

Flawed by Design

The 2007 Syrian Parliamentary and Local Elections and Presidential Referendum

Executive Summary

The 2007 cycle of elections in Syria – for parliament, local councils and the referendum on choosing its president – took place under a legal framework and within a political environment that is fundamentally flawed by design and does not allow for genuine democratic elections in line with international standards, established *inter alia* by the International Covenant for Civil and Political Rights (ICCPR).

Syria did not invite international election observers and there was no systematic independent monitoring of last year's elections by domestic groups, which creates difficulties in assessing in detail the actual conduct of the elections. There is a lack of transparency to the electoral process and many of the key legal instruments relating to the elections are not readily available for public access.

The cycle of elections in Syria during 2007 took place in the context of a hardening of the authoritarian regime under Bashar Al-Assad since late 2005. In 2005 the Syrian opposition and a number of civil society organisations adopted the 'Damascus Declaration', a platform for democratic change. Likewise during 2005 the *Baath* party congress debated some of the key issues of political reform, but ever since there has been a crackdown on any political opposition with numerous arrests of opposition and civil society activists.

As far as the political and human rights context is concerned, Syria has been ruled since 1963 under a state of emergency, which gives additional powers to the President of the country and allows significant

restrictions of political rights, such as the freedoms of expression and association. The Syrian authorities continue to claim that a state of emergency is required because of the conflict with Israel, but have never explained in which way restrictions on political rights of Syrians have a bearing on the conflict.

The constitution privileges the *Baath* party, which dominates all aspects of political life. In 2005 President Bashar Al-Assad pledged to end the overlap between the *Baath* party and the state, but so far nothing has been done to achieve this. A semblance of multi-party politics comes from a number of other small parties, all of which are grouped together with the *Baath* party under the umbrella *National Progressive Front (NPF)*. Non-governmental organisations which seek to promote human and political rights are not permitted to register or to function. These legal obstacles to the free operation of political parties and NGOs violate the freedom of association guaranteed under art.22 ICCPR.

The constitutional architecture violates the principle of the separation of powers. The President heads the executive branch of power, manages the dominant party and is a member of the highest court, whose members he appoints. Furthermore, the President is not directly elected, but proposed by the *Baath* party, his nomination approved by the *Baath*-dominated Parliament and then put to a referendum. The late Hafez al-Assad was confirmed in office five times in this manner and his son Bashar Al-Assad twice.

According to the constitution the president should be at least 40 years old, but to ensure the succession of power from father to son in 2000, the age limit was reduced to 34 years. According to the constitution the President needs to be Muslim, another violation of art.25 ICCPR which does not allow discrimination on the basis of religion.

A significant number of parliamentary seats are generally reserved for the NPF. For the 2007 elections 163 of 250 seats were reserved for the NPF by decree, of which 130 were allocated to the *Baath* party, which thus has an in-built absolute majority in Parliament. These provisions violate art. 25 ICCPR, because voters have no opportunity to freely express their will where Parliament's composition is largely decided before the elections. In the event, 169 seats were won by the NPF. The remaining seats were contested among non-party candidates, but reportedly genuine opposition politicians were prevented from running for elections at all. According to the constitution half of the seats in Parliament must be held by workers or farmers which may result in a candidate in gaining a seat on the basis that he/she is a worker or farmer,

although he/she has less votes than another candidate. It appears that many candidates are declared to be farmers or workers without that being the case. Such a provision invites abuse.

Ahead of the 2007 elections the President issued a decree, stipulating spending limits for campaign financing of non-party candidates, the use of indelible ink to avoid multiple voting and the use of transparent ballot boxes. These measures can be useful to improve the quality of elections, but by themselves have no meaningful impact on an election that takes place within a fundamentally flawed framework. The political and electoral system not only prevents any serious political challenge against the regime through elections, but also blocks any possibility for a party or a candidate to gain enough support to be considered an 'officially legitimate' opposition force.

For there to be any genuine opening for democratisation in Syria, the fundamental flaws of the system would need to be addressed. However, given the ethnic and religious divisions of the country and the unstable geo-political environment, significant consideration will need to be given to safeguard mechanisms that can limit risks for the derailment of democratisation efforts. This briefing includes some preliminary reflections for such a situation.

