The Constitutional Convention for Sudan
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Constitution - Making in Sudan: The National Constitutional Convention
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I. Introduction:

Sudan has been in search for a permanent constitution for more than a century. Sudan has been engaged in several failed efforts to adopt a permanent constitution that helps in building political institutions and democracy which have been manipulated and distorted by certain forces over the years.

The Sudanese current crisis has always been associated with their failure in adopting a permanent constitution for the country. The disintegration of the country in 2011, the spread of civil wars in Darfur region, Blue Nile province and Southern Kordofan, and the massive human rights violations are the main symbols of the constitutional failure.

This paper addresses the problem of constitution-making in Sudan and presents a way forward. To introduce a new approach to constitution-making in Sudan, it is imperative to understand the political and constitutional history of Sudan. Therefore, the paper will first narrate the political-constitutional history of Sudan since its independence in 1956. The paper will look into the past as a way to provide some valuable perspectives and answers as to why efforts to draft and adopt a permanent constitution failed.

Second, the paper will detail the constitutional failure and analyze the flaws of the many previous constitutional making processes that were adopted in Sudan. In doing so, the paper will highlight the inherited defected constitution-making processes that have continued for long years.

Third, the paper demonstrates that the process is vital to the outcome of the constitution. Therefore, it suggests a full departure from the past failed experiences in constitution-making in Sudan and specifically it proposes a new more inclusive approach to adopting a permanent constitution in Sudan that guarantees wide participation and prevents the manipulation of the process by certain powers. More specifically, the paper introduces the National Constitutional Convention as a vital mechanism to adopt the permanent constitution and solve the Sudanese fundamental problems. The paper details the different steps the Sudanese should follow to convene a National Constitutional Convention to debate and adopt the permanent constitution.
II. Political Background:

In the current impasse of the differences and the absence of serious dialogue between the government and the many opposition forces on the issue of drafting a permanent constitution for Sudan, visions have intertwined and fears and worries arise on what the status quo might lead the Sudanese people to. The future of the Republic of Sudan is at a critical juncture. Here lies the need to explore the political-constitutional history of Sudan and the recent experiences to draw lessons from them.

Sudan has been plagued by political instability and civil wars. In the independence dawn the Sudanese failed to accommodate South Sudan in the political-constitutional arrangements which led to a bloody civil war that lasted nearly fifty years. The Beja peoples in the East of Sudan organized themselves and rebelled against the government just two years after independence. Darfur Renascence Movement, consisted mainly of Fur, took arms in early sixties. In Kordufan the government-backed militia fought the Nuba in the mountains.

The Sudanese achieved their independence in January 1956, but they had never undergone a political revolution or constitutional reforms that align with the new born nation. Instead, they preferred to be governed by the British colonial constitution for long years to come. The pioneer elites inherited from the British a colonial centralized government that marginalizes the Sudanese regions and discriminates against its own people. The elites did not mean a full departure from the colonial power as the independence should have been. There was no clear rejection to the British political culture and social norms. There was no radical change in their principles, opinions, sentiments, and affections. There were no talk about the country’s size and its diversity and the need for a contract theory of government, separation of powers, federalism and fundamental human rights. There were no plans for a different frame of government. Influenced by Western culture and political ideas, the elites preferred to sustain the colonial political system they inherited and mastered. Their political thinking had to catch up with colonial institutions and practice. The Sudanese elites, bound by tribal and sectarian traditions, saw their national movement as essentially a defense of their own interests. They did not cast off the aristocratic corruptions of the British and usher in a new reign of liberty, democracy, justice and public virtue.

The Sudanese people had won two revolutions against tyrannical corrupt dictatorships in October 1964 and April 1985, but they did not win their freedom, justice, and democracy. The Sudanese politicians again failed to see the country’s diversity and instead they preferred to sustain the status-quo. Tyranny would always come in another face and the Sudan’s regions remained peripheral to the central power and marginalized economically, socially, and politically. The Sudanese regions have suffered greatly throughout the history
from the political hegemony of the center and policies of marginalization. The regions have been denied equal economic development and equal political participation. They have been denied the right to rule themselves under a decentralized system. The inherited centralized unity has put the country in jeopardy. The manipulation of power by certain groups and policies of marginalization have been implemented by all kind of governments in Sudan. As a result of these policies, Sudan has been plunged into civil wars, continuous political instability, constitutional vacuum, economic and developmental crises.

The idea of holding a national constitutional conference as a vital solution to the Sudanese fundamental issues was introduced when the Sudan People Liberation Movement “SPLM” - who was fighting the central government in the South-met with representatives from Northern political parties and trade unions leaders at Koka Dam, Ethiopia in 1986. The two delegates signed what became Koka Dam Declaration which called for a creation of a new Sudan that should be defined by convening a national constitutional conference. The constitutional conference would address the basic problems of Sudan. In November 1988 the leader of the Democratic Unionist Party-one of the two major political parties-met with the leader of the SPLM in Addis Ababa. The two leaders signed the historic Sudan Peace Agreement of 1988, which essentially modified the Koka-Dam Declaration by agreeing to freeze the infamous September Sharia Islamic laws. The Prime Minister Sadiq Al Mahdi of the Umma party rejected the agreement. Both agreements had been victimized by political rivalries.

At this sensitive time of stirring national debate about peace, the National Islamic Front “NIF”, who was not happy with the peace efforts, the freezing of Islamic laws in 1988 accord, and the forthcoming constitutional conference, organized a successful coup led by Brigadier Omer Al Bashir and took power in June 1989 to abort all these efforts. President Bashir dissolved the political parties, trade unions, and arrested all the politicians and activists involved in the peace efforts with the SPLM. Later the regime set what is known as the ghost houses to torture activists. As a result of these harsh policies, parties’ leaders, politicians, and trade unions activists fled the country and founded the National Democratic Alliance, an umbrella that groups all political parties and trade unions in opposition. The NDA set two offices in exile, one in Cairo, Egypt and the other one in Asmara, Eritrea.

