

## **Fetsum: The Sudanese Constitutional Charter to Genuine Democracy (extension of part 1)**

**Dedication:** I dedicate this article to the very promising ERITREA FOCUS for its latest strategy to diffuse the dictator and democratize the nation through genuine transitional phase. I strongly believe we have to rally behind this group's strategy which I consider the most significant development as of today considering its brain power and diplomatic essence on the fundamental question of the Eritrean people. I feel more relaxed now as a result because self-respect is something we should earn through excellence to use it as a foundation for respect from others. In the meantime, I strongly suggest that ERITREA FOCUS give maximum attention to the Sudanese democratic journey as one of its research materials and good luck!

It seems like many Eritreans are worried about their sovereignty in the relationship between Abiy and Isaias. But this should not stop us from researching more for bright future. In my case, I am not worried as much and I know the situation is at our disposal. We can change it and that is what matters to me. I am not going to waste my time thinking about it for Democracy cannot wait because of fear and we should continue learning to achieve it through knowhow and unity. In so saying, neither does a challenge appear without impact nor can it be confronted without considering its destination. We have a challenge (dictatorship) and its inherent destination (genuine democracy); we cannot overcome the challenge to face the destination empty handed. We need to remove the dictatorship as our main challenge while simultaneously crystallizing the destination through basic knowhow. One does not have to wait for the other and both can be simultaneously executed without destructive interference. I think we have started moving forward in this regard, the latest ERITREA FOCUS's press release being the witness to this effect.

This article is about the legalized form of the last article and my last effort on the matter. You may find it monotonous in a way but I could not help it.

**Introduction:** The Sudanese "Draft Constitutional Charter for the 2019 Transitional Period" disclosed on 6 August 2019 was an agreement between the

Transitional Military Council and the Forces of Freedom and Change and has 16 Chapters but I will only discuss it partially in this opportunity and enjoy.

## **Chapter 1: General provisions**

- **Repeal and Exemption**

**[2] (a.) The Transitional Constitution of Sudan of 2005 and the constitutions of provinces is repealed, while the laws issued thereunder remain in force, unless they are repealed or amended.**

**Comment:** It was not about reformation but total transformation of the system. There was a transitional constitution in 2005 whose CHAPTER II [57] says: *“The tenure of office of the President of the Republic shall be five years, commencing from the date of assumption of office, and the same President may be re-elected for one more term only”*. But Bashir did not allow it to be implemented until his downfall in 2019. The constitution had then to be amended to accommodate reality while partially repealed as a result. Here, the signatories disqualify the old transitional and provincial constitution keeping the laws conditionally active while open for amendment.

## **Chapter 2: Transitional period**

**[6] (a.) The duration of the transitional period shall be 39 Gregorian months, starting from the signing of this Constitutional Charter.**

- **Mandate of the Transitional Period (in compact form)**

**[7] During the transitional period, state agencies perform the following duties:**

**(3-8) Hold accountable members of the former regime by law, carry out legal reform, rebuild and develop the human rights and justice system, and ensure the independence of the judiciary and the rule of law, Guarantee and promote women’s rights in Sudan in all social, political, and economic fields, and combat all forms of discrimination against women. Establish mechanisms to prepare to draft a permanent constitution for the Republic of Sudan, hold a national, constitutional conference before the end of the transitional period, enact legislation related to the tasks of the transitional period.**

**Comment:** All past transitional governments failed to answer the society's democratic call except the current one that the world considers genuine and scientific. This transition is real and has the responsibility to legally draft the country's permanent constitution within its legal time limit. Ours is a lot simpler because the dictator neither ratified nor changed the constitution to serve his interest unlike in the Sudanese experience where the consecutive dictators kept changing it through the years. The 1997 Constitution was produced by our best Lawyers and Social Scientists of the time and quite a few international scholars, and ratified by then people's Assembly. All we have to do is amending it if necessary through legal procedures and utilizing it forever.

### **Chapter 3: Transitional period bodies**

**[9] The bodies of the transitional government consist of the following: (a) The Sovereignty Council , which is the head of state and symbol of its sovereignty and unity; (b) The Cabinet, which is the supreme, executive authority of the state; (c) The Legislative Council, which is the authority responsible for legislation and oversight over the executive's performance.**

### **Chapter 4: Sovereignty Council: Composition of the Sovereignty Council**

**[10] (a.) The Sovereignty Council is the head of state, the symbol of its sovereignty and unity, and the Supreme Commander of the armed forces, Rapid Support Forces, and other uniformed forces. It is formed by agreement between the Transitional Military Council and the Forces of Freedom and Change.**

**(b.) The Sovereignty Council consists of 11 members, of whom five are civilians selected by the Forces of Freedom and Change, and five are selected by the Transitional Military Council. The eleventh member is a civilian, selected by agreement between the Transitional Military Council and the Forces of Freedom and Change.**

**(c ) Over the first 21 months of the transitional period, the Sovereignty Council is chaired by someone selected by the military members, and in the remaining 18 months of the transitional period, starting from ..... 2021, it is chaired by a civilian member selected by the five civilian members who were selected by the Forces of Freedom and Change.**

**Comment:** Whatever they agreed on in the last few months (see the last article) has now become the country's law within the transitional phase. The Sovereignty Council serves as the coordinator of the entire process behind the unified support of the people and the intellectual and professional associations of the country. The situation necessitated a POWER SHARING arrangement between the Army and the people but they collectively decided the Council to be 100% independent of the political parties and to consist 45% (5 individuals) from the Army and 55% (6 individuals) from the people. Yet, the Civilian side had to have a leverage over the Army by at least 10% more power and they legally assured that privilege in this grassroots based confident ride to democracy .

