

Position Paper

Opportunities and Risks in the Battle of the Sudanese Constitution

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In a speech to parliament in early April 2013, Sudanese President Omar al-Bashir announced that all political prisoners would be released. This decision came to fulfill one of the main conditions of the opposition to call of boycotting dialogue for the state's new constitution. The government called for dialogue and directness after the secession of the south but displayed inconsistent behaviour. This included the restriction of freedom by shutting down newspapers and stalking civil society organisations. Furthermore, the number of political prisoners released by the authorities amounted to approximately only seven.

Facts indicate that the government has placed the issue of a new constitution as its top priority for the upcoming stage and seeks to achieve internal consensus on it.

The Pressure of Time

Two factors that affect the balance of power in Sudan are pushing for a new constitution:

First, the current constitution was drafted in 2005 during the implementation of the Comprehensive Peace Agreement with the Sudan People's Liberation Movement (SPLM). During this time, power and authority were split between the north and the south so that the conflict could potentially be resolved politically through power-sharing. For example, the Sudanese vice president was from the south. After the secession of the south, however, the political balances in the constitution no longer reflected this dynamic. In

addition, the current constitution is void of all articles relating to the potential separation of the south.

Second, and more importantly, the current constitution limits presidency to only two terms. The president's second term will end in 2015, which raises a critical question about the future of the regime's structure and consecrated balances, which have been present since the end of the nineties after the renowned split in the Islamic Movement of Sudan.

The answers to questions about the content of the new constitution and the method of its preparation and approval may determine the course of political developments in Sudan in coming years.

However, the questions remain: will there be a constitution that enshrines the status quo? Or will it be a progressive constitution that includes gradual reforms to the system? Will the regime lose its initiative, thus causing Sudan to change the status quo and reformulate the balance of power in a new way?

Three Possible Paths

Maintaining the status quo would require the preparation of the constitution in a way that allows for the re-appointment of al-Bashir. If this does not happen, he could stay in power by making some form of allowance for an extension due to exceptional circumstances. Possible scenarios include the escalation of confrontations with armed groups in Darfur, South Kordofan, and the Blue Nile, and possibly the re-ignition of tensions with South Sudan. An increase in internal political tension could also allow the regime to justify this extension by placing pressure on the opposition and civil society institutions.

There are several indications that the situation could move in this direction. More than a week after al-Bashir's announcement of the release of all political prisoners, authorities only released seven people. The opposition had spoken about dozens of detainees and political prisoners, some of whom have spent ten years in prison. Also, security authorities have not eased their restrictions on press freedoms. For example, Kubra, a local newspaper, was forced to change its editor, and the director of Al Jazeera's Khartoum bureau was arrested after attempting to discuss the issue of un-released detainees and political prisoners. There were also strong attempts to tighten the reins of power through the ruling party's removal of Ghazi Salah al-Din from his position as head of the parliamentary division of the National Congress Party (NCP) as a result of a remark in which he declared that according to the current constitution, President al-Bashir is not allowed to run for a new term. Similarly, the official spokesman for the

ruling party, Badr al-Din Ahmed Ibrahim, was also dismissed. Both are regarded as moderate voices within the party.

Perhaps the likelihood of this scenario is strengthened by the military's control of state apparatuses since the coup in the early 1990s. Its leadership took part in the management of the country during that periods and continues to control the executive branch of the regime. Members of the military obtained all the advantages and disadvantages of the rule, causing certain leaders to potentially be tried in the International Criminal Court.

The cost of continuing this scenario of the status quo seems extremely likely, and as such the regime may not be able to afford it. The regime also failed to maintain the territorial unity of Sudan and continues to engage in complex civil wars. Furthermore, its policies led to restrictions on Sudan's foreign relations. As such, in most cases, the regime was paralysed vis-à-vis opportunities and risks.

The continuation of this scenario may also mean that there will be a military and security solution as opposed to a political solution. However, the regime no longer possesses sufficient economic resources to finance its military operations after the south took approximately three quarters of petroleum resources.

Furthermore, maintaining the status quo would compel the regime to promote a comprehensive ideological slogan of Islam and Arabism to defend the legitimacy of the elections. In the aftermath of the secession of the south and the war in Darfur, such policies caused the government to lose much of its prestige and influence. The regime therefore no longer has an ideological slogan to justify its stay in power.

Gradual reform can be achieved through a comprehensive national consensus on the constitution that expands the base of political participation through open competition for the responsibilities of the state and regarding the elections as the main source of legitimacy.

The chances of this occurring are enhanced by the shifts in a number of Arab countries, especially neighbouring Egypt and Libya. These countries are currently experiencing a transitional shift of power from authoritarian and military regimes to democratic systems. Egypt has encouraged the Sudanese regime to reform in order to keep up with the ongoing transitions in the region, and avoid the disruptions that have affected other Arab states.