President Bashir regime has continued the policies of marginalization, intensified wars and sought loyalty of the regions by the barrel of the gun. By the end of 1991 he declared Jihad in the South and the old war there was reintroduced to the public as a holy war against the infidels in the South. Jihad campaigns with Islamic slogans and indoctrination spread all over the country. Jihad war was also launched in the Nuba Mountains in early nineties. In the mid nineties the war broke out in the East region and in the Blue Nile. In 2004 just before an international brokered peace agreement was signed between the
Sudanese government and the SPLM of the South, the war in Darfur broke out. Darfur war has been described as genocide. Sudan has plunged into interlocking regional wars. Hundreds of thousands of people lost their lives and millions fled the country.

In June 1995, the National Democratic Alliance “NDA” convened a conference in Asmara, Eritrea on “Sudan’s Fundamental Issues”. The Asmara Declaration endorsed the idea of convening a national constitutional conference to solve these issues and adopt a permanent constitution for the country. The NDA also discussed and agreed on the general principles to be embodied in the constitution. However, the NDA failed to produce an agreed upon constitution draft.

In January 2005, the Sudan Government and the SPLM signed the Comprehensive Peace Agreement (C.P.A.) which officially ended Africa longest civil war and gave the South the right to exercise self-determination which resulted in independence of the Republic of South Sudan in July 2011. The C.P.A. also mandated the Interim National Constitution of the Republic of the Sudan which was based on the provisions of the C.P.A. and the 1998 constitution of the Sudan. The Interim Constitution was adopted by the National Assembly and entered into force on 9 July 2005. The Sudanese long quest for peace, political stability and democracy, is always connected with their quest for a permanent constitution.

III. A History of Constitutional Failure:

In its history, Sudan has had many and different kinds of constitutions; transitional constitutions; interim constitutions; Islamic constitution; a long list of temporary constitutional decrees and covenants; significant number of national constitutional committees and commissions; and a number of competing constitution proposals that plagued the country and led to constitutional and political instability. Sudan's continuous worsening problems are a direct result of this vicious constitutional circle which resulted from the lack of constitutional knowledge and experience among the Sudanese political leaders and the ruling elites.

The story started before the independence when the Sudanese political parties loyal to Egypt boycotted the Executive Council and the Legislative Assembly Act of 1948 despite the fact that this law was not intended as a final constitution of the Republic of Sudan, but was considered a step towards the right to self-government and a way to train Sudanese people for self-rule.

The first constitutional committee was established in 1951 by the British Governor-General of Sudan to draft a constitution for the self-government that preceded the self-determination of the country. The committee recommended a parliamentary democracy composed of the Governor-General, a Council of Sudanese Ministers, and a parliament with two chambers. The committee also
recommended a Constituent Assembly be established before the end of 1953 to draft the Sudanese permanent constitution. However, in 1951 the Egyptian government abrogated the Condominium Agreement of 1899 and the Anglo Egyptian Agreement of 1936. As a result, the first constitutional committee was dissolved. Instead, the Self-Government Statute was drafted based on the constitutional committee recommendations and was adopted by the Legislative Assembly in 1952. In 1953 the Self-Government Agreement was signed and the Statute was amended to accord with the Agreement. In March 1953 the Legislative Assembly adopted the Statute as the first Transitional Constitution for the country. The Transitional Constitution established a parliamentary system and executive composed of Supreme Council of five Sudanese persons.

The Transitional Constitution of the Sudan of 1953 continued until the beginning of 1956, along with the provisions of the Self-government Agreement of 1953 which granted the Sudanese peoples the right to exercise self-determination. Then the Interim Constitution of Sudan was promulgated after it was adopted by both House and Senate in a joint session in early 1956. This was the first Interim Constitution to be adopted by the national legislature of the Sudan as a new sovereign democratic republic which included all regions that were ruled by the Anglo-Egyptian Sudan.

In February, 1956, the Council of Ministers established a committee to present recommendations on how to draft and adopt a permanent constitution for the Republic of the Sudan. The Committee recommended that the government should form a national committee to draft the permanent constitution that represents the different points of views as much as possible and that every Sudanese should be given an adequate opportunity to express his opinion on the constitution which will be the basis of the governance of the country. The Committee also recommended the establishment of a constituent assembly to adopt the permanent constitution of the Republic of Sudan. The National Committee was formed from 46 members, who continued to work for a long time and its recommendations for a permanent constitution mounted to full five folders, which were raised in April 1958. This was the right step in the right direction and could have been the best for the future of Sudan if it was completed.

Due to political infighting and deep division between the main two sects, intra parties’ rivalries, and the emergence of a new Islamic party that calls for an Islamic State, the proposed constitution did not get the required consensus and therefore, it was halted. Accordingly, the political elites preferred to rule Sudan with the Interim Constitution of 1956 for years to come rather than changing the approach to proceed with the passage of the permanent constitution. The “permanent constitution draft” became the basis of deliberations by different technical committees for some times and then it was renamed as the “Draft Constitution of 1958”. This last step was aborted by the first coup-d’état led by
Lieutenant General Ibrahim Aboud in November 1958. This pattern of events has characterized the political life and the constitutional history of Sudan for years to come.

Following the coup, General Aboud ruled the country by constitutional decrees to consolidate his government’s grip. In 1961 President Aboud formed a national committee headed by a prominent judge to lay down a system of local governance. In the wake of success of the revolution of October 21, 1964, which had overthrown L. General Aboud, the victorious political forces and trade unions adopted the National Charter of 1964, which was modeled on the Interim Constitution of 1956. Then the October Revolution government adopted the “Sudan Interim Amended Constitution of 1964” to govern the country during the transitional period. Under this constitution a constituent assembly should be elected by March 1965 to adopt a permanent constitution for Sudan. This step was never completed as well.