- **Competencies and Powers of the Sovereignty Council**

**[11] (a.) The Sovereignty Council exercises the following competencies and powers:**

- **(i) Appoint the Prime Minister selected by the forces of Freedom and Change;**
- **(ii) Confirm the Cabinet members appointed by the Prime Minister, from a list of candidates provided by the Forces of Freedom and Change;**
- **(iii) Confirm the heads of regions or governors of provinces, according to the case, after they are appointed by the Prime Minister;**
- **(iv) Confirm the appointment of members of the Transitional Legislative Council after they are selected in accordance with the provisions of Article 23 (3) of this Charter.**

#### **Chapter 5: Transitional Cabinet**

**[14] (a.) Composition of the Transitional Cabinet: The Cabinet is composed of a Prime Minister and a number of ministers not exceeding 20 from national talent of independent counsel, appointed by the Prime Minister from a list of candidates from the Forces of Freedom and Change, and confirmed by the Sovereignty Council, except for the Ministers of Defense and Interior, who is nominated by the military component of the Sovereignty Council.**

**(b.) The Forces of Freedom and Change selects the Prime Minister, and he is appointed by the Sovereignty Council.**

**Comment:** The Sudanese people have decided to go for Prime Minister and the Cabinet as the superior power in the country. This is the EXECUTIVE body of the government. Through the articles, the independent Sovereignty Council (the 11 individuals) appoints a neutral Prime Minister exclusively selected by the FFC “Forces of Freedom and Change” without the involvement of the Transitional Military Council in the government as well discussed in the last article. The Prime Minister then selects his Cabinet.

## **Chapter 6: Common provisions for constitutional positions**

### **• Financial Disclosure and Prohibition of Commercial Activities**

**[18] (a.) Upon assuming their positions, members of the Sovereignty Council, Cabinet, governors or ministers of provinces or heads of regions and members of the Transitional Legislative Council submit a financial disclosure including their properties and obligations, including those of their spouses and children, in accordance with the law.**

**(b.) The chairman and members of the Sovereignty Council and ministers, governor and ministries of provinces or heads of regions undertake to not practice any profession or commercial or financial activity while occupying their positions. They do not receive any financial compensation, gifts, or work of any type from any non-government entity, whatever the case may be.**

**Comment:** This is one of the most mandatory procedures in any transitional arrangement as such to avoid corruption during the transition period and that is what we have to do in our situation. They did it in many countries including Liberia and ready to do it in Sudan.

### **• Prohibition on Candidacy in Elections**

**[19] The chairman and members of the Sovereignty Council and ministers, governors of provinces, or heads of regions, are not be entitled to run in the public elections that follow the transitional period.**

**Comment:** All transitional government elements are restricted from running for political office in the upcoming democratic election. This is to further avoid conflict of interest in the system and to have a clean electoral committee for the

democratic election ahead. They did it in many countries including Liberia and ready to do it in Sudan.

## **Chapter 7: Transitional Legislative Council [Assembly]**

### **• Composition of the Transitional Legislative Council**

**[23] (a.) The Transitional Legislative Council is an independent, legislative authority. The number of members therein shall not exceed 300 members, and it represents all forces participating in change, except for members of the National Congress and political forces that participated in the former regime until its downfall;**

**(b.) The participation of women is not be less than 40% of the membership of the Transitional Legislative Council;**

**Comment:** The 40% translates to guaranteed 120 sits at minimum but still offers unlimited opportunity for women in the most important branch of the government. Gender equality was guaranteed to certain extent by that many women in the Assembly but to full extent considering the open ended opportunity in the clause. We need to empower our women as such to have a decent and prosperous society in our country.

**(c.) 67% of the members of the Transitional Legislative Council are selected by the Forces of Freedom and Change, and 33% are selected by other forces who did not sign the Freedom and Change Declaration. The appointments take place and the percentages of each force are determined in consultation between the Forces of Freedom and Change and the military members of the Sovereignty Council;**

**Comment:** Most of the Sudanese opposition forces had signed the Declaration with the exception of few that I did not find important to research for this discussion. But Sudan has about 20 political parties where few of them signed the document. I am not sure here but part of the 33% of the Legislative Council could have been assigned to the political parties which is normal in a situation as such; a part of it given to the other portion of the society that did not sign the document. In any case, the people at minimum occupy 67% of the sits in the parliament in this situation without other sits in the rest of the council (out of the 33% sits).

