

2010-09-22

Guidelines for the Draft Constitution

Preliminary Remarks

The Political Commission for the National Congress (PCNC) has been, among other things, authorized to accomplish the following task: “To prepare the national charter, the draft constitution, and the road map, for the national congress”. Further, the PCNC assigned some of its members to prepare the named documents in its first meeting. It is on the basis of this authority that the present and future documents regarding the draft constitution shall be issued.

Why do Multi-national Post-colonial States Need New Constitutions?

Multi-national post-colonial states - particularly those that are engulfed by internal and external conflicts - are progressively resorting to creative constitution-making referred to as New Constitutionalism. This novel approach, as distinct from traditional constitutionalism, represented by the Constitution of the United States, regards internal dialogue as the essence of conflict resolution and the bedrock of democracy. The Eritrean condition demands such a dialogue. There is another equally important reason for adopting the methodology of internal dialogue in Eritrea; namely, the crystallization of confessional and nationality issues that presently occupy a central space in Eritrean politics. In conjunction to the named issues, federal formulae have become important elements of the Eritrean political language.

During the two decades of Isaias' dictatorship, issues of religion, nationality, and other identity forms came to the forefront; these issues provoked an intensive debate within the Eritrean National Alliance (ENA), and its successor, the Eritrean Democratic Alliance (EDA). Over the years, three Islamic organizations in the EDA developed views regarding the relationship of religion to the state, society, culture, education, economy, and politics. Similarly, two nationality organizations in the EDA developed positions regarding the relationship of the national question to the Eritrean state and society. Furthermore, it should be noted that mainstream organizations of the EDA made useful contributions to the debate on religious and nationality issues.

Why a Draft, Transitional, Constitution?

The drafting of a transitional constitution has been necessitated by the importance of establishing a fount of democratic legitimacy. The dictator's constitution that has not seen the light of day since its inception, in 1997, is regarded as wanting in legitimacy and democratic content. During the past decade the Eritrean people demanded constitution-based democratic governance in protest to the one- party, one man, dictatorship. The project of constitution-making launched by the national conference shall be presented in draft form to the national congress. The draft constitution shall also maintain a transitional character until the demise of the dictatorship, at which point the Eritrean people would seize the opportunity to approve and ratify it through their elected National Parliament.

Principles of Constitution-making

Constitutions do not only deal with processes and structures – they also concern themselves with statements of principle. As a source of legitimate governance and a vital precondition for **Rule of Law**, the Eritrean draft constitution is expected to provide guidelines for reform generating political instruments in the fields of economic growth, cultural diversity, and social harmony. The draft constitution is propelled by the vision that power emerges from the people; in this context it can be said that the true owners of the draft constitution are the Eritrean people.

Another important reason for drafting a constitution is lodged in the significance of symbolic values of nationhood achieved by sacrifice, and the sense of national obligation of the present generation to impart the Eritrean homeland to future generations. The Eritrean people seek legitimacy in their constitution in order to safeguard fundamental humanitarian and civil rights. Declarations of rights and freedoms, designed to limit the power of the state vis-à-vis the citizens, have become common features of constitutions of which the draft constitution shall partake freely. Rules of the democratic game that govern the interplay of political power among decision-makers, define the rules of civil service, and oversee the performance of the judiciary, constitute essential elements of the draft constitution. Information is also significant to constitution-making; the constitution must be expressed in unambiguous language that is understood by all citizens. Rules of amendment based upon a broad

support in parliament, is essential in order to avoid the straight-jacket of a constitution by referendum.

Who are the Makers of the Eritrean Constitution?

As postulated above, the makers of the draft constitution are the Eritrean people. In practice this means that Eritreans have the duty to express their views via the electronic media, meetings, and seminars concerning the main components of the draft constitution. The task of the Political Commission for the National Congress (PCNC) is to facilitate public discussion, solicit informed input from the Eritrean intellectual community, political organizations, and constitutional experts. The results of the collective Eritrean contribution shall be presented to the meeting of the Commissioners to be held around February, 2011, for a preliminary evaluation. We encourage Eritrean youth in the Diaspora to establish constitution-making sub-committees everywhere: engagement of this sort is certain to facilitate the work of the Organizational Committee in identifying possible participants to the national congress.

Sources of Reference and Institutional Support

In addition to the input of the Eritrean people, reference to the Eritrean constitutions of 1952 and 1997 shall be made. Recently, Mejlis Mukhtar harmonized the 1952 and 1997 constitutions: much can be learnt from this effort. Not least, we shall also learn from the constitutional experiences of our neighbors. We shall seek advice from Eritrean and non-Eritrean peer groups; as we shall seek international support for the Eritrean constitution-making process. In summary, the preparation of the Eritrean, draft, transitional, constitution shall be the result of the combined efforts of the Eritrean people, Eritrean and non-Eritrean experts, and the Political Commission of the National Congress.

Preliminary Components of the Draft Constitution

The discussions of the draft constitution shall revolve around the following preliminary components. Suggestions and improvements are most welcome.

First Component:

1. A Brief History of the Making of modern Eritrea

2. The Basis of Eritrean Sovereignty and its International Status

Second Component:

1. Religion and the State
2. Nationality and the State
3. The Principle of Devolution: a) decentralized unitary state, or b) federal state
4. Language and the state

Third Component

1. Principles of Government
2. Form of Government
3. Organs of Government

Fourth Component:

1. Human rights and Fundamental Freedoms
2. Fundamental Rights and Duties
3. Freedom of the Press
4. Freedom of Expression

Fifth Component:

1. The Parliament
2. The house(s) of parliament
3. Election of the Parliament
4. Powers of the parliament
5. Sessions of the parliament
6. Parliamentary Control

Sixth Component:

1. The Head of State
2. Election of the head of state
3. Powers of the head of state
4. Ministers and the Administration

Seventh Component:

1. The Judiciary
2. Administration of Justice
3. Oversight of Performance of justice

Eighth Component:

1. International Principles
2. Eritrea's International State Relations
3. Belligerence and peace

Eighth Component:

1. Financial Power
2. Budget

Ninth component:

1. Transitional Government
2. Provisional Government

The Political Commission for Drafting the Constitution