



The 2019 Draft for a Syrian Constitution

Freedom of religion within the constitutional order of Syria

By Danilo Gerber, Emilie Pasquier, Ville Verronen
Revised by the European Center for Kurdish Studie



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Introduction

Freedom of religion – in an individual aspect or a collective one – should be considered as a primary element of the more general principle of freedom based on pluralism and the protection of the minority¹.

The relations between the State and the Church is crucial to understand freedom of religion. Both extreme solutions a religious state (understood as a single-religion state) and an atheistic state (understood as an anti-religious state) are very dangerous. Between these two extremes there are many versions of separation and cooperation between church and state.

In the proposal for a Syrian Constitution, freedom of religion is consecrated at Art. 14 and at Art. 36. There are 55 occurrences related to religion while in the French Constitution for example there are only 9. Through a small « Large-N » study method we have figured out that religion occupies a significant place in the Syrian proposal. Most of the time, it is linked to an aspect related to diversity rather than a liberty in the classical sense of the term. The word « religious » is mostly used in a diversity context: For example, Art. 3 par. 4 « Syria shall respect, protect and promote the diversity of its population. All ethnic, religious, denominational and linguistic groups, shall form part of the identity of Syria and shall be recognised as elements of Syrian society. [...] »².

1. Context behind the proposal

To understand the context of the proposal of the Constitution of Syria, we need to look back to its history and also try to observe its nations.

1.1 Syria

Syria conference was held in January 2018 with the intention to put an end to seven years of suffering of Syrian people. In the conference it was decided that Syria needs a new constitution. A constitution which states - for example - that Syria shall be a democratic and non-secretarial state based on political pluralism and equal citizenship irrespective of religion, ethnicity and gender, with full equality of all citizens, the cultural diversity of the Syrian society, and public freedoms, including freedom of belief, featuring transparent, inclusive, accountable and answerable governance, including before the national law, with the necessary effective measures to combat crime, corruption and mismanagement³.

1.2 Iraq

Since the March 2003 occupation, those in Iraqi political circles, the media, the U.S. administration, and the United Nations have shared the assumption that a constitutional democracy would be the hallmark of success in post-Saddam Iraq. Before Iraq's first national election on January 30, 2005, there was real expectation that the completion of a permanent constitution would represent an important, perhaps critical, turning point in Iraq's fortunes. Constitution on its own wouldn't be sufficient. Also, necessary would be a participatory, transparent, and well-ordered drafting process that the constitutional text itself was expected to embody⁴.

¹ GARLICKI, p. 467.

² See attachment 1.

³ Final statement of the Congress of the Syrian national dialogue. ⁴ Morrow p. 4.

1.3 Comparison

Since the death of the Prophet Mohammed, the Arab nation has been struggling to find an appropriate balance between religious values and concepts of Islam on one side, and political struggles to acquire the authority and to control the nation on the other side. Islamic Sharia plays a major role in most of Arab countries laws, not only as a reflection of the influence of Islam on the Arab world, but also as confirmation of the legitimacy of the governor. Today if we survey most of the Arab states modern constitutions apart from the Lebanese constitution, we found that Islamic Sharia is declared, as "a" or "the" source of national legislation⁴.

Both Syria and Iraq had a military crisis going on before drafting the constitution. In both cases drafting a new constitution was seen necessary action to guarantee the rights of the people. In case of Syria, it was necessary to state that it shall be a secular state to guarantee equal rights to every religious group in the country. Despite the debates during the drafting process regarding second articles first part, today Iraqi's constitution states that Islam is its official religion and also its foundation source of legislation. Although the provision might be seen more as a symbolic gesture, honouring the central importance of Islam to the lives of many Iraqis, than as a fount of future legislation or of amendments to existing legislation. Iraqi constitution also guarantees the full religious rights to freedom of religious belief and practice of all individuals. This provision is notable because it guarantees individuals (as opposed to only groups) the right to freedom of belief and practice⁵.