At the beginning of the second elected government in January 1966, the Minister of Justice formed a technical committee to conduct constitutional studies to assist the National Committee in drafting a permanent constitution. The Technical Committee was formed from nine members and by December 1966 the new Minister of Justice reduced it to become five members, and later by June 1967 the third Minister of Justice changed its mandate and assigned it to the National Committee. The new National Committee for drafting the constitution was formed of twenty nine members. It submitted its recommendations to the Constituent Assembly by mid-January 1968.

The late sixties witnessed deep conflicts, partisanship, and sharp divisions, among political parties around the draft constitution. In addition, the political parties’ conference of 1967 issued its report along with the “Commission of the Twelve” report on the constitutional and administrative situation in the country. At this time the Islamic constitution proposal also emerged as new obstacle.

The partisan politics continued over the constitution. On July 1968 the Constituent Assembly established a Parliamentarian committee headed by a president chosen from the National Constitution Committee to review the 1967 constitution proposal. The committee was renamed to be the “Review Committee on 1967 Draft Constitution”. The new committee was tasked with submitting a new proposal for the permanent constitution to the Constituent Assembly in six months but no more than a year. This step was not accomplished and the permanent constitution was never adopted due to the May 1969 coup d’état led by Colonel Jaafar Nemeiry.

In its first three years May regime ruled the country by a series of constitutional commands, orders, and presidential decrees. In 1972 a new People Assembly was appointed by President Nemeiry to adopt a constitution prepared by the government. The assembly was divided into ten committees, each of which was
to give its own report on all aspects of the constitution draft. Substantial changes were made to the draft which the regime accepted, including a whole chapter on procedural aspects of the rule of law. The “Permanent Constitution of the Democratic Republic of Sudan” was adopted in 1973 by the People Assembly. The 1973 contained more modern constitutional principles than the previous constitutions.

A popular revolution ended Numeiry regime in April 1985 and a transitional military council assisted by civilian ministers assumed power. The military council promulgated the 1985 Transitional Constitution which was based on 1956 constitution. This followed by an elected constituent assembly and an elected civilian government in 1986. Hopes for a permanent constitution were still lingering. However, the government of Prime Minister Sadiq Al Mahdi failed to take any serious steps towards drafting a constitution for the country until a coup de’t.at led by Brigadier Omar al- Bashir overthrew the elected government and took power in 1989.

President Bashir ruled the country by constitutional orders for nine ears. In 1998 a new constitution was adopted for the country. The constitution was Islamic in its nature and declared Sudan as an Islamic State. The constitution also recognized self-determination for the rebelling South of Sudan. As a result of signing the Comprehensive Peace Agreement “CPA” between the North and the South, the Interim National Constitution was adopted in 2005 to constitutionalize the Agreement. The Interim National Constitution divided the power and national wealth between the North and the South. The Interim National Constitution also included very important provisions such as the Bill of Rights, the Commission on Human Rights, the Commission on protection of Non-Muslim, and the Land Commission.

The fact that the country has had many transitional and interim constitutions illustrates that the country has failed to reach an agreement on a constitution that is legitimate and acceptable to all regions, peoples, and ethnic groups. As we have illustrated, three out of the seven constitutions were written under military regimes, two of them were written after peace agreements between the North and the South, most of them had Islamic elements in them and none of them enjoyed public participation. These facts translate why these constitutions have resulted in little or no public acceptance.

As we detailed above, the Sudanese crisis has always been associated with the failure of the political elites and the parties represented in the constituent assemblies in adopting a permanent constitution for the country. A Constituent Assembly in the constitutional jurisprudence is elected once to accomplish a

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2 Id.
specific task which is the adoption of a permanent constitution and the formation of the political institutions of the country. After accomplishing its fundamental job it should be replaced by a parliament. However, in the Sudanese case it was assumed that the first Constituent Assembly elected in 1953 was to establish the new modern Sudan by adopting a permanent constitution and a political system, but it failed to achieve this historic mission. Thereafter, the Sudan has continued to have a number of failed constituent assemblies in all the democratic transitional points the country has had in an evil vicious circle: Self-Government of 1953 during the transition from colonialism to national governance; Independence in 1956; October Revolution government in 1965; and April uprising government of 1985 during the transition from military rule to civilian one. This failure of the constituent assemblies has become a milestone and a symbol of the Sudanese failure. Despite this continuous fiasco, the Sudanese elites have continued repeating the same failed methods in drafting and adopting the constitution. The bitter fact remains that either no one was willing to adopt a permanent constitution for the country, or they were not aware of the importance of constitutionalism at all, or they did not know how to accomplish it.

IV. Flaws of Previous Attempts:

It is just possible to say that all previous constitutional making processes had been flawed and the search for a permanent constitution has not yet been successful in Sudan. As we have seen from the above illustrated history, Sudan has been governed by seven constitutions and a long series of presidential decrees. Most of the previous attempts to draft Sudan’s constitution were prepared by committees that should have been adopted by constituent assemblies. That process was never completed due to political infighting, rivalries, manipulation, deep divisions, partisanship and military regimes.

The past Sudan’s experiences also demonstrate that politicians of the center have hijacked the constitution making process for many years and reduced it to their parties’ political gain. Members of the previous constitutional committees would only come from the center and the regions have been marginalized from its membership and therefore, they did not represent the many Sudanese people groups. Instead they only represented very narrow self-ambitions and sectarian interests that fueled partisanship and rivalries in the political arena.

