

## **Constitutions of Freedom and Constitutions of Deceit**

### **Arab constitutions in the time of revolutions and freedom**

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#### **2011, Year of Arab Constitutions:**

The year 2011 was not only bursting with Arab revolutions against despotic regimes and dictators, but it was also the year of Arab constitutions. Most of the Arab states, from the Sultanate of Oman to the east, till the kingdom of Morocco to the west, witnessed either a change or an amendment to said constitutions.

In Yemen, prior to the revolution, the opposition deputies refused to participate in the session of January 1, 2011 in protest against the constitutional amendments that were paving the way to the re-election of President Ali Abdullah Saleh for life. They protested before the parliament carrying banners stating "No reelection, no inheritance of office". Nonetheless, the parliament, which is controlled by the ruling party, adopted said amendments. But, once Yemen was hit by the waves of the Arab Spring which awakened the people, President Saleh proposed, less than 3 months after the adoption by Parliament of the previous amendments, to absorb the public outrage against the State by establishing a new constitution to be voted thereon before the end of the year and instituting a parliamentary regime. However, the public outrage was not reduced until the removal of President Saleh.

In Egypt, after the success of the Revolution of January 25, 2011, the Supreme Council of the Armed Forces presented for referendum, on March 19, the constitutional amendments drafted by a competent committee presided by Mr. Tariq Al Bachiri. It was approved by more than 77% of

the number of voters. The amendments aimed at paving the way for legislative elections followed by presidential elections by amending certain articles such as the articles related to conditions for running for presidency and the supervision of elections. Egypt also witnessed in said circumstances the supra-constitutional principles presented by Ali El-Selmi and was criticized by a large group of Egyptian parties and politicians. Egypt also witnessed, on March 30, 2011, the announcement of the constitution adopted by the Supreme Council of the Armed Forces to regulate the state's affairs until the new constitution is drafted after the parliamentary elections take place.

In Jordan, King Abdullah II Bin Al Hussein formed in late April a committee presided by the former Prime Minister Ahmed Al-Lawzi to review any possible amendments to the articles of the constitution. The committee concluded several amendments affecting more than 40 articles. The government considered enforcing the principle of separation of powers and thus restore balance, while the opposition considered the amendments as formal and devoid of content.

In Libya, before the fall of the Gaddafi regime, Saif Al-Islam Al-Gaddafi made referrals in mid-April to a new Constitution of Libya which limit his father's competences. After the fall of the Gaddafi regime, the interim Prime Minister Abdul Raheem Al-Keab declared that a new constitution for the State shall be drafted which defines the form of the State.

In Algeria, the month of May of 2011 witnessed discussions to amend the constitution which included articles related to the presidential term, the relationship between the president and the government, enforcing the competences of Parliament and providing the possibility to dismiss the second Chamber of Parliament. The request by President Bouteflika made to the Constitutional Council to prepare a draft law on political freedoms was circulated.

In Sudan, the question of a new constitution occupied a priority place in the political street, following the consideration by a category of people that certain articles of the current constitution should be considered as expired as a result of the separation with the South. President Al Bashir ascertained that the Islamic Sharia shall constitute the main source of the upcoming constitution.

In Morocco, the referendum on the amendments to the Constitution of 1996 was held in July 2011. King Mohammed V initiated, following the protests of February 20, the establishment of a

committee to review the Constitution in order to grant more competence to the Prime Minister and more legislative jurisdiction to the Parliament and appropriate liability to accountability.

In Syria, as part of his strenuous effort to contain the people's revolution and inform the external world that he is walking in the path of reform, the Syrian President Bashar Al-Assad formed in mid-October 2011 a committee assigned with the drafting of a new constitution, with a deadline of 4 months set for the committee to finish its work. The referendum regarding the project was held in February of this year and earned the approval of the majority of the voters.

Few days later, Oman witnessed a constitutional amendment to most of the articles of basic law especially those related to the Consultative Council and granted said Council the right to adopt draft laws and question ministers in matters related to their tasks and present the results to the Sultan. Oman witnessed public outrage and protests in certain regions during said year.

While Tunisia, where the revolution brought down the regime, witnessed in late October the elections of the National Constituent Assembly. On December 11, said Assembly adopted a temporary mini-constitution of the State that temporarily regulates powers in the State.

In Mauritania, the newspapers reported late last year news on the anticipated constitutional amendments aiming at the limitation of the competence of the President which shall be adopted during a joint meeting of the two chambers of Parliament.

Finally, in Bahrain, after the crisis witnessed by the State during 2011, the Bahraini government referred to Parliament the draft constitutional amendment that aims, as alleged thereby, at the enforcement of the role of the legislative power and granting it wider competence.

Undoubtedly, the fall of certain of said constitutions and the amendment of the provisions of certain others are inevitably related to the outrage of the Arab people witnessed during the year 2011. Said revolutions erupted to release enslaved people from the chains of oppressive regimes and to grant them freedom.

In this concise speech, we limit to the comparison between two constitutions set during the Arab Spring. One constitution represents the constitution of freedom and the other the constitution of deceit.