1.4 About the context

In the twentieth century, Syria was under colonial control of the French. Not until 1946 did Syria gain its independence. Although Syria become a sovereign state, and French colonists were out of power, it brought new problems to the face of the Syrian people. Like many countries post-colonial control, Syria spiralled through periods of instability and constant conflict that was fuelled by the inability for the different cultural factions in Syria to peacefully coexist. In essence, Syria was similar to playing "king of the hill" between different groups of the country. Soon enough other countries recognized Syria's conflict and allied with them. From 1958 to 1961, the country was unfired with Egypt. In 1963, an army coup organized by Arab Sunnis retook Syria's independence. It was an Alawite Shias party took control with the support of Egypt. This committee that initiated a coup consisted at one time or another a Sunni, Amin al Hafiz; a Druze, Hamad Ubayd; and two Alawis, Muhammad Umran and Jadid. After the secession from UAR in 1961, the Syrian Baath Party was formally re-established at a party congress in May 1962. The coming to power of the Baath party in 1963 is sometimes referred as "the revolution", although the March 8 coup was not executed by the Baathists and did not actually initiate the great social revolution postulated in Baathist ideology. In any case the party was supreme, but factionalism continued with the Baathist regime.

Today, Syria is the home to several diverse ethnical and religious cultures: the Kurd, Armenians, Assyrians, Christians, Druze, Israelis, Alawite Shias and Arab Sunnis. Arab Sunnis account for the majority of the Muslim population. Islam in Syria is followed by 90% of the country's total population: Sunnis make up 74% of the total, mostly of Arab, Kurdish and Turkoman ethnicities. Shias make up the remaining 13% Alawites are the predominant Shia group, followed by Twelvers and Ismailis.

The old Syrian constitution from the 2012 stated that Syria is an Islamic state and Islamic jurisprudence shall be a major source of legislation. As mentioned above, according the new draft of constitution, Syria shall be a secular state and the new constitution shall override all federal, regional and local provisions. An Islamic state is considered as a type of government primarily based on the application of Shari'a dispensation of justice. For a comparison Iraq is not considered as an Islamic state, although its constitution states that Islam is the official religion of the State and its a foundation source of

⁴ Razi p. 1.

⁵ Deeks, p. 16.

legislation. Iraq's legal system is based on French civil law as well as Sunni and Jafari interpretations of Sharia.

In turn, Iran is considered as an Islamic state and its constitution states that all judicial rulings must be based upon "authoritative Islamic sources and authentic fatwa". Although Iranian application of sharia has been seen by scholars as highly flexible and directly contradicting traditional interpretations of the sharia. From among the neighbour states of Syria, only Turkey and Lebanon are secular states. It is a remarkable step for Syria to become a former Islamic state which now states that its secular in the constitution.

The proposal of Syrian Constitution reflects Syria's national richness. The proposal can be seen as a transformative constitution and kind of a holding together constitution as well. We can note from the draft that its goal is to fully respect, protect and promote the diversity of its population. This can be seen for example from articles of the constitution that creates quotas for different religions. It's quite obvious that you can't find that kind of parts from the finish constitution which is a country that has only one major nation and few minorities, but it's a significant note that you can't find those from the Iraq's constitute either.

2 Freedom of religion

2.1 The individual aspect (Art. 36)

All democratic European nations contain the principle of freedom of the individual to hold a particular belief or associate with a chosen religion as provided for in Art. 9 of the 1950 European Convention on Human Rights⁶. Due to Art. 9, there is a common level of freedom for all democratic European states that must be guaranteed in every country, for every religion, and for every belief. However, these guaranteed freedoms, including the determination of relations between church and state, varies vastly.

Freedom of religion in the proposal for a Syrian Constitution is deduced from Art. 36 that says "everyone has the right to freedom of thought, freedom of conscience and freedom of religion. The right shall include the freedom to have, adopt or reject a religion or ideology of one's own choosing and to acknowledge the religion or ideology alone or in the company of others in public or in private". This article makes a wide definition of freedom of religion and connect it with the freedom of thought and freedom of conscience.

In the Swiss Constitution, the freedom of religion is deduced from Art. 15 Cst. There are usually two dimensions: the subjective one and the objective one. The subjective dimension corresponds to the individual protection of freedom of religion and the objective dimension is linked to the collective protection, that is to say the principle of religious neutrality of the State. In Switzerland, jurisprudence and the authors also distinguish between the inner aspect of freedom of religion independently of an outward manifestation, and the outward appearance of that freedom that protects the manifestation⁷. The distinction is fundamental because freedom of religion cannot be restricted and forms the core intangible freedom of conscience and belief while the external aspect can be restricted⁸.