On this note, some observers emphasise the timing in which al-Bashir announced the release of all political prisoners. It was on the eve of Egyptian President Mohamed

Morsi's visit to Khartoum. The Sudanese president sought to secure Egypt as an ally to relieve his isolation in foreign affairs. To the new Egyptian leadership, an alliance in Sudan is considered a necessity, an opportunity, and a burden all at the same time. It is a necessity for Egypt's security, and an opportunity because Sudan is the country in the region that is most likely to accept Egypt's soft power because the two countries' regimes are based on Islamist ideologies. This allows Morsi to exploit the ideological kinship with the Sudanese regime and manipulate it. It is a burden, however, because the Sudanese regime bases its survival on security apparatuses and the restriction of freedom. This clashes with the foundation of Morsi's legitimacy. Perhaps Morsi's insistence that the Sudanese regime hold meetings with the opposition indicates his desire for a shift towards greater openness.

There are internal factors that may allow the regime to broaden its base of power. It is suffering from an erosion of legitimacy after nearly twenty years, which makes it unable to govern the country on its own. Perhaps the way in which it dealt with armed groups proved the limits of its ability to govern. It has yet to impose its authority over the whole of Sudan, which is highly unlikely considering it has failed to achieve this in the past when it had greater resources.

This will force the regime to keep its military and security apparatus away from institutions of power, which is not easy. As a result of their role in Sudan's historical and current civil conflicts, the importance of these institutions has expanded.

In this case, the regime will be forced to resort to elections despite many factors that indicate that its victory is not guaranteed due to, for example, its repression of freedom. Had it been confident about winning them, it would have entered the elections to acquire the legitimacy required to reduce the costs of staying in power.

Breaking away from the status quo stems from retaining the status quo after the preparation of the constitution. An increasing number of people will be affected by the continuation of the regime and will want to break from it. Breaking away from the existing regime may take one of three forms:

1. There may be a departure from within the military institution through a coup, especially as military coups are not unfamiliar to Sudan. This does not necessarily mean that ending the status quo through military means is a step towards the rule of law. On the contrary, it may occur in order to maintain the status quo.
2. It could take place as a result of rebels' appropriate of power in Khartoum. The attempted attack on Khartoum in 2008 is an indication that this is likely, especially after the unification of the militant factions and their determination to

overthrow the regime. The likelihood of this is strengthened by the troubled region Sudan is in. Adjacent to Darfur, Libya has no control over the movement of fighters and weapons. In addition, rebels have seized power in the Central African Republic. Controversies are still raging between Sudan and South Sudan. These conditions may provide armed groups with a haven, weapons, and expertise to seize power in Khartoum especially due to geo-political factors. Sudan is vast and the current regime cannot impose its rule by force. This enables armed groups to travel and mobilise. In addition, there are no natural barriers to protect Khartoum, as plains dominate Sudan's geographical landscape. These factors are advantageous to armed rebels. Factors that reduce the chances of this scenario, however, include the absence of cooperation between the armed groups. The aforementioned armed factions do not have the capability of challenging the army in the capital. Also, the idea of seizing Khartoum by the force does not have the support of a broad political spectrum. The army that is stationed outside the capital will not easily accept submission to a new regime, and the executive structure has hidden militias that may continue fighting even after the fall of the capital.

3. A break with the third regime could also arise as a result of a popular uprising. This is likely due to the political culture of Sudan, where popular uprisings caused the government party of Ibrahim Abboud to step down in 1964 and Gaafar Nimeiri in 1985. To some extent, it would be similar to the uprisings in certain countries during the Arab Spring and the potential is supported by the current mass protests against the Sudanese government that broke out a few months ago at the University of Khartoum. Also, they are likely to recur as a result of the discontent of difficult living conditions and the restriction on freedom.

Two Critical Years

The next two years will determine the future of Sudan. There are forces aiming to maintain the status quo, proving their position through the rise of radical militant wings in the regime, and the restriction of freedom. However, there are signs that the regime is still grappling with the new power balance because it feels that the internal and external situations have changed.

In addition to the disapproval of an increasing number of people contesting it, such as internal armed factions, its bases are exhausted, its resources are diminishing and its cohesion is loosening. Regionally, it is located in an Arab area with an atmosphere of relative democratic openness while the African continent remains unstable and hostile.

All of these issues subject Sudan to the possibilities provided in the previous three cases. Even though signs to maintain the status quo may currently prevail, prospects for reform

will conquer. The regime is not the only political player; there are other internal and external players who could convince its radical wing that power sharing may be less costly than losing power completely. These players may also take power from them, as demonstrated by the Sudanese experience or other similar Arab experiences, through popular uprisings, military coups, or armed rebellions of which the Central African Republic is the last example.

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