

# CSSR

## Thematic Working Group

# Local Governance and Decentralisation

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## Report

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## BACKGROUND

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The Civil Society Support Room (CSSR) Thematic Working Group (TWG) on 'Local Governance and Decentralisation' was established in September 2022 to leverage Syrian civil society's broad range of experience and expertise on local governance and community participation working in different areas of control in Syria, and to enhance intra-Syrian civil society dialogue on the possibilities for local governance and decentralisation in the context of United Nations Security Council (UNSC) Resolution 2254.

The TWG consisted of 23 Syrian experts and practitioners on the topic of local governance and decentralisation in Syria. The group represented a broad spectrum of Syrian civil society operating from all the various parts of Syria and the diaspora.

The group was tasked with developing policy-relevant ideas, inputs, and recommendations for the Office of the Special Envoy for Syria (OSE-Syria) on the topic of local governance and decentralisation as a potential contribution to the political process, in line with UNSC Resolution 2254.

Following seven months of substantive collaboration through online sessions, at the invitation of OSE-Syria the members of the group met over three days in Geneva to finalise their work. The meeting concluded with the presentation of a summary of the discussions and key recommendations to the OSE-Syria team, International Syria Support Group (ISSG) members, and CSSR donors.

## TWG3 SUMMARY REPORT<sup>1</sup>

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Decentralisation represents a potential framework for post-conflict governance and can be considered a key entry point in political negotiations. In Syria, decentralisation is part of a system of reforms needed to address governance problems, enable resource distribution, and guarantee the rights of local communities. Because 12 years of conflict have created a wide variety of experiences and governance systems, the expected political solution for Syria must provide practical solutions to the deep problems that already existed before 2011. In addition, it should address the existing situation to provide the necessary environment to produce a local governance system that restores cohesion, establishes a consensual national framework, and ensures the preservation of the country's unity and territorial integrity.

The TWG on 'Local Governance and Decentralisation' under the CSSR created by the OSE-Syria has undertaken a critical examination of the existing legal framework (i.e. Decree 107 of 2011), noting that this decree's implementation remained incomplete in government-controlled areas and was applied in different degrees in those areas outside of central government control. Recognising that there are fundamental disagreements about the ability of the current decree to provide an acceptable practical basis for local governance, the TWG examined the political, economic, social, and service-delivery aspects of this framework to identify the strengths and weaknesses demonstrated over the nearly 12 years after the issuance of the decree. The group's comprehensive review of this framework was an attempt to build on the different experiences of Syrians in the field of local governance over the past years. The TWG analysis outlines current possible areas for action in both the various Syrian localities and the negotiation tracks to adopt decentralisation as a tool (among other possible tools for a solution in Syria) to ensure the recovery and democratic transition of the country. This study does not adopt a recommendation regarding the decree itself, but assumes that the current framework should be reviewed for future deep reforms of the local administration and governance system. Below are the key points of the conclusions that the TWG reached:

1. Local governance is an essential avenue for early recovery, by building local capacities, ensuring social cohesion, and accommodating the return of refugees and IDPs. The role of local bodies in building a secure environment, developing local resources, and attracting investment should be considered rather than focusing on the distribution of national resources and aid as future political rents.
2. Decentralisation is one of the fundamental avenues to ensure the country's unity and territorial integrity.
3. Various Syrian experiences of local governance, with and without legal frameworks, arose based on the needs of local communities, and these experiences need to be assessed and developed to regenerate an inclusive framework for local governance.
4. Decree 107 of 2011 represents an important entry point to open the discussion on decentralisation in terms of the identification of its strengths and weaknesses, and to try to build on its positive points and develop them towards a legal framework that is more responsive to the requirements of this period and to practical experiences. The discussions on the National Decentralisation Plan stipulated in the decree represent a broad gateway for dialogue among

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<sup>1</sup> This is an unofficial English translation of the original Arabic version written by the TWG3 members and is "Not an Official UN Document". It represents a summary of a larger report that the group worked on over months of virtual collaboration ahead of their meeting in Geneva.

