Minorities in the Syrian Legal System and the Principle of State Neutrality

Dr. Nael Georges

EZKS
Europäisches Zentrum für Kurdische Studien
European Center for Kurdish Studies

Europäisches Zentrum für Kurdische Studien
European Center for Kurdish Studies
Project: Power Sharing for a United Syria
Emser Straße 26
Berlin 12051
Germany

mail@kurdologie.de
+49 30 67 96 85 27

August 2020|Berlin

Minorities in the Syrian Legal System and the Principle of State Neutrality

Dr. Nael Georges

European Center for Kurdish Studies

Contents

Executive summary 3

1. Introduction 4

2. Part One: Non-Muslims in the Syrian State System 7

2.1 Religion in the Syrian constitutions 7

2.2 Non-Muslims and Syrian legislation 9

3. Part Two: Non-Arabs in the Syrian State System 12

3.1 Arab nationalism in the Syrian constitutions 12

3.2 Non-Arabs and Syrian legislation 14

4. Conclusion 18

Minorities in the Syrian Legal System and the Principle of State Neutrality

By Dr. Nael Georges[1]

Executive summary

There are many minorities in Syria, varying in religion and ethnicity. While this is supposed to create cultural wealth, diversity mismanagement and the absence of a citizenship state has allowed foreign intervention into Syria, often in the name of "protecting minorities". It has also caused serious human rights violations as well as sectarian and ethnic conflicts. Historical, political, legislative, economic and social factors have affected the situation of minorities, the intensity of violations committed against them and the extent of their integration. However, the main reasons for the deterioration of the situation of minorities and the increase of religious and ethnic tension in Syria are on the one hand due to the influence of religion and sectarianism on the structure of the state and, on the other hand, the dominance of an authoritarian regime of Arab nationalism ideology. The continuous interference and use of religion in politics and legislation, in addition to a lack of public liberties and political pluralism, played a big role in preventing the rise of a state based on equal, democratic citizenship that fosters religious and ethnic diversity and that is based on the principle of state neutrality. This led to a widespread protest as witnessed by the Syrian scene since 2011. This paper highlights the main aspects of citizenship state absence in Syria, especially the legal discrimination against non-Muslim and non-Arabs.

[1] After earning a law degree from the University of Damascus/Syria and a Master in International and European Law from the University of Grenoble II, Nael Georges obtained his doctorate in international human rights law in France. He has provided consultancies to many international and regional organizations, and has published work on issues related to human rights and legal reform in the Middle East.

1. Introduction

Religious and ethnic diversity has influenced the political, cultural, social and legal life in Syria, a country whose minorities[2] are one of the most diverse in the Arab region. A distinction can be made between non-Muslim and non-Arab minorities. As for ethnic diversity, the minorities can be divided into Kurdish and non-Kurdish. The Syrian Kurds are the largest ethnic minority, representing 10% of the population[3]. The majority of the Syrian population is Sunni Muslim, other minorities include the Yazidis and, to a lesser extent, Christians and Alawites. The remaining non-Arab ethnicities are: Turkmen, Assyrians and Syriacs. Regarding religious diversity, a distinction can also be made between two types of religious minorities: the first includes those who differ from the majority in their interpretation of the Islamic law, such as Shiites, Druze and Ismailites. The second includes non-Muslims, such as Christians, Jews and Baha'is. Some of these religious minorities are officially recognized, while others are banned, such as Jehovah's Witnesses, Baha'is and Yazidis. These are forced to choose one of the recognized religions on their IDs, which is a clear violation of their most basic rights[4].

The Syrian regime, like in the rest of the Arab countries, imposes religious, and sometimes sectarian affiliation on all its citizens. It also prohibits converting to a religion other than Islam. This, too, is an obvious violation of religious freedom, which necessarily implies freedom of belief or non-belief, freedom of being affiliated or not affiliated with a specific religion or rite. It also certainly violates the right to convert to a different religion, as well as the right to be free from discrimination based on religious affiliation[5]. Concerning non-belief, a distinction can also be made between two categories: devout religious citizens, whether Muslim or non-Muslim, and non-believers, who are treated as if belonging to a certain religion. As such, educational systems and religious personal status laws are imposed on them which they do not believe in.

[2] There is no clear definition of the term "minority" in international law. The UN Working Group on Minorities considers the "feeling of belonging" of people to a particular minority is essential in determining their affiliation with this minority. Thus, according to this definition, the person's desire is crucial to classify the affiliation from whether or not it belongs to a minority. However, this definition cannot be generalized, especially in the Levant region, where the classification is often due to the considerations of states and not to this sense of belonging. In principal, a minority is a "group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population". See "Définition des minorités, Groupe de travail sur les minorities", document E/CN.4/Sub.2/AC.5/ 1996/WP.1, 14 February 1996, p. 5.