Politicians and members of constitution’s drafting committees lacked the constitutional knowledge required for nation building and establishing strong political institutions for countries of special nature like Sudan. Therefore, they preferred to keep the inherited British colonial constitution written for the old Sudan for many years to come. Their rejection of federalism as demanded by Southerners in the fifties is another proof. They confused federalism with separation and considered it as a danger to the country’s unity. They failed to
see the regional and people diversity of the large country they ruled and the need to evolve a viable national political system, governance framework, a process of nation-building and a true democracy based on the multiple diversities of Sudan and their aspirations.

As a result, the drafts constitutions that were submitted by the many different committees either called for an Islamic State or proposed to sustain the parliamentarian system and keep the status quo, and that why they stopped short from reaching consensus among stakeholders and being adopted by constituent assemblies. The drafts constitutions were produced to serve only the interests of the elite groups at the expense of building strong democratic institutions and long-term political stability. The drafts constitutions were silent of decentralization of the country, devolution of powers, social justice, human rights, citizenship rights, and the rule of law.

The primary flaws in the past constitution-making processes could be summarized in the followings: (a) the process has always remained exclusively elite-based and inherently unrepresentative; (b) it was ill designed and did not fit Sudan’s ethnic and geographic diversity; (c) there was no clear approach to constitution-making and the process was not guided by any constitutional principles; (d) the process was not guided by the best practices experiences of the world especially countries of similar nature such as U.S.A., Australia, and Canada; (e) members of the constitutional committees tended to change according to the political rifts and the rapid changes in governments; (f) the process did not ensure consensus building among the main actors and there was no room for political bargaining and compromises; (g) and the tendency to dismiss the procedures and jump to conclusions.

V. A New Approach for Sudan’s Constitution: The National Constitutional Convention:

The challenges and the need of drafting and adopting a permanent constitution for Sudan rank high on the national agenda of all Sudanese political forces. Today all parties, government, opposition groups, and civil society recognize the pressing need of a permanent constitution.

The massive violations and suppression of the most basic human rights and freedoms of the Sudanese individuals and communities have been reinforced by the denial of democracy and policies of marginalization. Conflict between the dominant center and peripheries has been central to the country’s troubled history since independence. This feeling of alienation has led some regions to insurgency. The spread of wars in the regions and the massive atrocities committed by the current government triggered serious questions about the national identity and the country’s unity. The secession of the South in a referendum held in July 2011 highlighted the risk and fears of disintegration of the country provided the current long bloody war in Darfur, Nuba Mountains
and the Blue Nile. In addition, the weak inherited exclusive parliamentarian democracy and the lack of political institutions have been an open invitation to military tyrannies and dictatorships.

In summary, the most pressing fundamental problems that face the Sudanese are therefore: unity; peace and wars; ethnic conflicts; issues of marginalization; governance and political institutions; decentralization and restructuring the country on new basis; democratization; sharing of national wealth and power; national reconciliation; nation building and national identity; protection of human rights; social justice; and the rule of law. These fundamental interconnected issues are yet to be resolved and they highlight the need for a national constitutional convention.

Now it is widely recognized that past constitution making processes were deeply flawed and that why those attempts failed to deliver a consensus or an agreed upon permanent constitution for the country. There has been a considerable lack of constitutional knowledge and practical guidance for politicians, legislators, and their advisors, on how to design and implement a constitution-making process that guarantees a permanent constitution and supports a durable political stability, justice and a lasting peace.

Developing an effective constitution-making process that departs from the past failed experiences, guarantees a wide popular participation and prevents the manipulation of the process by certain groups is a considerable challenge. The new approach to the making of a permanent constitution for Sudan must not be built on the past bitter experiences and at the same time should not be constrained by it. The Sudanese can’t keep doing the same thing over and over and expect different results. Therefore, this paper suggests a full departure from the past flawed constitution-making processes Sudan has adopted throughout its history.

The process of making the constitution is as important as the outcome; in fact the process determines the outcome.\(^3\) The Sudanese permanent constitution should develop through a process that encourages popular participation, dialogue and broader consultation, overcomes deep divisions, addresses conflict root causes, establishes viable mechanisms for consensus building, allows democratic processes, principles, and values to take root and prevent manipulation by certain powers. Additionally, it should be guided by diversity, transparency, and accountability. The process must be empowering to all Sudanese communities and regions. By ensuring the involvement of all relevant groups, actors from each social group are instilled with a sense of responsibility for the rebuilding and reconciliation process.\(^4\) Our experiences have shown that

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\(^4\) Michele Brandt and others, Constitution-Making Handbook for Peace, Interpeace 2009
the exclusion or marginalization of certain actors breeds resentment and sows the seeds for renewed violence.\(^5\) A constitution-making process can be one of these defining moments in a country where, if key actors are excluded, peace is more likely to collapse.\(^6\)

The new approach the paper intends to propose is a more inclusive constitution-making process. This process could be divided into five steps outlined as follows: an agreed-upon statutory framework “the Convention Act” that sets out the process, principles, mechanisms, and timelines; the Constitution Drafting Committee “CDC” which leads the consultation with the people and the preparation of the draft constitution; the Provincial and Regional Conferences “PRC” which are designed and held to broaden the dialogue and public consultation and to guarantee the regions’ participation on the constitution draft; the National Constitutional Convention “NCC” which debates and adopts the constitution; and the Referendum which enacts the Permanent Constitution for Sudan.

**A: The Convention Act:**

The making of a permanent constitution in Sudan will require an agreed upon statutory framework that clearly sets out the process, articulates the principles and procedures, lays down the structure and mechanisms, and sets the timelines. The government should express its good will by enacting the Convention Act as the legal framework for comprehensive constitutional reforms. The government should take certain steps to build up a political and civil environment that encourages public consensus on the desirability of a new constitution making process.