To conclude, we can mention the positive and negative aspects of freedom of religion that is seen in Art. 36 in the proposal for a Syrian Constitution. The positive aspect guarantees its holder the right to forge a religious conviction and to follow the precepts. The negative aspect of freedom of religion guarantees the right not to have religious belief. It also follows from the negative freedom of religion that no one can be forced to pay an ecclesiastical tax of a religion's community to whom he does not belong.

⁶ GARLICKI, p. 467.

⁷ ATF 119 Ia 178 consid. 4c = JdT 1995 I 290 ; DUBEY, n° 1949.

⁸ DUBEY, n° 1950.

2.1.1 A human right

Before being a right, religion was also considered as a duty of Man, even after Grotius who fought for freedom of religion through the definition of human dignity as a human right (natural law). In the 17th century, PUFENDORF advanced that the three sources of human duty were the reason (natural law), the law and the Revelation⁹. So, did also The French Constitution of 1795 which is titled: « Declaration of the Rights and Duties of Man and Citizen » and says, under Duties, that there is « no virtuous man unless he is unreservedly and religiously an observer of the laws »¹⁰.

Now modernity wants to normative itself¹¹. The internationalisation of fundamental rights is a line of that process. Also, the recent « Universal Declaration of Human Rights » (1948) and the « European Convention on Human Rights » are bunches of individual rights. In that all, religion seems no more to be a duty.

Since the middle of the twentieth century, freedom of religion or belief is recognized as a fundamental right. Freedom of religion has come to be recognized as a principle that has a universal validity¹². It may thus come to a surprise to find that states have fought immense battles to ensure that the freedom to believe is protected or controlled¹³. The reference of the possibility to reject a religion or ideology in the art. 36 of the Syrian constitution is especially aimed to protect the people wanting to convert to another religion. In fact, a growing number of countries around the world have passed legislation to criminalize conversion from officially sanctioned religions, punishing those who follow atheistic beliefs or join newly emerging faith communities¹⁴. Around the world, individuals who leave Islam for another religion face immense persecution. Both Iran and Turkey are seen to be countries actively persecuting individuals on the basis of religious affiliation or belief, structurally blocking religious freedom, and denying religious minorities access to equal social, political and economic opportunities¹⁵.

2.1.2 Restriction

The proposal for a Syrian constitution mentions a possibility to restrict fundamental rights and human rights at the Art. 22. A comparison is possible with the art. 36 of the Swiss Constitution. It begins saying that “the essence of fundamental rights and human rights shall be inviolable”. However, some restrictions are admissible if they have a legal basis, are protecting public interests or protect the fundamental rights and human rights of third parties.

Although freedom of religion is a liberty in the classical sense of the word, it must be seen as a guarantee of the rule of law to the extent that it isn't only protecting individual behaviour, but also requires the state to behave in a certain way in its relation to religion. In Switzerland, the State cannot treat religious communities differently only if there is a public interest to do so and if this difference in treatment is appropriate, necessary and reasonably due to achieve the purpose. We could argue that the Proposal for a Syrian constitution goes in the same way.

2.2 The collective aspect (Art. 14)

The collective aspect requires the State to be separated from a particular religious community¹⁶. In the Constitution of Syria, the Art. 14 (1) says that “Syria shall be a secular state”. If we compare this article to the Swiss system, we can object that the Constitution doesn't mention a separation of the State and the Church. Only Geneva and Neuchâtel have mentioned this principle in their Constitution.

⁹ PUFENDORF, par. 1 and par. 8.

¹⁰ Constitution of the French Republic of 5 Fructidor, Year III (1795), Devoirs, art. 5.

¹¹ HEIDENREICH, p. 21 s.

¹² DURHAM, JR, W. COLE, p. 5.

¹³ KIRKHAM, p. 32.

¹⁴ KIRKHAM, p. 32.

¹⁵ KIRKHAM, p. 32.

¹⁶ DUBEY, n ° 1965.