[3] Human Rights Watch, Group Denial : Repression of Kurdish Political and Cultural Rights in Syria, 26 November 2009, available at : https://www.hrw.org/report/2009/11/26/group-denial/repression-kurdish-political-and-cultural-rights-syria

[4] For more details about the ethnic and religious communities in Syria, see Hassan Abbas, Governance of Diversity in Syria, *Arab Reform Initiative*, 20 June 2012, available at : https://archives.arab-reform.net/en/node/501 and the Arabic version available at :
https://www.shorouknews.com/columns/view.aspx?cdate=05072012&id=e2713efc-e61e-42cd-9533-cf54ac376bea

[5] The right of freedom of religion includes, among other, the right to manifest religion or belief in worship.

Some citizens belong to more than one minority, for example Kurdish Christians or Christian Assyrians, which can sometimes expose them to double discrimination based on religion and ethnicity, as they are both non-Muslim and non-Arab. Moreover, in the name of religion and race affiliation, Syria applies discriminatory legislation in violation of the principle of state neutrality, as we will see below.

In accordance to the International Convention on the Elimination of All Forms of Racial Discrimination[6], the term "racial discrimination" refers to any "distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life"[7]. Other international instruments, such as the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (the 1992 Minorities Declaration)[8], emphasize the necessity of elimination of discrimination. Article 4.1 of this declaration obliges states to "take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law". Article 14.1 of the International Covenant on Civil and Political Rights (ICCPR) provides that "All persons shall be equal before the courts and tribunals", and its Article 26 confirms that "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Inequality among citizens is one of the most important reasons for the obstruction of democracy as well as the spread of tension and oppression in Arab societies. This is especially true in Syria, whose legislation fosters discrimination among groups. Discrimination is quite apparent between Muslims and non-Muslims, men and women, Arabs and non-Arabs. It also includes other groups, such as Baathis[9] and non-Baathis, Alawites and other Sunnis. This is shown in the police and in the army, as well as regarding higher education grants, even if the latter type of discrimination is not clearly defined in legislation. The discrimination in Syria has contributed to the popular uprising, since it had a significant impact on the absence of justice and the feeling of grievance among some discriminated social strata. Therefore, discrimination is no less threatening than various other, serious human rights violations.

[6] Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969.
[7] See Article 1.1 of the Convention.
[8] Adopted by General Assembly Resolution 47/135 of December 18, 1992. It is considered the only international instrument exclusively focusing on the rights of persons belonging to minorities; it provides, in Article 8, the importance of preserving the territorial integrity of states including sovereign equality, territorial integrity and political independence.
[9] The political party that leads the government in Syria.

Building sustainable peace in a country of citizenship and law is not possible without the total elimination of all forms of discrimination.

The main challenges that the political system will be facing due to the current political changes in Syria is the elimination of discrimination, as well as respecting religious and ethnic pluralism. The legislation that is currently enacted must be re-drafted to comply with international human rights instruments, especially the non-discrimination principle. In order to promote respect of these rights and to move forward in establishing a democratic state, complete equality among citizens and on cultural pluralism must be ensured. This study will present an analysis of the Syrian reality by addressing, in particular, the situation of non-Muslim (Part One) and non-Arab (Part Two) minorities. The paper concludes with a critique of the status quo. It calls for a nation state that embraces all components of the Syrian people. This state shall be based on citizenship, especially full equality among citizens and respect of their cultural specificities.

2. Part One: Non-Muslims in the Syrian State System

This chapter starts with the situation of non-Muslims from a constitutional perspective (2.1). It will then showcase the main internal legislation which violates their rights and discriminates against them (2.2).

2.1 Religion in the Syrian constitutions

The successive Syrian constitutions include religious provisions, and none of them separates between religion and state or implements secularism. The traditional Syrian constitutional system is influenced by positive law such as equality among citizen; however, it also contains some religious arrangements. Many constitutional articles, whether in the 1973 constitution or in the current one of 2012, contain provisions, including religious provisions, to guarantee public freedoms.

As in the previous constitution, Article 3 of the current constitution states that "the State shall respect all religions, and ensure the freedom to perform all rituals that do not prejudice public order." The first paragraph of Article 42 adds that "Freedom of belief shall be protected in accordance with the law". This provision is weak, compared to what is included in other Arab constitutions. The Lebanese one, for example, stipulates in Article 9 that "Freedom of religion is absolute". In contrast to the Lebanese and Jordanian constitutions, the Syrian constitution does not guarantee freedom of religious education.

It is true that the fact that Islam is not the state religion in Syria is an almost unique case in the Arab region; however, the current Syrian constitution and the previous one stipulate in Article 3 that "the religion of the President of the Republic is Islam". Both of them add in the same article that "Islamic jurisprudence shall be a major source of legislation." These religious constitutional clauses affect the principle of state neutrality. They constitute a violation of the social and political rights of non-Muslim communities and affect the equality between women and men, of Muslims and non-Muslims[10]. The provision regarding the role of Islamic jurisprudence as a source of legislation is also incompatible with a number of other constitutional provisions such as equality among citizens. This creates a complex situation affecting judicial stability in the country, and it results in sometimes contradictory court decisions based on the judge's interpretation and position, especially in the area of personal status[11].

[10] Many Islamic scholars and writers agree that Islamic law guarantees the right of equality and rejects discrimination based on skin color, language and ethnicity. The principle of non-discrimination based on religion and gender remains a controversial issue. The overwhelming trend tends to establish this type of discrimination by virtue of the Sharia.