- Syrians on how to reach broad reforms in the structure, powers and responsibilities of institutions at all levels.
5. By itself, the current decree is not enough to bridge the gaps in local governance and should be accompanied by changes in the legislative environment, including the expansion of constitutional articles on decentralisation by enabling the separation of powers, strengthening the role of the Constitutional Court, amending the laws on elections and political parties, demarcating administrative divisions, detailing financial laws, and distributing resources fairly among local bodies.
  6. Decentralisation opens multiple entry points to explore the reciprocal and measurable steps put forward by the OSE as part of the ongoing political process.
  7. Local governance spaces allow for capacity development and for accommodating issues of political representation and the empowerment of key community groups such as women, youth and minorities of all kinds.
  8. To be successful, decentralisation needs broad community participation in the discussion on the next steps and future discussions on issues such as the National Plan for Decentralisation, political representation, the distribution and investment of resources, the demarcation of administrative divisions, and control over service planning and delivery. This includes roles and free spaces for the media, civil society organisations, and trade unions.
  9. There is a basic gap in human resources and their availability at the local level. The localities' competitiveness in attracting and retaining human resources will constitute the most important challenge to the process of transferring powers from the central government (hereafter the Centre) to the localities.
  10. A national regulatory framework must link local councils with the Centre. This should not be a zero-sum equation between the Centre and local entities, but rather an integrated relationship in which the Centre and the peripheries enhance the role of public institutions in serving citizens. There is no true decentralisation without a strong central government function.

In detail, Decree 107 of 2011 can be assessed in its various aspects to benefit from the experience it provides and move towards fundamental and deep reforms in the future.

### *A. Decree 107 from a political aspect*

Decree 107 of 2011 preserves a Syrian tradition that considers political unity to be formed in terms of a central framework in which local governance is part of the executive authority. However, the decree advocated a high degree of local political representation compared to its predecessors, and thus represents a qualitative leap without achieving full political decentralisation. The decree is facing challenges due to overlaps with the general legislative structure, specifically the electoral and political parties laws. Moreover, the prevalence of security concerns and partisan influences undermines the independence of political representation. Since the decree is only partially applied in government-controlled areas, the first challenge lies in creating the appropriate conditions for its implementation in other areas of control. Some regions in the north-west adopted a modified version of the decree, while the eastern regions adopted a completely different political system under the Autonomous Administration.

Decree 107 presents strong objectives for promoting decentralisation as a tool for the democratic representation of the people. It also includes the transfer of some or all of the line ministries' competencies to local administrative units in accordance with the National Plan for Decentralisation, which has not yet been finalised. The decree

abolishes all appointments that existed in local administrations except for one principal function, that of governor. In theory, this takes a significant step toward local political representation and creates new legal functions such as that of the head of the provincial council as an elected representative of the local political will. However, given the large prerogatives of the governor that remain either in this decree or other laws, and continued indirect interference in the electoral process, the shift towards a higher level of political representation remains limited. The decree also creates the Higher Council of Local Administration, allowing localities to participate in the formulation of central policies on local affairs. However, this point has been limited by the weak role of the elected heads of councils in this Council. The decree does not take into account representation mechanisms that would enable women, youth and minorities to participate effectively under the current electoral system.

Although Decree 107 represents a flexible negotiating framework, some parties on the ground do not see it as an acceptable reference point and may prefer to start from a different point in designing a new governance framework. Nevertheless, the following could be recommended:

- ◆ *Consider the concept of decentralisation as a cornerstone of the next constitutional reform, provide for the distribution of government (legislative, executive and judicial) functions between the capital or Centre and local authorities, and adopt the principle of subsidiarity, which gives local bodies the decision-making priority (given that they are the closest to the site of implementation), and let the delegation of responsibilities from the Centre be accompanied by the expansion of powers necessary to implement these responsibilities at the local level. It also requires that the Supreme Constitutional Court be given the right to consider the compatibility of laws with the principles of decentralisation that are to be enshrined in the Constitution, and that its decisions are final and binding.*
- ◆ *Review administrative divisions to ensure the homogeneous size of administrative units in accordance with broad consultative mechanisms to ensure the participation of the population and to guarantee that no community constituencies would be marginalised. These demarcations should be as homogeneous as possible between different levels and regions, where localities are allowed to collaborate and pool their efforts with other localities.*
- ◆ *Think of stronger constitutional mechanisms for the equal representation of localities in the drafting of national legislation, not as is currently the case, where the numerical representation of major localities in the People's Assembly is predominant. The system of one electoral district per governorate based on the numerical representation of the governorate's residents weakens the ability of small localities to make their voices heard in the People's Assembly.*
- ◆ *Put in place guarantees to impose respect for the Constitution; protect citizens and their sense of security; protect the cultural, political, and economic rights of both minorities and majorities; strengthen the oversight role of the local community and civil society organisations; and amend the necessary laws. The judiciary should be the only body authorised to hold entities accountable should the laws be violated.*
- ◆ *Amend the articles related to the competencies and powers of the governor and transfer these competencies and powers to the head of the Provincial Council, who is elected by the local population of the governorate. The head of the Provincial Council shall be the head of the Executive Office, and shall also be the focal point of the central body. The position of the governor, which becomes unnecessary, shall be abolished or his/her role shall be limited to monitoring public security and implementing laws, and not making decisions on behalf of voters.*
- ◆ *Amend the electoral law and the candidacy criteria and prevent the interference of the security services and the Baath Party in the elections, adopt a quota system, and require the participation by not less than 30% of women (working towards parity) in the elections to enhance women's*