In Syria, the State must refrain from introducing into the legal order religious prescriptions while remaining open to religion in order not to violate individual religion freedom of the different citizens. The State cannot therefore restrict the positive aspect of freedom of religion by promoting the manifestation of certain religions only, or to violate the negative aspect by promoting a certain religion without justified objectives reasons of public interest and proportionality.

2.2.1 Secularism in the name of God (Preamble)

Secularism means to manage and take religious away from the public sphere¹⁷. But there is no necessary fight between the State and a church. For example, secularism is inscribed in Christianity: according to the Bible there are two distinct kingdoms (terrestrial and celestial)¹⁸. Even more, there is no necessity of collaboration between the State and the Church just an injunction to be a free man and a God servant¹⁹. In facts, secularism is in the hand of the political view: as France, clearly secular is (art. 1 French Cst 1958), Malaysia gives prevalence to the Islamic religion (Art. 3 Malaysian Cst 1957). The Syrian draft clarifies it at Art. 14 (1): « Syria shall be a secular state ».

According to many constitutions, it can be founded to believe that the higher authority is God²⁰ or might be the highest supervisor²¹. In Constitutions, God is helpful²² - whoever he is and even if that word is regarded as a symbolistic affirmation. We could probably see that in the « spirit of reconciliation » in the Syrian Draft (par. 4 of the preamble) even if it sounds very neutral in a religious way.

For example, the word « In the name of Almighty God! » opens the text of the Swiss Constitution. This is a legacy that goes back at least to August 1291. In the 19th century, this reference to a divinity has not been controverted, and for the doctrine the invocation had no normative value²⁴. This reference probably teaches about the relativity of terrestrial matters and modesty²³. According to the Federal Council of Switzerland, a preamble is a ceremonial and solemn introduction whose content is symbolic and summarizes the spirit of the Constitution²⁴. The Swiss Supreme Court has never referred to it for interpreting a constitutional or legal provision²⁵. In the contrary of the US courts who refer to it.

Finally, let us consider, as did Justinian²⁶, that for many people there is no authority that does not come from a god and that what exists is constituted by a god; so does also the Coran²⁹. Also, secularism is more an ideal than a strict reality. At least, it provides the State the possibility to reaffirm its monopoly into the public sphere and the freedom of religion²⁷. Never mind, the remaining opposition between the faith and the reason that is still tested today by Christianity²⁸. There is always a need for the people to be feed with spirit matters and for that, the preamble of the Syrian proposal is prudently engaging. In Syria, some groups want Islamic rules (sharia) within an Islamic state while other not.

¹⁷ ANDRES, p. 5.

¹⁸ Gospel according to Saint John, 18, 33.36.

¹⁹ St. Peter, First Epistle, 2, 16.

²⁰ See preambles from constitutions of Afghanistan (2004), ..., to Zimbabwe (2017).

²¹ See art. 90 of Algerian Constitution (2016),

²² See art. 128 of Australian Constitution () ²⁴

AUBERT, ad Préambule, num. 5 s.

²³ *ibidem*, num. 8.

²⁴ MAHON, ad Préambule, num. 1.

²⁵ *ibidem*, num. 3.

²⁶ *Codici Domini Justiniani, Sacratissimi principis, ex repetitit praelectione, Liber Primus.* ²⁹ Sourate 12, vers. 40 and Sourate 7, vers. 54.

²⁷ REMOND, p. 23.

²⁸ NIGOUL, p. 34.

Therefore, a federal system which provides conditions, guidelines and a general constitution is the most conceivable option²⁹.

For example, the first Swiss Constitution (1798) said that Freedom of conscience shall be unlimited but subordinated to the feelings of concord and peace (art. 6). It was a question of social peace and the last Swiss constitutions charges the State to take measures to ensure peace between the communities (art. 72). The « spirit of reconciliation » of the Syrian preamble could be regarded as focusing on a similar aim.

Reconciliation means « social transformation », not only the cessation of hostilities and in a theological approach it must be focused on the restoration of broken relations. The principle of Ubuntu in South Africa is an example of this: it acts as a moral theory close to humanity and fraternity which are precondition for reconciliation³³.