The Convention Act must be designed in a consensus way to guide the constitution making process and to guarantee success of the National Constitution Convention and the final adoption of the permanent constitution by a popular referendum. The Act should set out the constitution making tasks, objectives and stages involved in the process and the organs which would undertake them, membership of these organs and how they are chosen, procedures and principles, terms of reference and the time frames required for each stage. To this end, it should establish an independent Constitution Drafting Committee “CDC” as a legal body to spearhead the constitution drafting, provide for the composition and functions of the committee, lay down the principles which will govern the drafting process of the constitution, indicate the method to be used by the committee, specify the timeline for each step it takes in order to draft the permanent constitution.

\(^{5}\) Id.

\(^{6}\) Id.
The Act should also establish the provincial and regional conferences as the main guarantee for public consultation, participation, and regional approval; provide for their membership and structures; determine their functions and their powers; lay down the principles and procedures that govern their debate and proceedings; and clearly specify the timeframes for them to avoid a prolonged process. The Act also determines how delegates are chosen by those conferences to the National Constitutional Convention “NCC”. Principles to workout issues of representation for all these conventions are clearly set out in the Act.

The Act also designs the National Constitutional Convention “NCC” as the main mechanism to adopt the final draft of the permanent constitution of Sudan before submitting it to a popular referendum. The Act should specify the composition and membership of the NCC and its structure, establish a chairmanship, Secretariat and technical bodies, lay down the debate’s principles and procedures, deliberation and voting system, and set out the mechanisms required for bargaining, compromises and building consensus. The Act must stipulate clearly the Convention’s process and articulate the mechanisms that guide the process and prevent manipulation of the constitution-making process. The Act also shall set the timelines for the Convention proceedings at all levels. It is crucial that all these principles, procedures, bodies and mechanisms are all agreed upon by all the stakeholders before the Act is adopted. A contentious process cannot produce a durable constitution.7

**B: The Constitution Drafting Committee “CDC”:**

The Convention Act should establish the Constitution Drafting Committee “CDC” charged with a primary task of providing civic education, seeking public input and drafting the permanent constitution and presenting it to the National Constitutional Convention. The CDC is the main technical driver of the process.

The Drafting Committee membership should be from people known for their expertise in constitution making such as lawyers, political scientists, and activists. In the light of the historical failed attempts mentioned above, the Committee should not be enlarged. What is required is a Committee of not more than nine experts, six of whom represent the Sudanese regions. They should be diversified in terms of gender and social background. They should be chosen and nominated by an independent body and appointed by the President of the country. The CDC should be fully independent from the Executive.

The Committee shall have a president, a vice president, a Secretary, and a Spokesperson. The CDC should be empowered to elect these offices from within its members. The Drafting Committee should be able to appoint its own advisers, and a technical staff to help with logistics, meetings arrangements,

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7 Muna Ndulo and Chaloka Beyani, Amidst Conversation with the Deaf: The Struggle for a legitimate and Democratic Constitution in Zambia, [www.saiper.org](http://www.saiper.org)
publications and media. The Committee should adopt its own rules of procedure and time frames according to the Convention Act. It should attract local expertise and procure foreign experts to bring in other countries experiences. After its establishment, the Constitution Drafting Committee should organize educational and training sessions for its members about the process and the task awaiting them. It should also convene groups meetings, public hearings and debates, and conduct civic education in different parts of the country to ensure the public understands the process and the mandate.

The Drafting Committee main mandate is to draft the permanent constitution and present it to the National Constitution Convention. The working document of the Drafting Committee should be the Interim Constitution of 2005 which was mandated by the Comprehensive Peace Agreement “CPA” and adopted by the National Assembly. The Interim Constitution of 2005 appears to be the most progressive draft and the one that have the most popular support. The Interim Constitution of 2005 remains the operating basic law of Sudan after it was amended following the independence of South Sudan. The Committee should also look into all past Sudan constitutions, proposals and drafts as well but should not be constrained by them.

The CDC should identify areas of agreement and disagreement and find ways to reach consensus. It should hold consultation and collect more submissions from different parties, armed movements, social groups, religious groups, women and youth organizations, and other civil society organizations. The CDC should be given freedom to consult and draft. It should study the different experiences of different parts of the world, especially from countries that are similar to Sudan in Africa, Australia and USA. Then the CDC should come out with a draft constitution within the time frame as stipulated by the Convention Act. During this period the Drafting Committee should organize and encourage educational conferences, seminars workshops, and town hall meetings to improve people’s understanding and awareness of constitution-making process, constitutional principles, and the pending draft constitution.

The Constitution Drafting Committee should submit the first draft Constitution to a select representative group from the major political parties and armed movements for more deliberations and consultations. The idea of this group is to ensure the participation of the main stakeholders in the constitution making process. It is important to consult with them and receive their feedback in this stage. The draft constitution should accompany these deliberations and feedbacks. After this the Committee should come up with a second draft which incorporates their opinions and comments. The CDC should publish the draft constitution in all kind of media and explain it to the public through civic educational programs.
C: Provincial and Regional Consultation Conferences:

The views of the Sudanese people on the new constitution should be adequately canvassed through provincial and regional constitutional conferences. The Constitution Drafting Committee should submit the draft to the provincial and regional conferences for consultation and participation. Public participation at this stage increases understanding of the process and guarantee legitimacy.

The provincial and regional conferences should be carefully structured to guarantee broader public participation and consultation. The Convention Act sets out the composition and rules for representation, elections and selection of delegates criteria, functions, powers, and debate procedures of these conferences. The provincial conference composed of delegates who are locally elected especially for this purpose on non-partisan basis. Other voting members may be selected to join the conferences to represent ethnic, religious and sectorial groups in each province. Delegates must be members with knowledge, experience and must be in good standing. The provincial conferences should also nominate alternate delegates.