Executive Summary

I. Political Context

Syria has been ruled since 1963 by the socialist *Baath* party. In 1970 Hafez Al-Assad assumed power and in 1973 a new constitution was adopted which is still in force. After Hafez Al-Assad's death in June 2000, his successor and son Bashar Al-Assad introduced a short period of apparent liberalisation (the so-called Damascus Spring), which saw some open debate and public criticism of the *Baath* party, the release of political prisoners and increased activities by human rights groups. However, this period ended in March 2001 with the arrests of many opposition and civil society activists and the country returned to being ruled with authoritarian methods.

In 2005 there again seemed to be opportunities for an opening of the regime. Against a background of international pressure on the Syrian regime, the tenth *Baath* Party congress of June 2005, raised issues which are essential for political reform, such as laws on political parties and freedom of expression

as well as the existing state of emergency. This was followed in October 2005 by the adoption of the ‘Damascus Declaration’ by opposition groups and civil society activists which called for the establishment of a democratic regime¹. Among the wide variety of groups that signed the declaration was the Muslim Brotherhood, which is banned in Syria. The declaration was followed by the defection from the regime of former Vice-President Abdel Halim Khaddam in December 2005. The government’s response to these steps was harsh; a fresh crackdown on opposition took place, leading to the arrests and imprisonment of human rights activists, intellectuals and opposition political figures. The situation persists today and there seems little appetite by the regime’s leadership to revisit the discussions and commitments made at the tenth Congress of the *Baath* party.

II. Human Rights Context

State of Emergency

Syria is ruled under a state of emergency that has been in place since 1963. This status provides the executive branch of government with extensive powers to derogate from civil and political rights, such as the freedoms of expression and media, as guaranteed by the constitution and freedom of association and fair trial guarantees, which are not specifically mentioned in the Syrian constitution, but guaranteed under the International Covenant for Civil and Political Rights (ICCPR)². The emergency law allows preventive arrests, prolonged detention without charge or trial, the establishment of special criminal procedures and a prohibition on the publication of any information that is considered to oppose the “the goals of the revolution”

In addition, extensive powers have been granted by article 4 of the State of Emergency Law to the regional Governors (*Orfi*) to control rallies and demonstrations, to issue residency permits and to exercise control over all means of electronic and print media. Officially the state of emergency is a response to the conflict with Israel. The UN Human Rights Committee noted “with concern that the state of emergency declared some 40 years ago is still in force (...), without any convincing explanations being given as to the relevance of these derogations to the conflict with Israel and the necessity for these derogations to meet the exigencies of the situation claimed to have been created by the conflict.”³

¹ The declaration calls for the abolishment of the state of emergency and for peaceful change; it recognises the special role of Islam while rejecting that any party or ‘trend’ should claim an exceptional role. Furthermore, it calls for a just solution to the Kurdish issue in Syria. Overall it is a carefully worded declaration designed to be acceptable to most parts of the diverse political opposition.

² Syria acceded to the ICCPR in 1969.

³ Point 6, Concluding observations on Syria’s state report, 2005, UN Human Rights Committee, CCPR/CO/84/SYR

Freedom of Association: Political Parties and Non-Governmental Organisations

The constitution declares that the Socialist Arab *Baath* Party is “the leading party in society and the state” (art.8), therefore by constitutional design there is no equal competition between political parties. The *Baath* party also leads an umbrella coalition, the *National Popular Front (NPF)*, which comprises a range of other ‘satellite parties’ (see annex). President Bashar Al-Assad has appeared to recognise the problems of the *Baath* party and the state being closely intertwined⁴, but no steps have been taken by him or the authorities to change that situation.