2.2.2 The principle of neutrality

The principle of neutrality is written in the proposal for a Syrian Constitution at Art. 14 par. 3. It is said that the State shall remain neutral in religious and denominational matter. In the Swiss Constitution, The Swiss Constitution does not contain an explicit reference to the principle of neutrality. It derives however from Art. 15 al. 4 and Art. 62 al. 2 Cst.

Neutrality is generally synonymous with non-identification. It is a result of a plurality of ideologies and religions. In this respect, the modern French notion of positive laicism serves as the foundation of judicial principles to ensure the neutrality of public power regarding religion and to ensure equal treatment of diverse religious expressions. Nonidentification and neutrality assume separation of State and Church, but generally the separation is not an absolute one. In Switzerland, some cantons (Geneva and Neuchâtel) have introduced this concept. In Portugal, the Constitution indicates that it imposes laicite (separation of State and Church) but not laicisme (a hostile implementation of this separation). Austria is described as not a completely secular state, since the separation has not been clearly conducted. Finally, Germany has a transformed independence within the coordination system or a sort of partnership of churches and the State.

Recently, on the 10 of February 2019, the Canton of Geneva adopted a law on the laicity which regulates the relations between the State and the Churches, as well as the religious freedom³⁰. The Art. 6 limits in particular religious manifestations and prohibits officials from wearing a religious sign. This highly criticized law thus calls into question Art. 15 of the Federal Constitution. And above all, admits a significant restriction on religious freedom. It is part of the process of the growing secularization of our societies³¹.

2.3 The power-sharing arrangement

First, the Syrian proposal sets his supremacy at Art. 5: all the state powers shall be bound to respect and protect it. Moreover, they have to act within the meaning and the spirit of the constitution (par. 1). The hierarchy of rules is determined in par. 2: international human rights are above the constitution which is above federal, regional and local provisions.

Second, the Syrian proposal designs a federal state in which powers and responsibilities are assigned to the federal state, the regions and the municipalities (Art. 9 par. 1). These levels shall collaborate peacefully (Art. 9 par. 4).

Third, the Syrian proposal distribution of legislative powers and responsibilities are based on the principle of subsidiarity (Art. 9) which here means that the functions that are not assigned by the constitution to the federal state fall within the powers and responsibilities of the regions (Art. 59 par. 1).

²⁹ GRIMS, p. 15 s. ³³

LOIZIDES, p. 3.

³⁰ ANDRES, p. 5.

³¹ ANDRES, p. 5.

In this constellation, the relation between the state and the religion is not depending on a constitutional repartition of competences and therefore it depends on the regions. But in any case, it must be given attention to that: a) Syria shall be a secular state (Art. 14 par. 1); b) freedom of belief and freedom of conscience is constitutionally protected (Art. 14 par. 2); c) all religious groups shall be neutrally and respectfully treated (Art. 14 par. 3); and that, d) those principles are constitutional and overrides all federal, regional and local provisions (Art. 5 par. 2).

This can be seen as a major change if we consider the previous Syrian Constitution which says that « [t]he religion of the President of the Republic is Islam; Islamic jurisprudence shall be a major source of legislation » at Art. 3 (Constitution of the Syrian Arab Republic 2012). Albeit it also after said that the State shall respect all religions which is a secular position. So did also the Syrian constitution of 1973 (Art. 3 and 35).

Syria has a dual legal system which includes both secular and religious courts. Civil and criminal cases are heard in secular courts, while the Sharia courts handle personal, family, and religious matters in cases between Muslims or between Muslims and non-Muslims. Non-Muslim communities have their own religious courts using their own religious law³². With this new Constitution, secularism may abolish Islamic jurisprudence and secularism is clearly realized over the federal power arrangement.

What is happening in Syria is a war of religion. Bashar Al-Assad is part of the Alawite minority of Shiite obedience that forms the ruling clan in Syria. And this minority has never stopped provoking the wrath of the Sunnis. Between Shiites and Sunnis, it's an old story of religious conflict³³. In this context, a « constitutional » secularism without place for an arrangement might be the solution.