## **From Tunisia where the winds of change blew and deposed the despotic regimes:**

In the last third of the month of October of last year, Tunisia witnessed elections aiming at the selection of members of a Constituent Assembly which draws the main aspects of the State of institutions and law. Drafting a new constitution for the State is among its highest objectives. Said elections were conducted according to a proportional representation system where those running win parliament seats according to the percentage of votes earned thereby and the minority is also included and guaranteed to reach Parliament within a number of seats equal to the percentage of votes earned thereby. It is a fair system especially for the election of the members of the Constituent Assembly that shall set the constitution of the State where everyone can participate in the preparation thereof. It should be also noted that the body that supervised the election procedure is not a governmental body subject to the Authority but rather to an independent authority presided by an independent rights activist which is the “High Independent Authority for Election”. It was also noticed that more than 80 actual political parties were competing with other independent and allied parties for parliament seats. During the time of falsification, one party dominating the State was always the winning party with the presence of artificial parties. Finally, for the first time in our Arab World, a major number of national and foreign observes and monitors, including three former heads of states, delegates of the European Union and civil, national and international society organizations and others, are allowed to supervise and monitor all the stages of the electoral process and observe any trespasses that might be done by competing candidates.

This procedure and environment surrounded the election of the Constituent Assembly that shall set the constitution of Tunisia, but how shall the constitution itself be set? The interim constitution named “Provisional Law Regulating Public Authorities” answered this question by stating that “the National Constituent Assembly is the original legislative power assigned by the Tunisian people to prepare a constitution that shall fulfill the objectives of the Tunisian revolution”. In its third title, it was decided that the draft constitution shall be ratified title by title by the absolute majority of the members thereof, and then the majority of the two thirds of the members that constitute the Assembly shall ratify same. Should the Assembly not reach said majority, the matter shall be returned for voting after a second reading of the draft within a period of one month at most from the first attempt. Should that be impossible too, the draft shall be presented

before the public in referendum to either ratify or reject the said constitution by a majority of the voters.

We can re-ascertain two notes. The first note: The Constitution is set by the Constituent Assembly elected democratically as we mentioned above. The second note: The Assembly assures that this constitution not only earns the approval of the majority of the members of the Assembly, but rather the absolute majority which is the majority of two thirds of its members, in order to avoid imposing the ideas or visions of one party or body without the other parties or bodies. The party currently dominating the Assembly is “Ennahda Movement” with 90 seats out of 217. It is then incapable of reaching the majority required by the interim constitution and thus exclusively setting the constitution because the majority required for its adoption is the majority of two thirds of the members.

Undoubtedly, Tunisia’s permanent constitution is not yet set. But through a quick review of the interim constitution set by the Constituent Assembly for this transitional period, it is evident that it is adopted through a parliamentary regime. In fact, the Constituent Assembly chooses the President of the Republic in confidential election by the majority of its members. The President of the Republic is elected among candidates nominated by at least 15 members of the members of the Constituent Assembly. No member of the Constituent Assembly may nominate more than one candidate for presidency. In case the absolute majority was not reached, the voting shall be repeated for the candidates attaining first and second places by simple majority this time, in case of equality of votes the older candidate shall win. The Constituent Assembly may relieve the President of the Republic from his position with the approval of two thirds of its members based on a request filed by at least the third of the members of the Assembly.

Upon reviewing the competence of the President of the Republic, we find them to be rather formal. He has competence to ratify the laws issued by the Constituent Assembly and order the publication thereof. But should that procedure not be done within 15 days from the date of their presentation before the President, the draft law shall return to the Assembly who shall ratify same with the same majority adopted by the constitution for the first ratification, at which point it shall be published and come into force. The appointment of the President of the Republic, of the Prime Minister shall be done by assigning the candidate of the party obtaining the majority of seats in the National Council and said candidate shall form the government. On the other hand,

the Constituent Assembly specializes in granting trust to the government and is entitled to withdraw its confidence therefrom or from any minister.

After considering Tunisia as a state where the revolution succeeded in overthrowing the regime and as an example of the constitution of freedom, we allocate the next part of this article to another state where the revolution is still sacrificing the pure lives for freedom and for overthrowing a regime that is desperately trying to resist to it in the worst forms of brutality. This is Syria.

### **Syria: Has the new constitution regained confidence in the regime?**

As part of his strenuous efforts to regain control of the conditions and contain the revolution of the people rebellious for its freedom, and inform the external world that he is walking in the path of reform, the Syrian President Bashar Al-Assad issued last Saturday a decision regarding the formation of a committee of 29 members for the preparation of a new draft constitution for the State so that the committee completes its task within a period of 4 months at most from the date of issuance of the decision. The assistant secretary general of the Ba'ath Party clarified that "the new constitution shall be approved by two thirds of the Parliament and shall be submitted for public voting..." The current Syrian constitution issued in 1973 is considered the oldest among a long series of constitutions known to Syria since 1920, reaching almost 18 constitutions: certain were permanent, others were provisional and some were draft constitutions that did not see the light.