[11] See below.

The current Syrian constitution, like the 1973 one[12], manifests the principle of equality in the preamble as well as in Articles 18, 19, 26 and 33. The preamble emphasizes "the protection of national unity, cultural diversity, public freedoms, human rights, social justice, equality, equal opportunities". In accordance with article 26, "Citizens shall be equal in assuming the functions of public service". Article 33.3 provides that "citizens shall be equal in rights and duties without discrimination among them on grounds of sex, origin, language, religion or creed". Paragraph 4 of the same article adds that "The state shall guarantee the principle of equal opportunities among citizens". Consequently, discrimination among citizens must be prohibited on the basis of these constitutional texts.

Unlike the 1973 constitution, the current one states in Article 3 that "the personal status of religious communities shall be protected and respected". What is already adopted in Syria concerning religious and legislative pluralism, is thus also anchored in matters of civil status with this provision. It also eliminates the possibility of adopting an institution for civil marriage. In Syria, as well as in several neighbouring countries, there are family laws[13] and courts specific to Muslims, Christians and Druze, especially when it comes to marriage, divorce and their impact (as shown below).

Lastly, the inclusion of texts related to the importance of human rights instruments[14], especially the principle of precedence of international over internal law, will most certainly have the greatest impact on weakening those legislative and constitutional texts, that display religious discrimination among citizens[15]. Some Arab constitutions clearly state the precedence of international over internal law,[16] while others give international stipulations the power of law. The new Syrian Constitution of 2012, like the previous one, does not admit the precedence of ratified international treaties over internal laws[17]. Legislative Decree 3, by which Syria joined the ICCPR on April 21, 1969, gave the statute of internal legislation to the covenant. This is not sufficient, as the treaty only takes precedence over laws adopted before

[12] The first Syrian constitution was issued in 1928 under the French mandate. The Syrian constitution was suspended and reformulated several times after the independence in 1946, due to political instability, including repeated military coups, and because of the establishment of the United Arab Republic in 1958, which brought together Syria and Egypt for a short period.

[13] Also called personal status laws. These include matters related to marriage, divorce, inheritance, etc.

[14] The Constitution of Lebanon provides in its Preamble that "Lebanon is also a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights."

[15] In fact, religious provisions in any new Syrian constitution should be accompanied by a clause related to human rights principles such as the following: "common principles of Sharia and human rights shall be a source of legislation". In this case, religious provisions which are incompatible with human rights principles should be eliminated. This also should pinpoint some barriers that need to be respected concerning human rights in the modern interpretation of Sharia, which is one of the main pillars needed to strengthen religious freedom and the rights of women and non-Muslim minorities.

[16] The preamble of the Moroccan constitution, for example, stipulates that treaties ratified by the state "take precedence over domestic law".

[17] These two constitutions only include provisions related to the authorities (The President of the Republic and People's Assembly) responsible for concluding and ratifying the international treaties. See Articles 71 and 104 of the 1971 Constitution and Articles 75 and 107 of the current Constitution of 2012.

the treaty. Laws adopted after the treaty annul its articles, particularly in case of conflict. However, the Syrian civil court of cassation has admitted in one of its decisions that "national courts do not apply treaties because the state has made an international commitment to apply them, but rather because they have become part of the state's internal laws. If a conflict arises between the treaty provisions and internal law provisions, the national court is to apply the provisions of the international treaty, giving its ruling precedence over the internal law" [18]. There are also some laws that explicitly focus on the relationship with the international system, such as the Syrian Civil Law. Article 25 of that law states that provisions that are previous to or violate an international treaty in effect in Syria are invalid. The Syrian Code of Procedure states in Article 113 that "pursuing foregoing rules does not breach the provision of treaties concluded or to be concluded between Syria and other states in this regard".

2.2 Non-Muslims and Syrian legislation

Like the other Arab Mashreq states, the Syrian legislative system has many positive laws, for example trade, civil and penal codes, with foreign roots. In fact, the legal system is heavily influenced by some Anglo-Saxon, Swiss, French and German legislation[19]. Hence, equality between citizen without discrimination based on religion or gender is included in many Syrian laws. This cannot be adopted in a religious state. With its considerable constitutional status, Islamic *fiqh* (jurisprudence) is considered one of the pillars of public order in Syria. As such, religious freedoms and the practice of religious rituals must be in accordance with the *fiqh's* traditional interpretation. Consequently, proselytization to a religion other than Islam or giving license to a religion other than the monotheistic religions acknowledged by Islam is not allowed. Non-Muslims also face discrimination, or are simply prohibited from holding some leading state positions, particularly the presidency of the republic, as mentioned previously.