That being said, it is perhaps regrettable that important fields of social life falls under the regions legislative powers and responsibilities. Those may strongly be related to religion also: the education system (Art. 59 par. 2 let. c) or personal, family and inheritance law (Art. 59 par. 2 let. j). While the federal state has responsibilities for citizenship, residence law (Art. 56 par. 2 let. d) and the safeguarding of high-quality education (Art. 56 par. 2 let. m).

For examples, in Switzerland, personal, family and inheritance law are parts of the Code civil suisse, CC (Art. 11 to 640 CC) which is a Federal law (Art. 122 Swiss Constitution). As marriage is a constitutional right (Art. 14 Swiss constitution), polygamy is prohibited by a federal law (Art. 96 CC) but only for the one who wants to marry (again). That allows polygamy to be recognised³⁴. In the Syrian proposal, family law falls into regions competences but there are constitutional preventions (Art. 31 par. 2 and 3). In comparison to Switzerland, the power-sharing arrangement in Syria gives more power to the regions but in return its constitution is more restrictive in family matters. While towards education the arrangements are more similar: in both countries education goes to the subnational level (Art. 60 (c) Syrian proposal and art. 62 swiss constitution) and in somehow the national level supervises and collaborates with the sublevels (Art. 107 par. 1 let m Syrian proposal and art. 61a, 62 Swiss Constitution).

3 On focus

3.1 The protection of the Yazidis (Art. 14 par. 3)

The protection of the Yazidis is a really important question we can focus on. The protection of this community is for us justified by objectives reasons of public interest and proportionality. What is particular into the Syrian project and its neutrality vis-à-vis religion, is precisely the place given to the Yazidi religion in Art. 14 para. 3. According to the Syrian project, it must be clear that (by law) the Yazidi religion is a religion. The Yazidi people is a scapegoat. Neither Christian nor Muslim, the Yazidis

³² DIAB, introduction.

³³ see BARBOUCH.

³⁴ BÜCHLER, p. 58 s.

have always suffered from the intolerance of others,³⁵ and recently ISIS. There is no need to give more details on what happens to this people here. Let us just note that this recognition in the Syrian constitution is also that of the international community. The 10 December 2018, as she received the Nobel price, the Iraqi Yazidi Nadia Murad implored the international community to protect its people and work for the liberation of the thousands of women and children still in the hands of the Islamic State⁴⁰. Does this show that sometimes neutrality of the state is not enough? In this case the minorisation of the Yazidi is due to the religion, but it is a minority question.

Other than the democratic one, the concept of minority refers to groups within the global society that have a certain permanence and whose members share an immutable characteristic. In addition, this common characteristic is usually at the origin of a certain vulnerability of the group compared to the rest of society. This is why the concept of minority refers mainly to a « vulnerable group »³⁶.

There is also a more specialized and narrower sense of the concept of minority which is used in international law, particularly in the instruments for the protection of human rights and the rights of "minorities" and which reserves this term to refer to "ethnic, linguistic or religious minorities". "*Dans les Etats où il existe des minorités ethniques, religieuses ou linguistiques, les personnes appartenant à ces minorités ne peuvent être privées du droit d'avoir, en commun avec les autres membres de leur groupe, leur propre vie culturelle, de professer et de pratiquer leur propre religion, ou d'employer leur propre langue* (art. 27 ONU II)". The UN Secretary-General spoke in the morning of the 19 November 2018: He was sad. He remembered that culture, faith and false notion of identity are still creating serious problems. As examples, he pointed the plights of the Rohingya people (Myanmar) and the Yazidi people in Iraq.³⁷

In fact, we can link the Yazidis to the Iraq's constitution. Iraq's constitution has integrated foundational rights considered by many to be essential for a 21st century democracy, Western or Islamic³⁸. However, the demographic situation of Iraq reveals a complicated mosaic of religious diversity, where political questions of identity and participation, power and territory, aren't yet answered³⁹. Art. 3 in the Iraq's constitution proclaims Iraq's "active" membership in the Arab League and identifies the country as part of the Islamic world. Turkmen, Assyrians and Kurds, of course, find no comfort in this declaration of Arab solidarity, and Iraq's non-Muslim minorities are here reminded of their non-Islamic status⁴⁰. The freedom of religion and the protection of minorities isn't a reality.

