrian crisis, in which large sectors of Syrians participate outside of the country. Furthermore, the call for concerted efforts from regional countries and the United Nations, in the context of seeking to start an open dialogue between the opposition and the regime that may include reconciliations over what happened during wartime, the release of detainees and an agreement on a transitional governing body.

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<sup>4</sup> Articles 88 and 155 of the Syrian Constitution - last amendment in 2012

<sup>5</sup> Geirpedersen's statement at the conclusion of the fifth session of the select-committee of the Syrian Constitutional Committee on April 29, 2019





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## Aspects of Constitutional Awareness

### The importance of constitutional awareness

Considering that the constitution must express the will and aspirations of the people, and what it contains of a structural, political, and social nature, which requires the participation of most of the components of the people in the constitutional process, which entails having sufficient awareness among the components of society, including women, children, elderly people, decision-makers and educated individuals about the issues of the constitution and what basic items it must contain. Generally, it is not possible to separate the constitutional awareness from the political one as well as dividing the principle of the political dialogue in addition to raising the capabilities of society to address political challenges in the state, enhancing a sense of national belonging and civilized identity, spreading objective thinking and promoting acceptance of diversity and respect for sects and minorities, as citizens with the same rights and duties. Thus, the progress of the level of constitutional awareness in the country will reflect positively on the process of reaching a real constitution that meets the aspirations of the people.

Given the experience of Rwanda in 2003, a popular awareness campaign was conducted two years before the constitutional referendum, where copies of the draft constitution were distributed, and efforts were made to reach marginalised segments of society, including those unable to read and write, to inform them of the content of the constitution, and encourage them to vote for the draft constitution. This led; therefore, to a high turnout for participation in favor of the constitution. Considering the case of Uganda, Judge Benjamin Odoki, head of the Constitution Committee there, said: "The manner in which the people adopted the constitution is important in establishing its legitimacy, popularity and acceptance... In order for the constitution to command loyalty, obedience, respect and trust, the people must feel that this constitution is made for them. And by participating in it, they will feel connected to it<sup>6</sup>". Looking at the Arab countries, in Iraq, a more sophisticated constitution has been reached that organises political work, gives greater rights to citizens, and adopts the parliamentary system. However, the exclusion of the Sunni component and those affiliated with the Baath Party and the exclusion of a large segment of society led the supporters of the former regime to adopt the principle of violence because of this marginalisation. Thus, the years 2006 and 2007 witnessed wide levels of violence, in which the growth of extremist Islamic currents also contributed. Equally, in Egypt, it seems that the constitutional process in 2013 did not bear fruit. Whereby, during the era of Islamic President Morsi, some secular currents refrained from participating in the constitutional process, which led to politically unsatisfactory results; hence, some constitutional matters remained in need of amendment. Also, during the era of President Sisi, the constitutional process took place in the absence of a large Islamic current such as the Muslim Brotherhood, which led to a weak constitutional process.

### Constitutional Awareness Methods

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<sup>6</sup> Constitution-making and Reform: Practical Options p. 117



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To reach a constitution that achieves broad consensus, large sectors of the people must be involved in the constitutional process to debate about it and encourage them to vote for it, taking into account the country's specificity, culture, post-conflict situation and the need for help of the international community, which requires the inability to import models of constitutional awareness methods from other countries without the knowledge of the context. Additionally, a special report by the US Institute of Peace stated that: "The constitution-making process can be a transformative process that facilitates peace and stability, but if the constitutional process is not organised transparently and with public participation, it will expose the country to further risk of disruption<sup>7</sup>".

Looking at the experiences of other countries in constitutional awareness, the South African model emerges. When the leaders of the Constituent Assembly of South Africa wanted to involve the people in the constitutional process, they created a body affiliated with the Constituent Assembly, a "Community Liaison/Communication Department". While the planning of the constitutional process took four months, the focus was on reaching the largest possible number of citizens, including the illiterate and the deprived, by holding meetings on constitutional issues with civil society organisations, in addition to holding open popular conferences, and using media campaigns to encourage popular participation in The constitutional process, as well as the use of advertising to pass on messages such as: "You have the right to decide your constitutional rights," "You have made your mark." Not only that, external groups were contracted to evaluate the effectiveness of these messages, and the possibility of revising them in later stages.

On the other hand, the " Community Liaison/Communication Department " also provided civic education programmes on some constitutional issues, through posters, bulletins, and constitutional newsletters issued every week, called "Constitutional Talk", of which 160,000 copies were distributed every week, in addition to brochures such as: "You and Building the New Constitution", as well as books and videotapes, along with establishing an official website on the Internet, and involving radio stations in constitutional programmes.