Furthermore, the Syrian educational system ignores the cultural heritage of non-Muslim religious minorities, including their history and language[20]. Mandatory religious classes, which differ depending on whether students are Christians or Muslims, are included in the educational system, while followers of non-monotheistic religions are ignored. Moreover, the entire educational system is tightly linked to Islam. Non-Muslims receive an education with Islamic tendencies through History and Arabic classes which constantly refer to Islamic teachings. They include Koranic verses which students have to study and to memorize

[18] Decision 366/1905, December 21, 1980, published in Al Muhamun Journal, p. 305 (1980). See Third Periodic Report, Syrian Arab Republic, Committee on Human Rights, CCPR/C/SYR/2004/3, July 5, 2004, Paragraph 39. The Syrian Government, like other Arab governments, insists on the principle of precedence of international law over internal law in front the UN Human Rights Committees, as explicitly admitted by Syrian Justice Minister on May 4, 2010, during the 44th session of the Committee against Torture. Still, there should be doubts about the credibility and the goodwill in application on the local level, especially amid the widespread violation committed by the Syrian Regime.

[19] See Abd el-Razzak el-Sanhuri, Easy Guide for Civil Code (الوسيط في شرح القانون المدني), Volume 1, Third edition, *Dar el-Nahda el-Arabyya*, Cairo, 1981, p. 50 and beyond.

[20] See below concerning nationalization of Christian schools in 1967.

regardless of their religion. History books paint Islamic conquests with a positive tone, while the negative aspects of the Crusades and their calamity for the Muslim Nation are highlighted, thus negatively impacting religious coexistence. Authors of these books often refer to Christians while narrating the Crusades' history. They use certain extremist, Islamist terms, such as "apostate" and "enemy of Allah". The spiritual aspects of the Qur'an are taught in law universities. Law students (Muslim and non-Muslims) must memorized Qur'an verses, even though they should be only concerned with the legal aspects of Islamic religion[21].

Islamic law also dominates matters relating to personal status or family law. Consequently, a pluralistic religious system has been applied: Muslims as well as Christians and Druze have their own laws and their own jurisdiction in matters related to family law. This system provides several privileges for Muslims, and discriminates against non-Muslims. It is the source of violations of many rights, such as the right of equality and religious freedom, especially in cases between non-Muslims (Druze and Christians) and Muslims.

If, for example, the husband converts to Islam, even during the judicial proceedings with his wife, he can repudiate her. If the woman converts, the marriage is dissolved because the marriage between a Muslim woman and a non-Muslim man is prohibited. Thus, a Christian husband can convert to Islam to force his converted wife to stay married. The children of a marriage between a Muslim and a non- Muslim are necessarily registered as Muslims. According to the Syrian doctrine, children should follow the best religion, Islam. Thus, the law of the country does not recognize the right of a Muslim married to a non-Muslim to educate his/her children in a religion other than Islam, even if this is against the will of both parents.

Non-Muslim mothers are discriminated against because of the position courts take regarding the custody of the child in case of a legal conflict. A Christian mother of a Muslim child born in a mixed marriage can keep the child up to a certain age. However, this type of care is in jeopardy if the religion of the child is threatened by the influence of the mother's religion. In such a case the child is removed from his/her Christian mother. Often, this type of dispute is triggered at the age when children can receive religious education (between five and eleven). The Syrian tribunals follow the famous jurisprudence of the Syrian Cassation Court: This court has ordered, in its decision of April 6, 1981, to verify allegations concerning the influence on the religion of the child by his Christian mother (Case No. 301). The conversion of a Christian husband to Islam thus allows him to seek immediate custody of a child in case such influence is proven, conversion offers a real advantage to him.

As for mixed marriages, article 48 of the Syrian Law of Personal Status prohibits a non-Muslim man from marrying a Muslim woman, with the consequence that any child of such a relationship is illegitimate. The conversion of a non-Muslim man to Islam is inevitable in order

[21] For more details, see Nael Georges, The Educational Systems in Arab Mashreq and the Future of Religious Pluralism and Democracy (الأنظمة التعليمية في المشرق العربي ومستقبل التعددية الدينية والديمقراطية), *Geiroon*, August 24, available at: https://geiroon.net/archives/132909

to enter a marriage with a Muslim woman in Syria. The prohibition of this type of mixed marriage is a violation of two fundamental rights of human beings, namely the right to freely enter into marriage and the right to equality. Regarding the second aspect, the non-Muslim man is discriminated against because Muslim men are permitted to marry any women, no matter if they are Muslim or Christian. Note in this context that Christian family laws in Syria include provisions on the prohibition of mixed marriages.

Additionally, inheritance between a Muslim and a non-Muslim is forbidden under article 264 of Syrian Law of Personal Status. Therefore, the question of succession can be solved following the conversion of Christians to Islam. Furthermore, the testimony of a non-Muslim is not accepted before Muslim courts.

It should be noted that Muslim converts, as well as Muslims by birth, cannot leave Islam[22]. Indeed, the legal and legislative apparatus imposes strong restrictions against the apostate in Islam. It is true that Syrian law does not provide for a prohibition of the abandonment of Islam, however, article 305 of the Syrian Law of Personal Status demands to follow the rules of Hanafi rite to fill the absence of positive legislation. Therefore, the judges will be forced to follow the Hanafi School, i.e. the provisions in the Code of Qadri Pasha[23]. This Code prohibits, in principle, for apostates to change their religious identity on official documents. They are separated from their spouses and they cannot enter into contracts including marriage. They are also deprived of their rights to child custody, inheritance, etc. In some cases, such restrictions are not applied, but the Syrian government continues to deal with the apostate as a Muslim. The ban on leaving Islam leads to the violation of certain fundamental rights of all Syrian citizens, including the principle of religious freedom, equality[24] and freedom of expression. Furthermore, prohibiting the abandonment of Islam in Syria resulted in strong restrictions against non-Muslims regarding their legitimate right to proselytize. This right must be guaranteed under the right to manifest religion or belief.