A new political parties’ law was adopted in March 2006. Reportedly it contains a number of vague provisions, allowing the executive to exclude any genuine opposition party.⁵

Non-governmental organisations which promote civil and political rights have repeatedly been unable to register themselves or to operate freely. The government claims that they cannot be registered as associations under the relevant law (1958/no.93), but instead must register as political parties⁶ despite the non-partisan status of such NGOs⁷. Beyond legal restrictions, NGOs working in the field of human rights have been systematically harassed by Syrian authorities.⁸

III. Parliamentary Elections Majles al-Chaab (People’s Assembly), 22,23 April 2007

Role of the People’s Assembly in the Constitutional Context

According to the Constitution the powers of the unicameral Syrian Parliament include: the nomination of the President, approval of legislation and the budget, confidence vote in the government, approval of international treaties, etc. However, these powers are significantly curtailed by the powers held by the President. He can dissolve Parliament at any moment (art.107) and can pass legislation when Parliament is not in session, or even if it is in session in the case of ‘extreme necessity’ The President can also veto Parliamentary legislation. Such Presidential legislation and vetoes can only be over-ruled by a two-thirds majority of Parliament (art.111 and art 98).

4 In the discussion with the UN Human Rights Committee, the Syrian representatives noted: “A Presidential injunction had been issued for the separation of the State from the Socialist Arab party.” Point 51, summary record 2292ndth meeting of the Human Rights Committee, 22 July 2005

5 Freedom House, Countries at the Crossroads 2007, Country Report Syria

6 Comments by the government of Syria to the concluding remarks of the UN Human Rights Committee, paragraph 12; CCPR/CO/84/SYR/Add.1

7 “The Committee is concerned at the obstacles imposed on the registration and free operation of non-governmental human rights organizations in the State party and the intimidation, harassment and arrest of human rights defenders. It also continues to be deeply concerned about the continuing detention of several human rights defenders and the refusal to register certain human rights organizations (arts. 9, 14, 19, 21 and 22).” point 12, concluding observations, op.cit.

8 See for a systematic overview: “No room to breathe,” State Repression of Human Rights Activism in Syria, Human Watch, October 2007

In the political reality of Syria, the Parliament is a weak institution that has played a very limited oversight role; it has not rejected any bills proposed by the executive or initiated any bills. One consequence of this would appear to be wide-spread voter apathy in parliamentary elections.

Election System

Parliament is composed of 250 members elected every four years. Elections should take place within 90 days after the expiry of the outgoing Parliament's term. All Syrians who are 18 years of age or older have the right to vote.⁹

Deputies are elected on the basis of open lists¹⁰ in 15 electoral districts based on the 14 governorates (*Mûhafaza*), with the Aleppo governorate divided into two. On the basis of data by the Central Office for Statistics¹¹, it appears that populated governorates, in particular Damascus and Aleppo, are proportionally under-represented with parliamentary seats. Given the size of some of these election districts, it is difficult for individual candidates without significant means to campaign effectively and there is no strong tradition of local representation in parliament.

Seats per Election District

Damascus (urban)	29	Hama	22	Tartus	13
Damascus (rural)	19	Latakia	17	Raqqah	8
Aleppo (urban)	20	Idlib	18	Daraa	10
Aleppo (regions)	32	Deir Ez-Zour	14	As-Suwayda	6
Homs	23	Al-Hasakah	14	Quneitra	5

The right to stand as a candidate is held by those who are 25 years of age or older, enjoy the right to vote, are literate and have been a Syrian national for at least five years. In addition, would-be candidates are examined by an official committee, which is chaired by the local governor and includes a judge (designated by the Ministry of the Interior) and a representative of 'workers and farmers'.

⁹ However, according to Chatham House there are some 300,000 Syrian Kurds who have not been granted citizenship. See "The Syrian Kurds: A People Discovered", January 2006. The UN Human rights Committee expressed concerns about "the situation of the large number of Kurds treated as aliens or unregistered persons and the discrimination experienced by them." point 19, op. cit.

¹⁰ The voter can vote for as many candidates as there are seats in the constituency. Voters do not have to use all votes they have. If they vote for more candidates than permitted, the ballot is invalid.

¹¹ <http://www.cbssyr.org/>

A candidate whose registration is refused can appeal to the appeals' court in the same governorate. The election law includes no restrictions for state officials to be candidates for Parliament.