**Chapter 8:** I have avoided many case laws so far but Chapter 8 deals with the formation of the independent Judiciary Council.

**Chapter 9:**

**[47] Equality before the law**

**People are equal before the law, and have the right to the protection of the law without discrimination between them because of ethnicity, color, gender, language, religious faith, political opinion, racial or ethnic origin, or any other reason.**

**[55] Freedom of belief and worship**

**Every person shall have the right to freedom of religious belief and worship. They shall have the right to profess or express their religion or belief through worship, education, practice, performance of rituals, or celebrations, in accordance with the requirements of the law and public order. No one shall be compelled to convert to a religion they do not believe in or to practices rites or rituals they do not voluntarily accept.**

**Comment:** People have the freedom to worship, educate and learn, practice, perform rituals and celebrations related to their beliefs but *“in accordance with the requirements of the law and public order”*. The freedom given in [55] is not out of the control of the regime and so cannot be used to politicize them in the country. Believers must respect law and order to enjoy their belief and worship because freedom comes with responsibility directed towards the benefit of a society as a unit (peaceful coexistence, nationalism, territorial integrity and equality, etc.). in my opinion, the clauses manifest the emergence of secular democracy in Sudan; the separation of religion from politics, which I think signifies the end of Sharia and other religious means of politically controlling the people.

**[57] Freedom of assembly and organization**

**(a.) The right to peaceful assembly shall be guaranteed, and every person shall have the right to free organization without others, including the right to form political parties, associations, organizations, syndicates and professional unions, or the join the same in order to protect their interests.**

**(b.) The law shall regulate the formation and registration of political parties, associations, organizations, syndicates and professional unions, in accordance with what is required by democratic society.**

**(c.) No organization shall have the right to work as a political party, unless it has the following:**

**(i) Open membership for all Sudanese, regardless of religion, ethnic origin or place of birth;**

**(ii) Democratically elected institutions;**

**(iii) Transparent and open sources of funding.**

**[58] The right to political participation**

**Every citizen has the right to political participation in public affairs, as regulated by law.**

**Comment:** The 22 political parties in the country and new political parties must respect the laws associated with Chapter 9 [57]. The upcoming Independent Election Commission is expected to crystalize the preliminary clauses in here but they suggest the minimum requirements for political party qualification in the country.

In our case, there were 13 organizations including the liberation movements (Kunama and Afar) listed as members of EDA (Eritrean Democratic Alliance) in 2008. We shall see what happens but it is clear that we cannot accommodate ethnic and religious political parties like many other societies in the classification. The subject in relation to the people vis-à-vis political parties is clear but some kind of agreement has to be reached between the people and our liberation fronts with maximum concern and respect for us to make it together to the end. There is no doubt genuine democracy that empowers our minorities should help the unity built on trust and nationalism.

**Chapter 16: Miscellaneous provisions**

**[70] (b.) The Transitional Military Council [TMC] shall be dissolved once the constitutional oath is sworn by the members of the Sovereignty Council.**



**Comment:** With this case law, the 5 members of the government from the Army (TMC) are legally conditioned to melt into the people and they did after they took the oath on 17<sup>th</sup> August 2019. The African Union Commission Chairperson Moussa Faki Mahamat, Prime Minister Abiy Ahmed, and representatives from Egypt, Saudi Arabia and the United Arab Emirates, President Kenyatta of Kenya, President Salva Kiir (South Sudan), President Idriss Deby Itno (Chad) and President Faustin-Archange Touadéra (Central African Republic), attended the ceremony. The parasite was hibernating in Adi Hallo singing the blues by then when President Kenyatta said *“the nation’s structure of government should reflect its heterogeneity to guarantee inclusion for all [and that] a peaceful and united Sudan is in the best interest of the region and the whole of Africa”*.

In conclusion, the Sudanese style of democratizing the country is indeed in “the best interest of the region and the whole of Africa”. The situation will greatly influence our region for the better. It will be impossible for Isaias to continue his absolute dictatorship without a good partner to that end. Abiy is just a survivor that deals with him in fear of the Weyanes and may be in dreaming state about our ports but he played a good role in Sudan, meaning that he is potentially part of the democratic environment in the region. Being in the middle of Democracies in Kenya, Somalia (excluding the Alshabab effect), Ethiopia, Djibouti and Sudan should then feel like swimming in the ocean with no land in sight for that paranoid dictator with thick mustache under his nose (symbol of dictatorship in a way (Hitler, Saddam, Bashir, etc.)). No one can rely on him as a strategic ally in the near future. Even that privilege is becoming very hard for him to sustain. In short, there is no better regional situation for us to change the situation and everything will change if we change the way we do things.

To wrap it up, the nature of transition to democracy is known to many societies on planet earth and we can keep on discussing a nation at a time to that effect. But I believe Liberia’s and Sudan’s experience would be enough to give us the head start towards the basic knowledge of the matter so we can confidently apply it in the very near future. This article completes my thesis on Transitional Government leaving the best of the subject for ERITREA FOCUS to deal with. Thank you and good luck.