[22] See Mohamed Zuhir Abdou Al-Hakk, *الدليل الشرعي للقاضي والمحامي (chariee guide* to the judge and the lawyer*)*, *Al-Majed*, Damascus, 1994, p. 40.

[23] Articles: 31-32, 120-130 and 303-309 concerning the status of apostate.

[24] The principle of equality is violated because the conversion to Islam is very easy, procedures are extremely simple, even if the convert only wants to evade the law.

3. Part Two: Non-Arabs in the Syrian State System

The influence of Islam on the Syrian state system remains limited compared to other Arab states, such as Egypt and Saudi Arabia. The Syrian regime's "non-religious" inclination is related to the Alawi rite, whose followers control major power positions[25]. This minority, which follows – or annexes itself to – the Shiite Muslim rite, makes up around 12% of all Syrian citizens. Hence, having legitimacy to rule on a religious basis is difficult because the majority of Syrian citizens are Sunni. Thus, the Syrian regime sought to remove the state's Islamic inclination[26], by consolidating the Arab Nationalist ideology which attracted non-Muslim religious minorities, especially Christian Arabs. They contributed to consolidating Arab nationalism thought that caused a decline in Islamic influence[27]. Similar to the previous part, the situation of non-Arabs in Syria's successive constitutions will be highlighted in the first section (3.1). The second section will deal with related laws and decrees found in internal legislation (3.2).

3.1 Arab nationalism in the Syrian constitutions

Arab nationalism began to take effect in varying degrees during the first stages of the Syrian state, which was designated "The Arab Kingdom of Syria" in 1920. The leaders of this new entity included newly appointed King Faisal I and Hashim al-Atassi, head of the Syrian Congress that was convened on March 6 of that year. These leaders immediately began to draft a Constitution which recognized Arabic as an official language (Article 3), without mentioning other languages such as Kurdish and Assyrian[28]. The Mandate Period saw the recognition of the 1930 Constitution, which merely mentions "The Syrian Republic" without specifying the Arab character of the emerging state. As for the 1950 Constitution, it was adopted by the democratically formed Constituent Assembly on November 26, 1949.

Despite the democratic nature of its adoption, and the focus on the rights of citizens and the sovereignty of the state in its provisions, the 1950 Constitution was the target of numerous criticisms - especially regarding its definition of the state's cultural identity, namely its Arab nationalism. Thus, the 1950 Constitution's Preamble includes the following phrase: "We, the representatives of the Syrian Arab people…" The phrase is repeated in the Constitution's final

[25] It should be noted that many Alawites, though, oppose the Syrian regime, such as the two political activists Munther Makhos and Wajdi Mustapha as well as the two writers Hassan Abbas and Samar Yazbek.

[26] Unlike most Arab constitutions, the Syrian constitutions under the Assad regime have not stated that Islam is the religion of state. Sunni face severe discrimination and oppression, especially when it comes to their religious gatherings or their positions in the army. The Assad Regime enacted Law 49 of 1980 which punishes every member of the Islamic Brotherhood in Syria with death, while movements of the political Islam became active in many other Arab states in the past decades.

[27] In his article "Journalism and the Dilemma of Contemporary Christian Discourse" (الصحافة وأزمة الخطاب المسيحي المعاصر), Talal Salman says the founding fathers of Arab nationalism are Christians. See Mashreq Christians Today, Issue 112, March 2013. p. 104.

[28] This draft Constitution was not adopted due to the beginning of the French Mandate Period in Syria with the arrival of French forces on June 24, 1920.

section – which also points out that the Preamble "is an integral part of this Constitution". The first article of the Constitution states that "Syria is a democratic Arab Republic" and that, "the Syrian people are a part of the Arab nation". The fourth article designates Arabic as the official language, without mentioning other languages, such as Kurdish or Syriac. Numerous sections of the 1950 Constitution are characterized by an Arab nationalist ideology, including Article 75, which concerns the presidential oath. This oath mandates a commitment "to realize the unity of all Arab nations"[29].

The 1950s and the period that followed witnessed a number of military coups, which were punctuated by the suspension of the 1950 Constitution and the adoption of [new] constitutional amendments, as well as the adoption of temporary constitutions that began to be dominated by Arab nationalist ideas. The 1950 Constitution was again suspended [in 1958] at the time of the unity pact with Egypt and the declaration of the United Arab Republic. An interim Constitution was adopted that remained in effect until Syria left the union in 1961. Subsequently, the 1950 Constitution was reinstated after certain amendments were added, including the designation "Syrian Arab Republic" rather than "Syrian Republic".