The electoral law requires that candidate lists are divided equally into two lists: one half of all candidates must be listed as 'worker and farmers' and the other list is for all other candidates.¹² The definition of workers and farmers is wide.¹³ In reality it appears that candidates are registered as workers and farmers regardless of their professional status.

A significant number of seats in Parliament have traditionally been reserved for the NPF. In the 2007 elections it was decreed that the NPF would have 163 seats, of which 130 for the *Baath* party¹⁴; this fact guarantees the *Baath* a built-in majority of seats and prevents any genuine open competition for these seats as the results of the election have been pre-determined by governmental decree. The election system, which ensures full control of political life by the *Baath* party and its allies, violates the most fundamental provision of the right to vote under art.25 ICCPR, because it does not allow the "free expression of the will of the electors".

The remaining seats are permitted to be contested by candidates who are not linked to a political party. These 'free seats' appear to have been intended to give an emerging business elite space for political participation and indeed most candidates were to be businessmen, though members of the free professions, religious figures and tribal chiefs were also running in the 2007 elections. Analysts assume that these candidates invested significant funds in their election campaigns. The strength of candidatures appears to depend on their financial means or their close links to persons in power. Tribal relationships and social connections are also considered to play a role.

Theoretically genuine political competition could take place for these seats. However, these candidates are screened by security services¹⁵ and genuine opposition candidates are discouraged to present themselves for elections; indeed, many lists of these 'independent' candidates are said to be organised by state actors¹⁶.

12 A 'Commission of Candidatures' is responsible for allocating candidates to one or the other sector.

13 A worker is anybody who works for the state or in private business for a salary. A farmer works in agriculture and this is his main source of income (art.1 Parliamentary election law).

14 See for election results, annex 1

15 Bertelsmann Transformation Index, Country Report Syria 2006, p. 4

16 "Geh zur Wahl in Syrien und alles bleibt beim alten," Report by H. Ostry, G. Schlombach, 2 May 2007, Konrad Adenauer Foundation

According to some reports the only element of real competition for these seats may be 'intra-power': between different regime groups which are part of the power, e.g. security services against candidates aligned with the governor.

Despite the weak political role of Parliament, it appears candidates are interested to be elected in order to be closer to the executive power for favours and connections. This may explain the particular interest of the business community in getting elected.

According to official results 81 independent candidates won seats, while the *Baath* party won 134 seats and other FNP parties 35 seats (see annex). There are 30 women in the new Parliament. Official turn-out was 56%, but according to other sources turn-out was around 5-10%.¹⁷

IV. Presidential Referendum, 17 May 2007

Role of the President in Constitutional Context

Under the constitution the President dominates the political system. He leads the government, serves as the commander-in-chief, can veto decisions by Parliament, can initiate constitutional amendments, can call for a public referendum without consulting the Constitutional Court, is a member of the Constitutional Court and nominates the other members of the Constitutional Court. The President holds further powers under the emergency law and enjoys further influence as the leader of the *Baath* party and the NFP. The system is thus marked by an excessive concentration of power which breaks down any possible separation or balance of powers: The President heads the executive, leads the party which dominates the legislative body and is also a member of the highest court of the country, which he appoints. Despite these enormous powers, there are no direct multi-candidate elections for President. Instead, there is a referendum to confirm a candidate proposed by the popular assembly on the basis of a nomination by the *Baath* party, which is led by the President.¹⁸

Presidential referenda have never had the semblance of an open election process: Between 1970 and 2000 Hafez al-Assad was confirmed five times in office and his son Bashar Al-Assad twice since (2000 and 2007). In the 2007 elections other persons proposed themselves as candidates,¹⁹ but they were

¹⁷ See report by Konrad Adenauer Foundation, *op.cit.*

¹⁸ The President is the 'regional secretary' of the party. Given the *Baath*' pan-Arab outlook, the party's national office is called 'regional command'.