*participation in the exercise of political rights at the local level. Also, adopt an electoral system that supports the active participation of young people.*

## **B. Decree 107 from an economic and development aspect**

During the years leading up to the decree, major cities grew at the expense of rural areas and some regions at the expense of others. After the protests erupted in 2011, it became clear that the Centre could not effectively control the state's local resources or distribute them equitably. The decree outlines a vision towards decentralised decision-making on development management in its objectives and major concerns. However, years of conflict, limited resources and the dependence of Syrian communities on aid have made most local societies focus today on guarantees of the distribution of national resources rather than self-dependence and self-confidence in their ability to lead future investment- and development-related activities.

Decree 107 defines administrative units as legal persons formed from the entire population and transfers a large part of public properties and resources to these legal entities. The decree views economic resources as development levers at the disposal of localities rather than just rent money divided among them. Despite the retention of basic roles for the Centre, the region and the governorate in leading the development process, it grants, in substance, greater freedoms to the localities to manage their developmental affairs in accordance with the will of their communities, although it does not grant a great deal of tax- and fee-collection powers. Some subsequent laws have recentralised some of these resources contrary to the decree's provisions.

However, the decree and subsequent investment laws give large room for localities to invest their properties alone or in cooperation with the private and civil sectors. This has allowed for the development of local projects that could be examined to deduce future lessons. For example, the decree creates roles for the community to frame participation in the development process (neighbourhood committees, community development committees and local economic activities). It is also noted that some localities developed pioneering developmental processes both before and after the passing of the decree, such as the local economic recovery unit (the city marketing plan) to manage a future vision for the city (urban observatories). They have also developed some limited experience of integrating returning refugees and developing local economic projects to support the local recovery of neighbourhoods. This calls for a review of the substantive conditions that produced this type of experience, not just the legal text. The decree allows for localities to contract with local and international, public and private bodies, and sources of expertise. Some limited projects began in cooperation with some UN and other international organisations, and a number of participatory agreements were tested.

However, the decree does not identify a clear economic reason to demarcate administrative units so that they can build on their local capacities and resources, which have changed a great deal during the conflict. Thus, this calls for reconsidering the administrative divisions from an economic point of view. The decree also does not provide a standard definition of the concept of development. Thus, localities have turned towards separate infrastructure projects that do not have an integrated vision that takes into account their economic and cultural identities. The budgets of these projects often remained outside the framework of local accountability, which excluded community awareness of and participation in them. Consequently, the development process was led according to national plans governed by financial concerns rather than a realistic economic logic based on available community resources. Furthermore, the decree does not acknowledge the vulnerability of human resources, and leaves this issue to the National Plan for Decentralisation. The localities do not have the freedom of movement to

overcome structural problems that discourage investment such as contradictory laws, corruption, youth migration, and weak local and national competitive power.

To expand the developmental role of localities, some recommendations include the following:

- ◆ *When formulating the National Plan for Decentralisation, benefit from some pre-crisis and in-crisis lessons learned.*
- ◆ *Strengthen the capacity of local communities to pool services at the horizontal level to facilitate economic savings, and to adopt local cooperation programmes at the city and international levels with UN and international organisations and twinning programmes.*
- ◆ *Strengthen the capacity of localities to increase the productivity of local economies and improve their competitiveness, provide incentives, ensure safety and security, and generate loans and grants and not only disburse them. Use an area-based approach for resource distribution (between localities as well as between localities and the Centre), implement it in coordination with multi-layered governance structures using reliable mechanisms to do so, and support the establishment of value and supply chains between regions.*
- ◆ *Strengthen social structures through the discovery and promotion of community leaders, build awareness of and support the local development approach, and explore different ways to adapt economic programmes to community priorities. This requires stimulating participation in decision-making and establishing connections between communities, local institutions, and higher governance levels while stressing the need to fully mainstream gender, integrate young people, and target the war-wounded and vulnerable groups in all post-conflict policies and programmes.*
- ◆ *Increase the tax- and fee-collection powers of localities and delete the paragraphs in some subsequent laws that recentralise some of those resources contrary to the provisions of Decree 107.*

## C. Decree 107 from a social aspect

Since 2005, it has become clear that community engagement has become a necessity for the success of the state's development plans, and there have been growing calls to integrate the community as a real partner in the process. A new law was considered at the time, but the governance system did not move quickly and deeply enough to avoid popular protests in 2011. Then came Decree 107, which changed the relationship of the governance system with the community as part of a package of reforms, but it may no longer be sufficient to meet the challenges created by the conflict.