In 1963, this Constitution was annulled for the last time after the military coup known as "the 8th March revolution", which was led by a group of Baathist officers, including the late Hafez al-Assad. This new authority adopted a series of temporary constitutions, dominated by Socialist Arab Baath Party ideals. The last of them was the 1973 Constitution which remained in effect until 2012, a year after the start of popular protests against the dictatorship.

The ideological hegemony of Arab Baathism can be noticed in the 1973 Constitution, which consecrates a single party system that dominates various spheres of life. The ruling party left its mark on a number of constitutional articles, particularly the first one, which includes a number of terms related to Arab nationalism, e.g., "the union of the Arab Republics", "the Syrian Arab Republic", "the Syrian Arab region", "the Arab homeland" and "the Arab nation".

The Constitution's Article 8 suppresses the multi-party system by stipulating that, "the Socialist Baath party is the leading party in society and state. It leads a patriotic and progressive front seeking to unify the resources of the people and place them at the service of the Arab nation's goals". According to Article 21, "the educational and cultural system aims at creating a socialist nationalist Arab generation which is scientifically minded and attached

[29] The 1950 constitution is not feasible today for many reasons. First, its commitment to Arab nationalism and Islamism would affect the rights of non-Arab and non-Muslim minorities, as discussed below. Second, the 1950 constitution was drafted and adopted before Syria's ratification of international human rights instruments. Consequently, a new constitution should be drafted to enshrine Syrian obligations with respect to these instruments. Third, because some systematic human rights violations, such as enforced disappearance (made especially problematic by the immunity of security services), have developed under the Syrian dictatorship, thus certain rights should be guaranteed on the constitutional level to prevent such violations.

to its history and land, proud of its heritage, and filled with the spirit of struggle to achieve its nation's objectives of unity, freedom, and socialism".

Article 2٣ states, that "the nationalist socialist education is the basis for building the unified socialist Arab society. It seeks to strengthen moral values, to achieve the higher ideals of the Arab nation…" As for the Constitutional oath, in Article 7, it calls for working towards "the realization of the Arab nation's aims of unity, freedom, and socialism". This commitment is also applied to the armed forces and other defence organizations, which are responsible, according to Article 11, "for defence of the homeland's territory and for the protection of the revolution's objectives of unity, freedom, and socialism". Even judicial rulings are issued, according to Article 134, "in the name of the Arab people of Syria". The 1973 Constitution remained in effect until the beginning of the Syrian revolution in March 2011. The Assad regime adopted a new Constitution in February 2012 in an effort to alleviate political tension, restore stability, and to guarantee that the regime remains in power.

Nevertheless, the text of the new Constitution came as a disappointment. First, it repeats the majority of what the previous Constitution contained, especially in terms of the system of governance and the possibility of Bashar Assad's rule being renewed for two additional terms. It was also considered disappointing because of the unilateral manner in which it was drafted, and because the constitutional referendum took place without even implementing minimum standards of transparency; and, in the context of the repression and abuse of those who did not support the regime, the continuation of military operations, and the absence of a peaceful solution.

The text of the new Constitution preserves the ideology of the ruling Baath regime as well as its means of administering its authority, despite the removal of Article 8 of the previous Constitution (which had stated that the Baath party is "the leading party in society and state"). Like the 1973 Constitution, the new Constitution affirms the ideological influence of both Arab nationalism and religion. In addition, the new Constitution's Preamble stipulates that, "The Syrian Arab Republic is proud of its Arab identity and the fact that its people are an integral part of the Arab nation. The Syrian Arab Republic embodies this belonging in its national and pan-Arab project and the work to support Arab cooperation, in order to promote integration and achieve the unity of the Arab nation." The Constitution adopts the same vocabulary of Arab nationalism as the 1973 Constitution, with the addition of phrases such as "Arab civilization", "the Syrian Arab role", and "the heart of Arabism". Article 4 confirms that, "the official language of the state is Arabic" without reference to other languages or the cultural rights of their speakers. The character of Article 7 concerning the constitutional oath also draws upon the previous Constitution: it calls for a commitment "to act in order to achieve the unity of the Arab nation".

3.2 Non-Arabs and Syrian legislation

The influence of constitutional texts infused with the ideology of Arab nationalism, along with the absence of an explicit acknowledgment of the cultural and linguistic rights of non-Arabs, affected all legislative, political, social and even economic aspects of life. One of the main characteristics of the past decades was the discrimination against non-Arabs, but also against non-Baathists or critics of the ruling regime and its ideology of Arab nationalism. Kurds and Syriacs were deprived of learning, and sometimes speaking in their language. They were also subject to several kinds of discrimination that included their political participation and the appointment in public positions, as well as discrimination in work, education and regarding the publication of non-Arab material.

Dozens of thousands of Kurds were deprived of their Syrian nationality. The census carried out on October 5, 1962 in Hasakah Province led to the denaturalization of around 15,000 Kurds[30]. Later on, many Kurds were denaturalized for political reasons. Some of them have never even gained the Syrian nationality under the pretext of entering Syria from neighboring countries. As such, these people were deprived of their most basics rights, including ownership, travel, benefit from the state's public services such as medical treatment, contracting and employment; they could neither register cases of death nor births. As a consequence, these unregistered new-born's became stateless, even though they were born on Syrian soil, just like their fathers. Conscription was forced on many stateless people. The issue was only partially solved when Bashar Assad issued Decree 149 on April 7, 2011, by virtue of which some Kurds were granted Syrian nationality. The reason for the decree was more political than legal. It aimed mainly to circumvent the uprising's demands for freedom and dignity to all Syrians and to isolate the different components of the Syrian people, in line with the divide-and-conquer policy adopted by the regime.