¹⁹ Mamoun Homsy (former member of parliament, who had been imprisoned for five years, resident in Beirut) Abdullah Khalil (attorney), Moumen Kowaifati (opposition

wholly ignored as candidates by the authorities. Theoretically, if a candidate does not win a majority of votes, the *Baath* party has to propose another candidate. In the Presidential referendum of 17 May 2007 the President has been confirmed according to official results with 97.6% of the votes and a turn-out of 96%; according to other sources the turn-out was 50-60%.

A candidate for President has to be an Arab Syrian²⁰ for at least 15 years, enjoy all civil and political rights and not be under investigation for a criminal offence. Previously a President had to be 40 years or older, but the rule was adjusted when Bashar Al-Assad was elected as President for the first time in 2000; Parliament changed the law and lowered the age for a President to 34 years. A President also has to be a Muslim (art.3 constitution). This provision violates art.25 ICCPR, which does not allow discrimination on the basis of religion.

V. Local Elections, 26 August 2007

Local elections took place for the council assemblies of the different local government units in Syria, namely: governorate, city, town, village and what are referred to as 'countryside units'. Even if party quota were in principle abolished for local elections in 2005, opposition allege that the reform was not implemented, with the administration continuing to determine the outcome, in particular at the stage of candidate selection. At any rate, given the limited means and influence of local councils in comparison with governors, the significance of these elections was low.

The local election law provides that voter lists are based on the civil registry and that voters are allocated to a particular polling center. It is foreseen that voter lists are published and that they be reviewed in case of inaccuracies.

Candidates have to be Syrian, literate, 33 years old (in contrast to parliamentarians who must be 25 years) and registered on the voter list. Candidatures are examined by a committee composed of representatives of professional organisations and chaired by the local governor. The committee decides to which professional group a candidate belongs ('worker/farmer', or other), in line with the decreed quota. This examination opens the door for abuse and *de facto* allows for continued political control of candidatures.

politician, resident in Yemen; presented his candidature in the Syrian embassy), Toufik Hamdouch (medical doctor of Kurdish origin in Germany, presented his candidature at the embassy).

20 Each Syrian is considered to be Arab.

VI. Election Administration

The electoral process is primarily managed by 'central commissions' in each governorate, which are formed by the Ministry of the Interior. The commissions are composed of the governor, who presides, a judge and a representative of 'workers and farmers'. The central commissions appoint civil servants as polling station officials, receive complaints against the election process and supervise the counting of votes and the aggregation and transmission of results to the Ministry of the Interior. The decisions of election commissions cannot be appealed against, except in relation to candidate registration.

The UN Human Rights Committee interprets art.25 in the sense that "an independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant."²¹ Therefore, should there ever be an opening for genuinely democratic elections it would be important to consider establishing an independent election authority, rather than leaving the task to the Ministry of the Interior which may be considered to have a partisan role in an election process.

- Voting in Legislative Elections

Polling takes place over two days, the first day from 7 a.m. – 8 p.m. and the following day from 7 a.m. – 2 p.m. Ballot boxes should be sealed and the law provides for the possibility that representatives of candidates can stay in polling stations over night. In the 2007 elections the use of indelible ink to mark voters' fingers and transparent ballot boxes was introduced.

There are no official pre-printed ballot papers. Voters can use their own paper or use a ballot prepared by candidates. This process may violate the secrecy of the vote and makes vote-buying easier, because voters can try to mark their ballots in a particular way to allow them ballots to be identified. It also makes multiple voting easier.²²

Voters are not allocated to a particular polling center. They can cast their ballot at their place of residence, where they registered or at their work place. The location of polling stations in the public administration and public companies makes it easier to control the votes of workers and civil servants.

²¹ UN Human Rights Committee, General Comment on art.25 ICCPR (1996)

²² The election law is generous as far as multiple voting is concerned: Art.36 provides that if the number of ballot envelopes in the ballot box is less than 5% more than votes cast according to the records, an equivalent number of envelopes should be destroyed on a random basis. If the discrepancy is higher than 5% the elections are annulled.