Among its objectives, the decree stipulates the priority of community development and community participation, and the role that the local authority should play in the delivery of social services. The spaces created by the decree, such as the neighbourhood committees, permanent and temporary council committees, local development committees, and the resulting community support centres, among others, can be seen as a productive opportunity for community-government negotiations that can be activated in the future. The decree also opens the way for the development of direct relationships between local councils, the private sector and civil society organisations, which have sometimes proved to stimulate community participation when linked to partnerships with international organisations, doubling the available resources and contributing to local capacity-building. While Decree 107 defines the active roles of local communities in terms of popular control over the planning and implementation of projects, most of these advantages remain limited due to the fact that the



executive by-laws of the decree have not yet been issued, and have been put aside until the completion of the National Plan for Decentralisation. It is also noted that similar local experiences and initiatives have emerged in different areas of control within Syria, which constitutes the nucleus of an in-depth discussion on the lessons learned from these experiences, such as the role of civil society in monitoring the elections that took place in some areas outside the control of the Centre, and the establishment of many offices with a social mandate, similar to what is outlined in Decree 107.

The decree speaks about the social role assigned to local authorities in general and does not set specific definitions for this role and its tools. The decree also does not discuss clear definitions of administrative units in societal (cultural or social) terms, which leaves the door wide open for unclear considerations when drawing up new administrative divisions. The decree does not disclose precise definitions of a local community, and does not clarify the issue of the geographical origin of the population before they arrive in a particular administrative unit and where they will exercise their right to community participation (a problem that will worsen when IDPs and refugees return). The decree does not specify an active role for social capital and the relationship of civil and private organisations, trade unions and the media with local councils. It does not specify the powers and responsibilities for the management of services of a social nature, e.g. support for vulnerable groups, the cultural needs of local communities and education, human resources policies, women's empowerment and women's rights, youth empowerment, services for persons with disabilities, nurseries, etc. Amid the ongoing Syrian crisis (and the new dynamics imposed thereby), the government's policy favours waiting before testing any new community spaces. Thus, the implementation of the decree has become more and more limited to the procedural service role of local councils with the decline in the societal role that local councils must play.

The following recommendations could be highlighted in this domain:

- ◆ *Establish constitutional rules related to the consecration of the independent legal personality of democratically elected local bodies and their role in community development and social solidarity, grant them the necessary powers, and ensure the effective participation of local communities in decision-making at all levels, in accordance with collective national principles.*
- ◆ *Establish constitutional principles on community freedoms and the formation of political parties, associations, unions, coalitions and civil society organisations in general as institutions that reflect the diversity of interests and identities of local communities, and activate the role of democratically elected local bodies in direct administrative and legal dealings with these civic entities on the basis of the principle of "self-declaration and notification" (as opposed to prior approval for registration).*
- ◆ *Give localities a role to play in the education process to enable them to take part in the identification of their cultural and community needs within the education system while increasing the capacities of local actors to play this role.*
- ◆ *Pursue the issuance of simplified executive by-laws for Decree 107 with mechanisms to ensure that it is not emptied of its content, especially in terms of the distribution of roles and responsibilities between different administrative levels, including their developmental and social roles. These mechanisms should include the restructuring of the Higher Council of Local Administration to review executive regulations, and allowing legal action against executive directives to be taken before the administrative judiciary courts by those not directly affected (such as specialised civil society organisations). The principle of class action suits should be established, in addition to allowing direct litigation of affected persons before the administrative courts.*

- ◆ *Review the experiences generated during the past years to draw lessons and expand the spaces available for local action.*
- ◆ *Ensure broad community participation in the preparation of the National Plan for Decentralisation, especially the participation of civil society and non-governmental organisations.*
- ◆ *Ensure the necessary participation of refugee and displaced communities in the formulation of social policies, and the consolidation of the role of local bodies in managing the return of refugees and displaced persons, including community reconciliation and community cohesion efforts.*