The most severe oppression and marginalization of Kurds took place under the Arab Socialist Baath Party, following the March 8, 1963 Revolution, in predominantly Kurdish regions. A study carried out by former Hasakah Governor Mohammad Talab Hilal[31] shows the regime's policy in dealing with Kurds in the Jazira region. In the study, Hilal suggests that the state should internally displace Kurds, impose restrictions on granting nationality to them and on their right to vote and stand for elections, adopt a policy of ignorance, i.e. not establish schools or scholarly institutions in the region, "limit job opportunities for Kurds to make them unstable and ready to leave at any moment," "cause conflict among them" and "turn Arabs against them"[32].The Arab Belt Project, which originates in Hilal's study, gave Kurdish-owned land to *al-Ghamr* Arabs[33]. The state took over other lands owned by Kurdish farmers, built

[30] By virtue of Republican Decree 93 issued on August 23, 1962.
[31] Appointed by the Baath Regional Leadership in 1965.
[32] See Mohammad Talab Hilal, Study on Jazira Region's Nationalist, Social and Political Aspects (دراسة عن محافظة الجزيرة من النواحي القومية والاجتماعية والسياسية), 1963, p. 23, available at http://www.amude.net/erebi/mihemed-taleb-hilal-lekolin.pdf
[33] They were named *al-Ghamr* as their lands were submerged when Euphrates' Tabaqa Dam was built.

"model farming villages" and populated them with Arabs. This led to a planned demographic change in that region.[34]

In addition to the marginalization of the history of non-Arabs, Syrian education curricula included a course on Arab Nationalism, which promoted the regime's ideology of Arab nationalism. Meanwhile, as mentioned earlier, Kurds and other non-Arabs were prevented from studying their mother tongue. The Baath Regime nationalized and 'arabized' schools, especially Christian ones, and imposed a unified educational system, by virtue of a decree issued in 1967[35]. This has allowed greater regime interference in the affairs of schools, which were put under the Ministry of Education's supervision, and the imposition of an arabizing educational system including school books for religious studies and Arab Nationalism. This has harmed particularly non-Arab Christians, such as Assyrians and Armenians, who lost the advantage of teaching their language in schools.[36] Any trace of Kurds in geography books was deleted. On November 11, 1986, the al-Hasakah Governorate issued a decision[37] that forbade the use of the Kurdish language at the workplace. A few years later, the then Hasakah Governor Mohammad Mustapha Miro issued another decision [38] that confirmed this prohibition and added the prohibition of non-Arab songs during weddings and celebrations.

The emergency legislation that had been applied for decades included the criminalization of any speech or action against achieving a union among the Arab states or against any of the Revolution's goals[39]. Furthermore, Article 267 of the Syrian Penal Code still punishes anyone who attempts "by actions, speeches, writings or otherwise to cut out a part of the Syrian territory and annex it to a foreign state"[40]. Many Kurds have been indicted on this charge, especially political and human rights activists. In September 2008, Presidential Decree 49 was issued. It limits the freedom to buy and sell real estates in border areas including predominantly Kurdish region[41]. The decree was enacted to amend and complement Law 41

[34] For more details on the Arab Belt and demographic change, see Azad Ahmad Ali, The Arab Belt in the Syrian Jazira Region (الحزام العربي في الجزيرة السورية), *Rudaw Center for Studies*, June 25, 2015, available at: http://www.rudaw.net/Library/Files/Uploaded%20Files/arabic/hizam_alarabi_rudaw.pdf; see also Issue of Syria's Kurds: Reality, History, Myth (مسألة اكراد سوريا : الواقع - التاريخ – الأسطرة), *Arab Center for Research and Policy Studies*, Doha, 2013, p. 38 and beyond.

[35] See Habib Mousally, Christians of Syria (مسيحيو سوريا), Higher Institute of Religious Studies, 1997, published in *Proche-Orient Chrétien* (Special Issue), Volume 47, p. 718.

[36] Laurent CHABRY et Annie CHABRY, Politique et minorités au Proche-Orient : Les raisons d'une explosion, *Maisonneuve & Larose*, Paris, 1984, p. 247.

[37] N°1012/S/25.

[38] 1865/S/25, on March 13, 1989.

[39] See for instance the Law for Opposing Revolution's Goals issued by virtue of legislative Decree 6 on January 6, 1965, and the competences of dissolved Supreme State Security Court which was established by virtue of Decree 47 of 1968.

[40] Many Kurds were also indicted due to other stipulations in the Penal Code, such as in Article 285, which states: "Whoever, in Syria, at the time of war or upon expectation of war erupting, resorts to propaganda that aims at weakening the national sentiment or causing racial or sectarian strife".