Counting takes place in polling stations and results are entered into protocols to be signed. The aggregation and proclamation of results takes place at the level of electoral districts. Results are eventually confirmed by Presidential decree. There are only insufficient ways to complain or appeal against the voting process. The Parliament decides by majority of its members on the validity of elections of a member. Irregularities can be communicated from central election commissions to the constitutional court, but the assembly is not bound to respect constitutional court decisions on electoral irregularities. There is thus no effective remedy against violations of rules on polling and counting.²³

Representatives of candidates can be present during voting, but presence during counting is not mentioned. Non-partisan election observer by domestic or international groups is not provided for by the law.

- Voting in Local Elections

Provisions for voting in local elections are similar to those for legislative elections with some exceptions: There is an official ballot, although a voter can use his own ballot; polling is terminated on the first day if the turn-out is beyond 50% and the presence of representatives of candidates during the counting of votes is foreseen. The counting is held in public at polling stations. The constituency commission aggregates results and decides on the distribution of seats. Results are not published in detail, only the names of elected candidates are communicated. It is possible to appeal to a court against results. Positively, article 22 stipulates that the population should be equally represented in the election districts ('equality of the vote').

VII. Conclusions/Recommendations

The political and electoral system of Syria violates international standards for elections and political participation, notably Syria's obligations under the ICCPR. There is no separation or balance of powers and no provisions for competitive democratic elections. The domination of the legislature by the *Baath* party and its satellite parties is pre-determined, undermining any sense of a democratic choice. The role of the President, who dominates all branches of power, is not subject to a genuinely democratic contest and therefore not accountable to anybody. Furthermore, there are provisions which violate the principle

23 Likewise there is no possibility to correct results. Instead elections can only be annulled and re-conducted in a given polling station. In that case only voters who cast their vote in the annulled elections can do so again.

of equality, including reserved quotas for workers/farmers and a restriction on the basis of religion on who may stand for President.

Should there be an opening for democratisation in Syria, the following proposals may be useful for the domestic debate:

1. The state of emergency needs to be abolished. Civil and political rights should be guaranteed in law and practice.
2. Syrian authorities should respect freedom of association. Restrictions that prevent political parties and civil society organisations from operating freely within a transparent legal framework should be removed.
3. All seats in the Parliament should be freely and directly contested with no quotas reserved for parties or professional categories.
4. If a presidential system of government is maintained, there should be direct multi-candidate elections for President. Given regional diversities it would be useful to consider a minimum threshold that a candidate would need to reach in all or a significant number of governorates. This is a best practice in ethnically or religiously heterogeneous countries (e.g. Indonesia).
5. An election administration that can function independently from the Ministry of Interior and undue governmental interference should be established with responsibility for all elections and referendums. There are different models for such an independent administration, but it should allow for representation of different strands of political opinion, in order to have the credibility and public confidence to organise elections.
6. Local councils should be re-vitalised through free elections and the allocation of financial means and authority that allow these bodies to function with credibility. In a transitional situation, one possibility is that elections be sequenced, starting with local election before holding national elections, in order to diffuse possible tensions and allow a re-development of political life bottom-up.

7. As far as the election process is concerned a number of 'technical' measures could be adopted to enhance the transparency of polls, in particular: the introduction of official, standard ballot papers, limiting polling to one day, allocation of voters to one polling station, allowing partisan and non-partisan observation of the whole election process, and a detailed and speedy publication of results.
8. A reform of the electoral system would need to take account of the political conditions of a possible opening, such as the weakness of political parties and the diversity of the country. An analysis of transitions in other countries and election systems used in the region would be useful in such a case to diminish the potential for violent conflict.

ANNEX 1

Election Results, Parliamentary Elections, 22, 23 April 2007

Parties	Seats
National Progressive Front (in total 169 seats), of which:	
• Arab Socialist Baath Party	134
• Arab Socialist Union	8
• Socialist Unionists	6
• Communist Party of Syria (Wissal Farha Bakdash faction)	5
• Democratic Socialist Unionist Party	4
• Arab Socialist Movement	3
• Communist Party of Syria (Yusuf Faisal faction)	3
• National Vow Movement	3
• Syrian Social Nationalist Party	2
• Arabic Democratic Unionist Party	1
Non-partisan Candidates	81
TOTAL	250

Source: Parliament of Syria

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