Telephone lines were also allocated to answer citizens' inquiries and suggestions, in 5 languages, and were called (the modern constitution phone). The Department of Community Liaison/Communication also established an educational programme on the constitution, which was linked to hundreds of civil society organisations. Moreover, four and a half million copies of the draft constitution were distributed free of charge in taxis, newspapers buildings, schools, and to members of the security forces. Other audio versions were additionally recorded for those who could not read, while the list of human rights was printed and drafts of the final constitution were distributed to schools, which helped the success of the constitutional process.

Hence, it can be said that the most prominent means that can be used in constitutional awareness is: the media in all its forms, visual, audio, and written, in addition to

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<sup>7</sup> The constitutional process in Iraq: Creating a vision for the country's future. Special Report No. 123, dated February 2005, the American Institute of Peace





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dialogue sessions such as lectures, seminars, and popular conferences. Furthermore, it is necessary to exploit gatherings to spread awareness such as festivals, matches, and celebrations of religious occasions. Also, the use of propaganda materials such as brochures, pamphlets, and leaflets. It is also possible to create a website and allocate phone numbers for suggestions and inquiries as well as the use of social media.

### **The most important issues raised in the constitution**

Far from details, there are certain points to be presented to people to discuss about and be aware of, the most prominent of which is:

- state religion
- The nature of the state, whether it is religious or civil
- Form and system of government
- The issue of separation of powers
- The issue of freedoms, rights, and duties.

### **Methods of constitutional awareness in the Syrian context**

The Syrian society has its peculiarity, as it contains many ethnic and sectarian components such as Arabs, Kurds, Turkmen, Druze, Alawites, Assyrians, Syriacs, and others, which is reflected in carrying out a move to raise constitutional awareness in Syria and that requires a deeper understanding of the privacy, requirements, and rights of these components. With regard to the state of war, and its ongoing existence, it is necessary to reach a state of relative calmness along with a positive political transition in the country in order to move towards constitutional awareness, which requires access to broad popular sectors.

In this context, it is also possible to learn about the experiences of similar countries in terms of political and social situations and to benefit from their accumulated experiences. High on the list is the Iraqi experience, which could be considered a failed constitutional adventure because it excluded a major component in the country such as the Sunni one and former affiliates of the Baath Party as well as the lack of proper focus on women. It also excluded the illiterate who could not fill in the data of the constitutional process. Furthermore, It is possible to benefit from successful experiences in constitutional awareness, as happened in Rwanda and South Africa, and to use all available constitutional awareness methods as mentioned in the previous section.

## **Opportunities and Challenges of the Constitutional Process in Syria**

Engaging in drafting a new constitution is difficult and its complication increases when the country is in a conflict situation, which rises the challenges for those wishing to



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move forward in the constitutional process, especially with the presence of growing pressures from the conflicting parties as well as external interference along with the weak popular participation. Despite all of this, there are some opportunities that may arise.

## Challenges of the constitutional process in Syria

### 1 - External Interference

Due to the existence of several external parties in the Syrian conflict scene, in addition to the presence of those accused of committing war crimes, which dictates a conflict of goals, interests, political orientations, and sometimes even the desire for impunity, it could be hard to achieve a permanent constitution for the country, without providing for the ensuring of the legitimacy of the current political actors within the constitution. This makes the nature of the hoped-for constitutional amendments at best temporary and limited, while it is difficult to talk about the process of drafting a permanent constitution unless the conditions are created for broader popular participation, or the ability to impose the rules of justice.

### 2 - Problems related to the balance of local powers

In the context of the absence of the political will, from the Syrian regime, for a new constitutional process, or the presence of political or religious groups that reject a peaceful solution and which impose their effective control over large areas inside Syria making it ineffective for the committees to involve large popular sectors in the constitutional process; thus, weakening the negotiation opportunities with the system<sup>8</sup>.

### 3 - Challenges Facing the Constitutional Committee

These challenges may stem from the non-existence or shortage of funding, the lack of trained cadres, the unavailability of infrastructure, or the absence of security or the relatively stable climate, an example of this is what happened in Somalia during the work of the Constitutional Committee, where the lack of security caused the transfer of the Committee to Djibouti.