## **D. Decree 107 from a service delivery aspect**

Services are one of the biggest challenges of local administrations, because they are the most relevant to the needs of citizens. As a result, providing them may be an essential criterion for the credibility of the local governance system and a guarantee of stability and democratisation. Decree 107 represents a paradigm shift in service delivery, giving inhabitants a sense of direct ownership of their local administrations, which are accountable thereto for the provision of services. The decree requires the government to issue a National Plan for Decentralisation applicable within five years, which can be extended once. Thereafter all line ministries' service functions will be transferred to local bodies, each according to its size and the scope of needs. Ministries will continue to set service standards and be responsible for technical control, staff development, the development of national plans, and coordination between local bodies. The decree also makes local bodies responsible for developing their developmental, investment and urban plans. It gives these bodies wide powers to coordinate the various services delivered to citizens, including through joint projects and a one-window system. It allows for a broadening of the base of popular control, amounting to permanent control through dialogue between local administrations and their communities. It also opens the way for partnerships between local councils, civil society organisations and the private sector to develop service-driven projects. The decree creates a number of new administrative functionaries (secretary-general of the governorate and director of the city, town or municipality) and makes these functionaries responsible for the management of services and accountable to the elected councils.

Despite the positive service side of the decree, it still lacks a supportive legislative and executive framework, and in some cases a set of contradictory laws was subsequently issued. The current framework lacks flexible financial laws and independent resources for local bodies (some resources were added in subsequent laws, but were directed to real estate investments through holding companies, which excluded them from being accountable to the community). The decree also preserves many of the Centre's resources and control functions without constraining them, which leads to the strengthening of the central role of ministries and governors, especially since the available resources are not precisely defined, which does not allow local entities to plan for long-term investments. Decree 107 does not set clear normative frameworks for delineating administrative divisions, making some localities too small to run efficient services and others too large to represent all the different interests and service priorities within such administrative units. To date, no executive by-laws have been issued for the decree, the National Plan for Decentralisation has not been approved, and the implementation of the decree has remained very limited. Moreover, the decree lacks a framework to address the gender gap in services, and its deficiencies were evident in the response to the recent earthquake disaster, because it does not cover the issue of disaster response.

Decree 107 represents a negotiating framework more than a normative text. In its service delivery framework, the decree serves as a starting point for a broad reform process to improve the reality of service delivery. However, this reform cannot be limited to amending the law, but must extend to the following:

- ◆ *Place the local administration law within constitutional frameworks that ensure the ongoing shift towards decentralisation, including a clear definition of the principle of subsidiarity, which specifies that the basis for service delivery is the (local) government level closest to the site of implementation.*
- ◆ *Give more space for the participation of local bodies in designing service delivery policies at the national level through a greater role for local entities in the People's Assembly, and in financial and monetary decision-making and representation in the Higher Council of Local Administration.*
- ◆ *Gradually expand the decentralised financial frameworks of local entities to expand their resources and develop their staff for planning, implementation, control and financial accounting. These entities should be given long-term funding horizons that allow for the development of sustainable investment projects, and should be entitled to a percentage of all revenues, fees, taxes and levies collected within their administrative borders.*
- ◆ *Conduct broad periodic reviews of the legal and administrative frameworks that affect their activities and their investment in local institutions.*
- ◆ *Adopt the principle of administrative judicial oversight instead of executive administrative control.*
- ◆ *Expand the law by including disaster response mechanisms.*
- ◆ *Involve local bodies in making and evaluating national development and spatial plans (five-year plans, the national framework for regional planning, reconstruction plans, and implementation plans for the UN Sustainable Development Goals), while ensuring the coordination of these plans at the local and national levels. Enable local bodies to develop and implement their developmental and spatial plans, with subsequent oversight from higher authorities and support from the Centre through relevant knowledge and training and by connecting them to other local entities.*
- ◆ *Build integrated solutions for public policies in a way that creates a flexible structure within a large network of partners to contribute to solutions and ways to implement such policies through partnerships with local communities, civil society, the private sector, the diaspora, and donors, with agreed national controls and by activating the role of the media.*
- ◆ *Ensure that localities have the power to collect the necessary income to finance the costs of the proposed services from the beneficiaries of these services. Public services should be approved by the beneficiaries, who should also pay for them.*
- ◆ *Expand the space available to localities to develop joint services (municipal unions) or qualitative cooperation programmes.*

## CSSR 2023

The Civil Society Support Room (CSSR) was established in January 2016 by the Office of the Special Envoy for Syria (OSE-Syria) as a mechanism to consult with a broad and diverse range of civil society actors. Through the CSSR, civil society actors meet, interact, and provide insights and ideas to the OSE, relevant United Nations actors, and international stakeholders. This mechanism aims to make the UN mediation process more inclusive.

The overall supervision and guidance of the CSSR rests with the OSE-Syria. NOREF Norwegian Centre for Conflict Resolution and swisspeace Foundation have been mandated by the OSE to provide methodological expertise and operational and technical support to the process.

The views expressed in this report are those of the authors, and do not necessarily reflect those of the United Nations.