

Constitution-Making Process in Sudan

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The Sudan has been searching for a permanent constitution since its independence in January 1956 without success. The three democratic periods of 1954-58, 1965-69, 1986-89 failed to produce a single permanent constitution approved by the elected parliaments, they only managed to agree on revising existent constitutions during their short-lived periods, till a permanent one is produced. The short-lived democratic parliaments did not have enough time to agree upon the thorny issues of a permanent constitution. The three military regimes of General Abbud (1958-64), General Numayri (1969-85) and General al-Bashir (1989-2005) also failed to make a constitution that political forces in the country would accept. Abbud never attempted to make a constitution, he administered the country through constitutional decrees during his six years in office. Numayri's constitution of 1973 was abolished immediately after his over-throw in April 1985 and al-Bashir's constitution of 1998 was replaced by the present Interim Constitution when he reached a peace settlement with the SPLM in 2005.

After the drastic secession of Southern Sudan in July 2011, the present constitution has to be changed to suit the post-secession situation in the North. Sudan, after more than 50 years of independence, is still in the search for a permanent constitution and a stable political order. It is a sad story of instability and political failure. The failure during the democratic periods was due to disagreements among political parties on major constitutional issues; the rejection of the two constitutions made by Numayri and al-Bashir was

based on the fact that they were crafted by military regimes that had no democratic mandate and which granted the head of state dictatorial powers over all institutions of the state without being checked by parliament or by the judiciary. A major shortcoming of all the attempts of constitution-making in Sudan were that the drafting was assigned to a small committee either of experts in the case of military regimes or to one comprised of representatives from political parties during the era of democratic governments. None of the governments since independence, tried to engage or to sound public opinion on a significant scale over the major issues of the constitution. It was not surprising that the general public did not give a dam to the abolishment of military constitutions or to the termination of the process of constitution-making by democratic governments. They were simply not part of any of them, and the outcome did not address their concerns about the share of power and wealth in the country.

It is time for the Sudanese people to try a new method of making their constitution, hopefully they will be more successful this time in reaching a wide agreement on the substantive issues of the constitution. It is a good sign that this time there is a real interest from some government units, civil society organizations, research centres and international bodies about the making of the constitution for Northern Sudan. This Forum is an indication of this interest. However, this interest should be utilized to broaden the public debate and participation in the making of the constitution. The objective of making the constitution should be clear in the minds of all political forces, especially the ruling party, that it is the political stability of the country rather than the capture of power or the consolidation of power by this or that party. The constitution is not simply a legal document which defines the institutions of

the state, how they are constituted, what are their jurisdictions and what are the rights of the citizen. It is in the first place a political contract between the different communities of the state, it should reflect their values and cultures and caters for their interests and ambitions. The Sudan is a multiple ethnic and cultural society, it has not yet integrated in a unified nation with a clear identity and objectives. Those diverse groups have to be engaged in the making-process in order to accept the constitution as the legal framework for organizing the society, distributing the wealth and power, administering the state and governing the peaceful rotation of authority. Thus, the constitution-making has to be a wide societal process in the full sense of the word. However, this is not going to be an easy or short process, the divisions between the various political, cultural and ethnic groups in the country are so diverse that it will take a long time and tough negotiations to reach a common ground on the important and delicate constitutional issues.

During the short democratic periods the major controversy about the constitution was focused on the following issues: the choice between the parliamentary system and the presidential one, the degree of decentralized government to solve the problem of Southern Sudan, the electoral law to include special seats for graduates or not, and the Islamic or non-Islamic nature of the state. During the military regimes of Numayri and the first term of al-Bashir (1997-2005) the limited public debate turned to the issues of: the devolution of power to the provinces, the legislative powers of the president, the number of terms in office allowed to the president, and the freedom of association for political parties. At present new constitutional issues came up after the CPA came into practice since 2005 which resulted in the referendum by the secession of Southern Sudan. Those issues are: the distribution of

power and wealth to the different regions of Sudan, especially the areas of conflict others than Southern Sudan (Darfur, Southern Kordofan, Blue Nile and Eastern Sudan), should the presidency be to a single person or to a council of regional representation, the checks and balances to the power of the president, the units of the federation should it be the present states or the old provinces, the criteria for the distribution of the central financial support to the states, the number of the federal ministries, is it necessary to have a constitution for each state or to have one unified constitution? How to preserve the autonomy of the central institutions of the state (the judiciary, the armed forces and the civil service)? The mechanism to protect freedom and human rights enshrined in the constitution, the degree of the Islamic nature of the state.

From the above list, It is clear that the controversial issues are many, problematic and not easy to be resolved. It requires time, patience and political will among political parties to make the necessary compromise at the end. The question is: how to go about the process of engaging public opinion on the important constitutional issues? As Nigeria did in 1998, the right beginning in my opinion is for the government to establish a credible independent body “Constitutional Debate Co-ordinating Committee” to perform the following tasks: pilot the debate on a new constitution for Sudan, co-ordinate and collate views and recommendations canvassed by individuals, groups and institutions for a widely agreed upon new constitution. The Constitutional Committee should establish a branch in each state to gather information and data within each state, so that the trend of thought in each state should be known. Besides receiving opinions and recommendations from all sectors of society, a well-prepared questionnaire on the major issues of the

constitution should be handed to every eligible voter to give his opinion on these issues. A committee of experts should be assigned the duty of evaluating and analyzing all the collected data, in order to show where opinions agree or disagree on the various aspects and issues of the constitution.

The outcome of the evaluation and analyses of the various views should be handed to a High Political Committee, representing the political parties and groups in parliament, and aided by a team of legal experts. The HPC should do the major work of drafting the constitution based on the material they received. The process of drafting should be all through open and announced to the public to allow comments and discussion from individuals and groups. The draft of the constitution, made by the Political Committee, should go to the Debate Co-ordinating Committee in order to publish it widely and distribute it to its various branches in the states inviting comments and views from the public. It may even organize seminars and workshops around the various aspects of the constitution to get more response from the public. Those collected comments and views from all sectors should come back to the High Political Committee to consider them in rewriting the draft. The final draft should go to the elected parliament to discuss it openly, allowing interested groups to attend the sessions and give in their contributions in writing. At all stages the process of making the constitution should be in public and open for debate and discussion. The primary objective of the whole process is to reach a wide agreement from all sectors of society on the final outcome. Political compromise and settlement is essential in making the constitution, it cannot be judged by a majority against a minority. Since the constitution is the legal framework for the whole political order, no significant group should be allowed to stand outside the political order. The Muslim tradition has the

concept of *Ijma'* (consensus), if *Ijma'* is ever possible in modern society it should be over the constitution of the country. Sudan should learn a lot from its previous failures over the years to produce a stable and agreed upon constitution. The time-consuming and laborious process for constitution-making suggested in this paper is worthwhile if the outcome at the end is a satisfactory document for the vast segments of the Sudanese nation.