The main purpose of the provincial conferences as preliminary conferences is to guarantee wide popular participation in the constitution drafting. The CDC should coordinate and facilitates these conferences. Delegates to provincial conferences, who legitimately speak for their own people, should have all the freedom to debate the draft constitution clause by clause. The provincial conferences should be of limited duration and their inputs and feedbacks should be sent to the regional conferences. At the end, the provincial conferences elect their delegates to the regional conferences.

The regional conferences are composed of delegates chosen from the provincial conferences in addition to other selected voting members who represent political parties, armed movements, trade unions, ethnic, religious, and sectorial groups in each region. The idea of organizing and holding the regional conferences is to ensure regional popular participation in the process.

The regional conferences should consider the draft constitution submitted by the CDC. Deliberations and debate over the draft constitution at this level will focus on the desires and aspiration of the peoples of the regions on the constitution. Each region’s conference represents a regional caucus where delegates discuss their shared concerns. Regional delegates are expected to express what they want to see in the constitution. In this regard the CDC should dialogue with each regional conference on the draft. After receiving the feedback and submissions of the regional conferences to the draft constitution, the CDC should incorporate these views of the regional conferences into the draft constitution and resolve any outstanding issues to come out with a final draft to be submitted to the National Constitutional Convention “NCC”. Each region is encouraged to draft its own constitutional plan for the system of government to
take it to the National Constitutional Convention for negotiations and compromise. At the end, the regional conferences elect their delegates to the National Constitutional Convention. Numbers of regional delegates are allocated to each region according to its population size. The CDC job ends here and turned into a consultant and advisory body to the NCC chairmanship.

**D: The National Constitutional Convention “NCC”:**

As we have illustrated above, convening a national constitutional convention came out as a viable mechanism to solve all the Sudanese fundamental problems including the problem of the permanent constitution. It was agreed among major political forces that a national constitutional convention be convened to deliberate and resolve these fundamental issues and adopt the permanent constitution. The parties, however, differ on the details and structure of the process to be employed and on the contents of the permanent constitution itself.

If a permanent constitution should ever be written for Sudan, it should be written by all Sudanese people. The permanent constitution should not be dictated by the government or regarded as a victory of one party or one group for it needs an inclusive popular participation and a modern vision for the country. The National Constitutional Convention membership should be kept for those who enjoy the trust and confidence of their constituencies, nationalist patriots who devoted themselves to the wellbeing of the country, and who have good hearts and faith, clean and free from any preconceived ideas or bitterness, and intelligent statesmen with creative minds, and those who have the constitutional knowledge required for State building. It should be understood that being a delegate to the Convention is a national duty and responsibility. It requires serious minded persons who are willing to participate and contribute to the debate.

The membership of the National Constitutional Convention must be open for all and should not be subject to partisanship and political competition. The Convention main purpose is to guarantee wide popular participation in the constitution-making process from all stakeholders such as regional representatives, political parties, armed movements, trade unions, military corps, social groups, religious groups, women and youth, and civil society organizations. No group should be excluded from participating in the drafting of the constitution. An inclusive Convention shall ensure a national constitution that pleases everyone and earns their respect and gain permanence.

The Convention should consist of delegates who are especially elected for this purpose on non-partisan basis throughout the regional conferences. In addition, other members should be chosen and appointed as voting members from national organizations such as military and police forces, religious groups, professional associations, businessmen, tribal leaders, academia, business
community, farmers, cattle herders, disable persons, student unions, senior citizens, and civil society organizations. The Convention should also have non-voting members selected to represent certain groups as observers.

The Convention members should elect a Chairperson, three vice-Chairpersons, a Secretary, and a Spoke person from among their number. The Convention Chairperson should appoint a Secretariat to provide secretarial, administrative, and other support services to the Convention. The Secretariat will be headed by the Secretary of the Convention who is responsible of the day to day administration of the Convention business; coordination of the papers and reports; recording the Convention’s verbatim; custody of all records and documents; drafting services; publishing and distribution of all the Convention’s resolutions and decisions. The Secretary of the Convention should have two deputies to help in the administration of the affairs of the Convention. The Convention should have local advisors and procure foreign expertise as well.

The Convention Act establishes the National Constitutional Convention “NCC” as a forum for the examination, debate, and adoption of the draft constitution as presented by the Drafting Committee. The Convention main function is to consider and deliberate the provisions of the draft constitution and the accompanying report submitted by the Drafting Committee; adopt the draft constitution and submit the adopted draft constitution to a referendum. In this regard, the Convention shall debate and adopt all the draft constitution’s chapters clause by clause. There are many fundamental issues that have been waiting for the constitutional convention to resolve. Those fundamental issues range from the system of government, issues of marginalization, identity of the State, to basic human and civil rights as we detailed earlier. The overriding purpose of the constitutional convention is to resolve and reach political-constitutional compromise and agreement on those prevailing fundamental issues. History has shown us that without settlement and compromises among the convening delegates in this long-awaited convention no solution would be reached to the Sudanese conflicts. The Convention shall also establish certain national commissions to safeguard the implementation of certain principles such as a commission on human and civil rights, election commission; commission on federalism and a constitutional commission.

The Convention should consult with the experiences of countries that are similar to the Sudan such as Australia, Canada and USA where regional and state and provincial approach was followed in adopting the constitution. The Australian constitution was drafted by a group of committees representing the six colonies and New Zealand and then the final copy was adopted by a conference of representatives of the six states who have been elected for this specific purpose. In the Unites States the drafting of the constitution was done by the representatives of the thirteen states that composed the union of the
American states at that time. The consensus was reached through bargaining and compromise among them.