3.2 Religious Education in Syria (Art. 50)

The Syrian proposal says at Art. 30 par. 2 that religious and denominational groups may have the right to cultural self-determination, specially the right to self-determination in matters of school education. Every child has the right to education and that obligatory education includes ethics education (Art. 50). In addition, Art. 36 par. 3 of the Syrian proposal adds that regarding religious schools and religious education there shall be a state supervision.

Religious teaching is one of the fundamental elements of religious freedom⁴¹, this principle is clearly illustrated in Art. 9 of the European Convention. This teaching can be private or public. Private schools are sometimes in constitutions where their role can be defined (for example, Art. 7 of the German

³⁵ https://www.lemonde.fr/proche-orient/article/2014/08/12/la-communaute-kurdo-phone-yezidie-cible-des-djihadistes-de-l-etat-islamique_4470471_3218.html. ⁴⁰

<https://www.nobelprize.org/prizes/peace/2018/press-release/>

³⁶ WOEHLING José, *Les trois dimensions der la protection des minorités en droit constitutionnel comparé*, in : R.D.U.S 2003/04, p. 93 – 155, p. 96.

³⁷ <https://www.un.org/press/en/2018/db181119.doc.htm>

³⁸ TYLER, p. 83.

³⁹ TYLER, p. 83.

⁴⁰ TYLER, p. 88.

⁴¹ GARLICKI, num. 141.

Basic Law). In here, freedom of religious instruction means the freedom to establish and operate private schools, freedom to determine the content of the curriculum and the freedom of parents to choose an appropriate school for their children⁴². There is no provision about private schools in the Syrian proposition which means that the region will decide.

The former Constitution of Syrian Arab Republic (2012) did in Art. 29 par. 4 saying that the law had to regulate the state's supervision of private educational institutions. Even if hazardous, that lack in the new Constitution is probably more than welcome. In 2015, an estimated 2 million Syrian children were out of school in Syria; roughly 5,000 schools could not be used because they had either been destroyed or damaged by the war⁴³.

3.3 Polygamy (Art. 31)

Islamic polygamy served the general purposes of marriage, but it had other functions as well. Many Muslim scholars argue using the Coran that God allows polygamy to ensure that the Muslim community cares for its widows and orphans. The coranic treatment of polygamy came in the wake of the Battle of Uhud, a battle that left many Muslims without husbands or fathers. Allowance for the surviving men to take additional wives allowed them to receive the economic and social protections of marriage.

Coran already limited polygamy but modern reforms have expanded the scope of these initial protections by making polygamous marriage harder to enter and easier to escape. Syria also followed the trend of restricting polygamy and included to its law that judge may prohibit a man from taking another wife if he does not have the ability to support the new family. Morocco requires the husband to obtain permission from the first wife to insert a condition into the marriage contract that the husband will not take another wife. Yemen likewise follows the suggestions of the Arab Family Law Project. Tunisia took these restrictions further and banned polygamy already in 1956. Now in the draft of the new Constitution of Syria, it is following Tunisia's example and taking a major step towards into a secular state by prohibiting polygamy⁴⁹.

Still in today, according to an Islamic marital jurisprudence, under reasonable and warranted conditions, a Muslim man may have more than one wife at the same time, up to total of four. For example, in Iraq and Lebanon polygamy is restricted but not prohibited.

Conclusion

In a nutshell, this Draft for a new Syrian Constitution upholds the human right to religious freedom and the neutrality of the State. The latter is especially important in highly diverse societies as in Syria. The provisions of ethics education instead of religious denominational education in schools is another step which fits into the concept of state neutrality. Apart from that, the Syrian constitution prohibits discrimination on the basis of religion or ethnic belonging. In the end, Syria has a versatile history and it has been a battleground where different countries and religions have fought during the decades. To gain a real peace, it's important that every religion and nation is seen equal from the perspective of constitution. Setting a one religion in front of others will always create imbalance between those religions, and that kind of imbalance will automatically reduce equality. That is why, it is important that the new constitution of Syria states that Syria shall be a secular state.

⁴² *Ibidem*, num. 147.

⁴³ <https://wenr.wes.org/2016/04/education-in-syria> ⁴⁹

OLSEN, p. 92-95.

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