### 4 - Time Factor

While the constitutional process requires time in a state of stability, the same process, during or after a conflict or a war, will require even more time, depending on the seriousness of the parties in conducting the constitutional process and the intervention of external states. Hence, it is expected that the duration of the constitutional process will be longer considering the period of time taken by the constitutional committee in charge of writing and drafting the constitution, given that the constitutional conference of the United States took 40 months (2) while the Indian Constituent Assembly remained in session from 1946 to 1949; besides, the constitutional process in Eritrea took 38 months and

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<sup>8</sup> Constitutional Alternatives for Syria a book by Dr. Ibrahim Daraji, p. 22



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in South Africa five (3)<sup>9</sup> years. Not only that, the constitutional process generally requires achieving the greatest popular participation in the process of the constitution, whether in debate or in voting on the constitution.

#### 5 - Challenges related to constitutional awareness

Among them is the lack of public awareness of the importance of participating in the debate on the constitution, which stems from the popular base's ignorance of its constitutional rights, in addition to the depth of the crises that have occurred in the country and the absence of a culture of dialogue as well as the ignorance and being influenced by religious slogans which considers the constitutional process a secular orientation. Moreover, in terms of funding, the financial support received from organisations or countries sometimes imposes particular agendas with regard to constitutional awareness.

### **Opportunities for the constitutional process in Syria**

It can be said that there are opportunities for the constitutional process and its proper public awareness, the most prominent of which are:

#### 1 - The long period of the war and the desire of large popular sectors to resolve the conflict

With the length of the conflict, broad popular sectors may have been realised the necessity to put an end to the war, which may make them ready to start a political dialogue that gives an indication to terminate their catastrophic situation. This also coincides with the suggestion of many countries that the solution in Syria should be political.

#### 2 - Preparing for the constitutional awareness process does not wait for the war to end

According to Lakhdar Brahimi, the UN envoy to several countries such as Syria, Afghanistan, South Africa and others: "The issue of consolidating peace and democracy after the war is a long-term<sup>10</sup> process. Despite the fact that the appropriate timing for the constitutional process and its awareness-raising should be after the end of the war or at least after the imposition of a ceasefire, the preparation and elaboration related to it needs to start as soon as possible.

#### 3 - International attention and the possibility of an international supervision over the Syrians' vote on the constitution inside and outside Syria.

#### 4 - Benefiting from the experiences of countries that have gone through similar circumstances.

#### 5 - Seeking to secure broad community participation for discussion and voting on the constitutional document, opening the door to civil society representatives for debating and holding conferences, selecting personalities in the Constitutional Committee who represent the political and societal components as well as the

<sup>9</sup> Constitutional Conference. US Embassy website. 2013-06-20. Retrieved 2013-07-16.

<sup>10</sup> Constitution-making and Reform: Practical Options by Michele Brandt and Jill Cottrell. Anthony Regan. Yash Ghai. Published by Interpeace 2012



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prevention of conducting the constitutional process in closed scopes so as not to restrict it to politicians and negotiators.<sup>11</sup>

According to the book *Constitution-making and Reform* by authors Michele Brandt, Gil Cottrell, Yash Ghai and Anthony Regan, in the sixties and seventies of the last century, the process of constitution-making was seen as the prerogative of political leaders and experts on constitutional issues; this has changed in recent decades in terms of expanding the concepts of the right of the people participation, examples of this is what happened in Uganda in 1995, Eritrea in 1997, Albania in 1998 and Kenya in 2005.

## Summary and Recommendations

To sum up, post-war states need international aid to help them rise and lay the foundation for the constitutional political system and the stability that is expected to follow. In the Syrian case, it may be the duty of the Syrians, in the context of the goal of seeking popular participation in the constitutional process:

- 1 - Having the goal of reaching a constitution that achieves a better constitutional life, lays the foundations of the law, preserves freedoms and rights, and serves as a starting point for constructive political stability and for the start of building state institutions.
- 2 - Working and cooperating with international and regional organisations along with the United Nations to assist and supervise the drafting of a new constitution; the international community must also assume its responsibilities towards Syria and seek to impose a ceasefire and secure an appropriate climate to begin the process of mobilisation to participate in the constitutional process.
- 3 - The Constituent Assembly adopts a principle of dialogue with ethnic and religious groups to dispel their concerns about the new constitution, and to achieve the principle of participation from all segments of society, in addition to setting rules for the process of preparing the constitution, and emphasising that it contains the principles of human rights.
- 4 - The people in charge of the constitutional process should not reproduce a complete experience and apply it to the Syrian case since every country has its own personality, culture and privacy.
- 5 - Strengthening a culture of consensus between the political parties regarding the steps for a political solution on the basis of United Nations resolutions, national reconciliation and transitional justice, and the subsequent steps towards the constitutional process and the popular awareness around it, similar to what happened in South Africa and Rwanda

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<sup>11</sup> Previous reference