The Convention members should engage actively, freely and meaningfully in debating the draft constitution without any pressure from their constituencies or from the government. The proceedings of the Convention should be held in public with transparency. The Convention takes its decisions by consensus, but in the absence of consensus, decisions on the general principles of the constitution shall be determined by a two-thirds majority vote of the members of the Convention. Decisions on the system of the government and devolution of powers shall be determined by a two-thirds majority vote of the members of the Convention and the majority of the regions. Voting shall be by secret ballots. The Convention shall publicize its deliberations and avail a record of the proceedings of any meeting and the draft bill through the printed and electronic media. At the end, the NCC should hand the adopted constitution to the Chairperson of the Electoral Commission for a popular referendum which enacts or rejects the constitution.

The work of the National Constitutional Convention should be divided into two main phases; Phase one will discuss, deliberate, and adopt the general principles of the constitution, identity of the State, the Bill of Rights, the government’s three branches and their structures: the legislature, executive, and judicial and a system of checks and balances to ensure that no branch would have too much power over the others. Phase two of the convention is the most important and contentious phase of the convention which will focus on the system of government. One of the fundamental issues that Sudanese would want to answer is how their country should be governed. The Sudanese regions have suffered from political, developmental, and social marginalization throughout the history. The civil wars spread in Sudan demonstrate that no one is happy with the current unity and the prevailing unjust policies. As a result, the South seceded in 2011 and Darfur and Nuba Mountains are vulnerable. Here lies the importance of convening the Sudanese regions in one platform within the Constitutional Convention in the second phase of deliberations.

Despite the long bloody conflict that has continued in Sudan, the regional powers have never been consulted in the unity of the country and the type of political system they prefer. We should seek the consent of these regions to live voluntarily in one united strong country. Unity must come from all Sudanese regions, and the approach to this unity must be a regional approach. Unity this time must not be dictated from the political elites of the capital, Khartoum. We cannot talk about voluntary unity without the consensus of the representatives of the regions that make the Sudan. In this phase of the Convention the regional delegates will be able to examine the country’s current unity thoroughly. Unity is made by people who recognize that their ideals, future, survival and aspirations can only be achieved through union. The regional delegates should
clearly express their consent, intention, and affirmation to live together in one united strong country. They should also decide on what type of unity they wish to have. This unity should be based on the democratic right of the regions to debate and decide their own destinies.

In this context, the second phase of the Convention represents a drawing platform for regional delegates to debate the future of Sudan and agree on a system of government. Delegates seating at this phase will be assigned on regional basis. Each region’s delegates constitute a regional caucus and shall be seated together and have a one vote as bloc. Each region caucus shall appoint a secretary or a whip to be responsible for organizing the region’s delegates and serves as spokesperson for the delegation on the floor of the Convention. Therefore, the Convention provides a fully representative forum for discussion, debate and negotiations of special issues such as issues of marginalization, restructuring the country on new basis, division of power, devolution of powers, division of national wealth and financial relations. The regional delegates should not only express their views, but they should convey their region’s citizens’ views as well and speak on their behalf.

The Sudanese regions have always aspired to govern themselves. The current Sudan consists of six large regions assembled together by the Turk- Egyptian rule in the late nineteen century. Each region of those six regions represents a unique geographic, cultural, demographic and ethnic unit. Previous attempts provided only for a weak form of federation, which were spoiled by the central governments’ intervention and manipulation. Sudan has experienced a quasi-federal system in the eighties where governors and legislatures of the regions were elected. The Regional Rule Act of 1980 stipulated the powers of the regions governments, governors, and legislatures. According to this, Sudan was divided to seven regions where each region elected its governor and a legislature. This experience did not last long and was never developed. In 1994, President Al Bashir applied the current “Unionist Rule” where the country is divided to 26 states, where each state has a legislature and a governor “Wali”. All states governors are appointed by the President and no election is permitted to the states. Those two experiences of federation were never constitutionalized.

Now there is an agreement among all Sudanese political and regional forces that Sudan should be a federal state. Regionalism is a one version of federalism. The Convention should discuss and deliberate on federalism as a recommended favored formula for governance in Sudan. It is imperative that the Convention determines the nature of the Sudanese state as a federal united democratic state consists of six regions. This system should differ fundamentally from the regional rule that was implemented in the eighties and from the unionist rule that has been implemented by the current regime.
Therefore, the Convention should consider restructuring the country and the system of governance on new basis. Central to restructuring of the governance is devolution of power. The convention should clearly determine the relationships between the central government and the regions and detail each power. It must also determine the level of governments in the country and the powers allocated to each level of government. In doing so, the Convention’s delegates should debate, deliberate, negotiate and reach compromise on all issues pertaining to the system of government and devolution of powers. Regional delegates are encouraged to carry with them their regions’ plans and visions for the system of governance they wish to have to present them to the negotiating table at the Convention.

The federal system sought by the Sudanese people is a system that allows the devolution of powers between the different levels, so that the federal government prevails in the matters of sovereignty, while the region governments prevail in other services. The federal government shall not be able to fire an elected-governor of a region nor dissolve the region or state assembly. On the other hand the region shall not be able to abolish a federal law.

When debating federalism the convening regional representatives should bear in their mind the historical facts on how Sudan was made and the geographic and demographic diversity of the regions that make the country. In all previous experiences there was a clear recognition that regional democracy is a necessity enforced by those facts. The delegates should also bear in mind the long history of marginalization and injustices that the regions have suffered from.

At the end of deliberations and after reaching settlements and compromises on all issues pertaining to the system of governance, the regional delegates should draw and adopt the Federalism Charter clause by clause that would create a negotiated federal system of government. The Charter therefore, should finally settle the Sudanese fundamental issues, such as how the country should be governed, establish a federal system of government and regional administrations.

The Federalism Charter shall represent the hopes and aspirations of the citizens of the Sudanese regions in the future Sudan. It should reaffirm the regions’ will to live together in one united strong democratic Sudan on new basis of federalism, justice, equality and dignity. The Federalism Charter finalizes the union of the regions and gives birth to the new federal Sudan. The Federalism Charter should stipulate clearly how much power the federal government should have and alternatively, how much liberty states and citizens should have.