[41] See full text with its amendments on the Syrian Parliament's official webpage: http://parliament.gov.sy/arabic/index.php?node=5588&cat=4784

of 2004 related to the demarcation of border regions[42]. It imposes the imperative to get a security authorization to carry out such procedures. Kurds organized many sit-in's and protests against this decree. They were met with crackdowns, just as most other Kurdish gatherings as for example celebrations[43].

These discriminatory policies, which non-Arabs – mainly Kurds – suffered from, played an important role in fostering a separatist trend. It has fuelled feelings of rage and grievance and caused the absence of a citizenship state that treats non-Arabs equally. Thus, the conflict in Syria has an ethnic dimension, not only a sectarian one, and some military and political Kurdish movements want to establish an independent Kurdish nation state on Syrian territory.

Finally, the twofold discrimination that non-Arab and non-Muslim minorities face should be highlighted. These minorities face the above-mentioned religious constraints and discriminations on the one hand, as well as the Syrian State's Arab nationalist dimension on the other. It becomes more complicated for non-Arab minorities which are not recognized by Islam, such as the Yazidis, who belong to the Kurdish minority and whose population in Syria is around 100,000. Islamic religious education in schools and Islamic civil status legislation are imposed on them, unlike for Christians and Druze, who have the right to resort to their own legislation, as mentioned above.

[42] See full text with its amendments on the Syrian Parliament's official webpage: http://parliament.gov.sy/arabic/index.php?node=5595&cat=16133

[43] See Human Rights Watch, *op. cit.*

4. Conclusion

The relationship between religion and state on one hand, and the cultural and ethnic pluralism in the state system on the other, are a highly sensitive issue that became even more complex by sectarian and ethnic violence. As a result, Syrian political parties will have a difficult debate regarding the drafting of a constitutional and legal legislation related to religion, ethnic and linguistic diversity. Respecting rights of minorities amid political changes is crucial to secure their survival and accomplish their social integration, including complete equality and respect of their cultural identities. This respect is also crucial for the participation of these minorities in public political life. It contributes to the rise of their communities, their cultural wealth and the overcoming of the minority issue. Such a development will not only have a positive impact on the persons belonging to these minorities, but on all citizens.

This paper shows that, on the one hand, the effects of religious legislation and the establishment of a link between religion and the state have resulted in a violation of the rights of non-Muslims. The ideology of Arab nationalism, on the other hand, has contributed to the violation of the rights of non-Arabs, with a negative effect on their integration. In this context, we should leave behind ideology, whether religious or nationalist, in favour of the establishment of a civil state that provides services to citizens regardless of their religious or racial affiliation. This matter also applies to those demanding secession, like some Kurds – as the establishment of a state based on race or ethnicity will lead, in the end, to discrimination against non-Kurds who will be treated as second-class citizens. In this context, the establishment of a state based on citizenship is the only solution to remove discrimination and to ensure minorities' integration. Thus, the principle of state neutrality vis-à-vis all ethnicities and religions should be respected.

The provisions of the upcoming Syrian constitution will play a significant role in entrenching the rule of law and protecting human rights, including religious and ethnic minorities. If the next Syrian constitution does not explicitly mention the term "minorities", given its sensitivity,[44] their protection could be ensured through two main categories of constitutional rights. The first category would deal with equality in rights and obligation and equality before the law and the courts. The second would deal with religious freedom and respect of cultural and linguistic pluralism. All enforced laws that are issued after a constitution has been passed must be compatible with the constitutional text. Previous unconstitutional law texts, especially the ones that include discrimination against citizens, must be cast aside. Legislation to prohibit discrimination among citizens must be issued, legislative measures that guarantee the rights of all minorities must be adopted and personal status laws that comply with international human rights instruments must be drafted. A civil marriage law must be issued.

[44] Most Muslims, especially Sunnis, consider raising the issue of protecting minorities in Syria as a justification to persecute them. Some western powers, Russia in particular, justify their military intervention in Syria to "protect Christians". Moreover, the Syrian Regime continues to claim that it is protecting minorities form the threat of Islamic Sunni extremism.

In addition, the personal status laws of each rite must be maintained. In this way, any two people desiring to get married can choose between the civil law, the religious law or even both laws. Adopting such civil legislation that is inspired by modern-day needs and that applies to all, regardless of their religion or sect, is a right to every citizen believing in the separation between religion and politics. A civil law of such kind helps to establish a civil state, activates citizenship and belonging to the country (not to one religion) and promotes religious tolerance and acceptance. Finally, similarly to most non-Arab constitutions, the principle of neutrality towards ethnic communities must be upheld.[45] Moreover, there must be an explicit acknowledgment of the cultural identity and linguistic rights of non-Arabs in Syria, thereby helping to preserve pluralism and cultural wealth in the country.

[45] See The United Nations Economic and Social Commission for Western Asia, The National Agenda for the Future of Syria Programme, Constitutional Options for Syria (بدائل دستورية لسوريا), p. 15, available at : https://nafsprogramme.info/sites/default/files/2019-06/Constitution%20Options%20for%20Syria%20-%20Final%20-%20Arabic.pdf