

Constitution Making, Replacing and Amending

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The case of interim –constitution/transitional and permanent constitution. What is the difference between interim and permanent constitution. Interim –constitution is a legal framework providing a basis for the democratic transition.

Interim or provisional or transitional are the various names given to the period from the fall of dictatorship to the permanent constitution. In this article I will deal with

Why interim constitution/transitional is needed after the fall of the dictatorship in Eritrea

I have read the analysis under the heading, " The State of the Nation" written by Eritrean Professionals.

The analysis is in its content instructive and constructive. I will only take the last article recommending to use the 1997 constitution as interim -constitution/ transitional after the fall of the dictatorship

Why interim constitution or transitional constitution is an issue for discussion at this time?

The issue of constitution/ transitional period is the first issue that comes immediately after the fall of the dictatorship. The new democratic system will require an interim- constitution that establishes the desired framework of the transition from the fall of the dictatorship to the establishment of the permanent constitution.

Interim –constitution is supposed to govern during the transitional period – from the fall of dictatorship until the permanent constitution established.

It comes into effect when the regime falls and is handed over to a caretaker government composed the sovereignty of all political organizations. The interim –constitution will function as a basic law during the year of transition until an elected Assembly can draw up a permanent constitution inside the fixed time.

Constitutions are the supreme laws of the nation designed to manage the internal conflict of the Eritrean diversity. They must be arranged in a

way that provides the people the opportunity to discuss on their fundamental rights and freedoms not granted by those who were in power. Was the 1997 constitution founded under the fundamental freedoms and liberty in post-liberated Eritrea. Let our professionals the G-16 as they are named by some writers discuss on it by its contents and spirit.

The 1997 constitution drafted but not implemented/defunct was under the control of dictatorship. It was founded in the atmosphere of hate and conflict without any opposition. It was just like that of Haile Selassie's constitution -given by God to the people, The people were not the makers but receivers.

An interim constitution is the transitional basic law of the transitional caretaker government until the permanent constitution is drafted and processed. The reason why this issue is crucial and conflict issue is because there is no common understanding what kind of constitution unitary or federal constitution will be suitable to manage conflicts in Eritrea? Eritrea has never ruled under the law since independence and the road map of transition must focus also on the period from the fall of dictatorship up to the building of constitutional government guaranteeing security and safety for all its citizens.

Here , I would like to quote Gene Sharp's arguments. Gene Sharp in his book, " From Dictatorship to Democracy" says that,

"In the interest of preserving the democratic system an impending dictatorial trends and measures, the constitution should preferably be one that establishes a federal system with significant prerogatives reserved for the regional, state, and local levels of government"

In Eritrea there are no functioning constitutions either unitary or federal. Therefore the need for interim constitution is of crucial importance. Those who ignore interim arrangements their aim is to establish themselves as new dictators under the 1997 constitution that was drafted under dictatorship without any freedoms.

Our struggle is not only to remove the dictatorship but looking forward how to arrange the period of transition from dictatorship to permanent constitution.

The Key features of the interim constitution:

- Directive principles of the state/ State structure

- Citizenship
- Fundamental Rights & Duties- the rights of Eritrean Nationalities
- Fundamental freedoms
- Interim - Legislature- Parliament
- Interim- Government
- Interim Court
- Interim security provisions
- Constitutional bodies
- Autonomous and local administrations
- Constituent Assembly
- Transitional Justice and reconciliation
- Other miscellaneous provisions

Transition from dictatorship to democracy is both fighting the dictatorship and at the same time laying the foundations for democratic transition.

For most of Eritreans in the opposition or those who support the dictatorship constitution means for them like a bible that comes from the heavens. Why do we need interim legal framework from the fall of the dictatorship to permanent constitution must be one of our agendas and prepare for it while struggling to topple the tyranny.

Constitution Building and its role in conflict management

Constitutional arrangements provide us an important opportunity to manage our internal and external conflicts. When designing a legal framework citizens identify the fundamental values they believe in and the sort of institutions by which they want to be governed. This may involve inclusive and participatory national deliberation resulting in agreements that establish the country's basic law. Does the 1997 constitution provide us the opportunity to manage our internal and external conflicts?

Given their role and their contributions to continuity, stability and legal certainty , constituting making or amending requires negotiation and discussions

among all the Eritreans including those in power, opposition groups and all the people.

References and further reading

1. Gluck. J. and Brandt, M, Participatory and Inclusive constitution making: Giving voice to the demands of citizens in the wake of the Arab Spring (Washington D.C : United States Institute of Peace, 2015
2. Ladley,,A,, Constitution Building after conflict; External Support to a sovereign process,International IDEA Policy Paper
- 3.Constitution making process of the 1997 in Eritrea
4. The Eritrean Constitution of 1952 part one.