The Federalism Charter will serve as the guiding supreme document in the creation of the federal Sudan. Finally, the Federalism Charter ensures that our chosen governance and democratic institutions do not run themselves and that they require periodic review, renovation and restructuring. The Federalism
Charter shall be an integral part of the permanent constitution to be adopted by the whole convention.

The constitution is the supreme popular charter, which represents and symbolizes the political, social, cultural, economic and legal values of the country and the people. It reflects the aspirations and wishes of the people. It must be a consensus of who the people are and aspire to be. The anticipated new constitution must establish a just voluntary unity, guarantee freedom and bring about democratic change in Sudan and move the country from the constitutional instability and the weak temporary state that Sudan inherited to a democratic constitutional state where the people are the primary source of powers. The permanent constitution must be a democratic one and provide for democratic institutions that prevent political manipulation by any group. It must restructure the country on new basis and provide important safeguards to ensure the devolution of power to regions and local communities.

The permanent constitution should ensure that citizenship is the main source of equal political and civil rights for all Sudanese. It must also guarantee equal protection for ethnicities and minorities. It should promote development and good governance and guarantees citizens government under the rule of law and ensure the role of the High Court in guarding the constitution. The new constitution should be based on the principles of separation of powers and provide for checks and balances. It should prevent the concentration of power in one branch or group. Finally, the permanent constitution should stipulate the process of its amendment.

A number of basic constitutional principles should be emphasized in the permanent constitution, including a bill of rights; social justice; equal protection and non-discrimination; multi-party democracy; affirmative action for the marginalized areas and people; the rule of law; integrity; transparency; public accountability; federalism and voluntary national unity; good governance; sustainable development; respect ethnic, religious, cultural and regional diversity; protection of these diversities; power sharing; national wealth sharing; guarantee peace and security; universal adult suffrage; gender equality; ensures supremacy of the constitution; ensures the role of the supreme Court as the guardian of the constitution.

E. The Referendum:

The adoption of a constitution through a referendum is the most democratic transparent way. The NCC should hand the adopted constitution to the Chairperson of the Electoral Commission for a popular referendum which

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enacts or rejects the constitution. The NCC Chairperson should publish and distribute copies of the proposed constitution throughout the country. The Secretariat of the Convention will lead the conduct of civic education on the proposed constitution in the period leading to the referendum and will be assisted by the Electoral Commission. The Convention Act stipulates the method and the timeframe for the referendum. For the constitution to become law it has to be approved in the referendum by the majority of the Sudanese people and ratified by the majority of the regions. This double majority approval will guarantee a wider approval and sustain permanence.

The Electoral Commission is the one in charge of conducting the referendum. It should decide on the methodology to be followed, symbols to be used, the ballots design and the supervision of the votes casting. If passed by the referendum, the proposed constitution will be enacted as the Permanent Constitution of Sudan and will be promulgated by the President of the country. If not passed by the referendum, the NCC Secretariat, the Drafting Committee, and the NCC advisors and consultants should convene a meeting to consider the way forward in making a new constitution for the country.

**Conclusion:**

Since its independence, Sudan has been engaged in several failed efforts to adopt a permanent constitution. The Sudanese current crisis has always been associated with their failure in adopting a permanent constitution. The country has been ruled by many transitional and interim constitutions. As a result of the constitutional failure, which continues for decades, the country has plunged into civil wars within its regions.

Most of the failed attempts to draft Sudan’s constitution were prepared by committees that should have been adopted by constituent assemblies. That process was never completed due to political infighting, rivalries, manipulation, deep divisions, partisanship and military regimes. Despite this recurring failure, the Sudanese elites and politicians have continued repeating the same flawed process in drafting and adopting the constitution. The past constitution-making processes have always remained exclusively elite-based and inherently unrepresentative and it was ill designed and did not fit the Sudan’s ethnic and geographic diversity.

The challenges and the need of drafting and adopting a permanent constitution for the Sudan rank high on the national agenda of all Sudanese political forces. Today all parties, government, opposition groups, and civil society recognize the pressing need of a permanent constitution. Therefore, the process of making the constitution is very important in the Sudanese case.

In this paper, as a way forward, I suggest a full departure from the past failed bitter experiences and the flawed constitution-making processes Sudan has adopted throughout its history. Therefore, the paper intends to introduce a more
inclusive constitution-making process that guarantees a wide popular participation and prevents the manipulation of the process by certain groups. The paper has specifically suggested convening a national constitution convention as a viable mechanism to solve the Sudanese fundamental problems and adopt the long awaited permanent constitution. The National Constitution Convention “NCC” as the paper presents it is a forum for the examination, debate, and adoption of the constitution.

More specifically, the paper spells out and details the phases and the steps should be taken to convene a national constitution convention to adopt the Sudan’s permanent constitution and solve the Sudanese fundamental problems. Those steps could be outlined as follows: an agreed-upon statutory framework “the Convention Act” that sets out the process, principles, mechanisms, accountability and timelines; the Constitution Drafting Committee “CDC” which leads the consultation with the people and the preparation of the draft constitution; the Provincial and Regional Conferences “PRC” which are designed and held to broaden the dialogue and public consultation and to guarantee the regions’ participation on the constitution draft; the National Constitutional Convention “NCC” which debates and adopt the constitution; and the Referendum which enacts the Permanent Constitution for the Sudan.

To facilitate its mission in adopting the permanent constitution, the Convention should discuss, debate and negotiate the Sudanese fundamental issues such as: citizenship and State identity, protection for minorities, Bill of rights and the rule of law, just unity, issues of marginalization, restructuring the country on new basis, structure of government, separation of powers and checks and balances, and devolution of powers between regions, division of national wealth and financial relations. One of the main fundamental issues that Sudanese would want to answer in this convention is how their country should be governed.

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