The existing constitution was set in the same way as the constitution of Ba'ath in Syria and different from the constitutions of the preceding era when the people expressed their opinion through a society or an elected constituent assembly. Nothing may change by stating that the current constitution was adopted only after the approval of the people thereon in the referendum of 1973, since its draft was set by the parliament chosen and recommended by the national leadership of the party. Moreover, the procedure of referendum in despotic states usually reaches a result in favor of the authority controlling the state, often attaining over 90 percent! Perhaps the most raised matter concerning the current constitution is the text of Article 8 assuring that "Arab Socialist Ba'ath Party is the leading party in the community and the State...",

in addition to the content of this Article from cancelling the political diversity and discrimination between nationals in political rights and in undertaking different constitutional and civil positions.

After the decision instituting the committee concerned with the draft constitution, the Syrian President Bashar Al-Assad issued a decree inviting Syrian nationals to vote thereon on Sunday February 26, 2012. Syrian Arab News Agency (SANA) published the draft constitution. Did it actually introduce more reforms as suggested by certain of its articles? Such as Article 2 which ascertains that “the sovereignty belongs to the people, an individual or a group may not claim it” and that “it is based on the rule of the people by the people and for the people”. And Article 50 thereof states that the sovereignty of the law is the basis of the government in the State, and Article 8 reveals that the basic law in the State is based on the principle of political diversity and authority is practiced therein democratically through vote. Surely, the answer is negative! This appealing cover hides the truth which is the hell of tyranny and despotism. One reading of the rest of the articles of the constitution reveals its deceit.

For instance, the provision pertaining to the presidential terms that ascertains that “the President of the Republic may only be reelected for one additional term only” must absolutely not deceive us. It does not cause optimism since reality often revealed that Arab republics amend their constitutions before the lapse of the presidential term so that the president may rule for life. The Syrian constitution added after its assertion of the presidential term a very humorous provision set forth in Article 87 that states that “should the term of the President of the Republic expire and a new President not elected, the existing President of the Republic shall continue in fulfilling his tasks until the election of the new President!” and in another amusing provision, the draft states that “should the Parliament be dissolved during the period specified for the election of a new President of the Republic, the existing President of the Republic shall continue in fulfilling his tasks...”. And certainly, the President of the Republic himself has competence to dissolve the Parliament!

Another striking point reveals the capacity of the persons drafting the constitution to deceit, related to legislative power. In fact, Article 113 of the draft constitution grants the President of the Republic said power, not only outside the sessions of the Parliament or simply dissolving same, but also during the convening of the Parliament, should absolute necessity so require! And inevitably, the President shall estimate said absolute necessity! This matter is highly dangerous

since the President of the Republic owns thereby the legislative power in addition to owning the executive power. The draft constitution does not only grant both powers to the President, but also stresses on adding tyranny by naming him President of the Supreme Judicial Council as well, thus he may appoint judges of the Supreme Constitutional Court to whom the candidature applications for the position of President of the Republic are filed. It examines them and rules out the applications it deems as not having fulfilled the conditions. Is this the limit of tyranny and oppression?

The Syrian Ministry of Interior declared the voting results of the constitution which earned the approval of 89% of the voters. Almost 8 million persons participated in the voting, which is equivalent to about 57% of persons entitled to vote. The voting procedure was made under the supervision of a supreme committee presided by the Minister of Interior.

We conclude our speech with a summary on referendum as a procedure to set constitutions.

### **Referendum: A procedure aiming at legitimizing tyranny**

Referendum is considered as a certain means of a semi-direct democracy, where it is referred to the people to take their opinion in a public matter or on an important issue such as the adoption of a constitution for the state or approval of the amendment of certain of its provisions, adherence to a certain agreement, separation of a certain region from the state or earning of a certain region of its autonomy, etc...

The referral to the people to take their opinion in a certain matter is an affirmation to the principle of sovereignty of the people, therefore, the referendum must be held in a state where the people are the source of powers, and where the transition of power and access to institutions of political decision making are held peacefully and periodically through a free and honest election procedure. Referendum may not be efficient or productive in states of absolute monarchy or dictatorial regimes where the government was taken from the people through dominance and oppression.

In our Arab monarchies or dictatorial regimes, referendums are often conducted either to select the President of the Republic, to extend his presidency term and grant him a new term, to adopt

a new draft constitution or to amendment articles of an existing constitution. In all cases, whether the referendum is related to the constitution or the selection of the President or the renewal of his term, the matter is essentially a mean to deepen tyranny and earn absolute power. For example, in the Arab Republic of Egypt, the referendum of 1987 earned President Hosni Mubarak a new term, his term was renewed for a second time in the referendum of 1993, then for a third term in 1999 and for a fourth time in 2005. Should it not be for the revolution that obliged him to step down from power, he would have still been hanging on thereto and the referendum for renewal would have gained him a fifth term in 2011. In addition, the referendums held in Egypt in the years 2005 and 2007 for the amendment of more than 34 constitutional articles, including Article 76, aimed at maintaining the governance of Mubarak and provide for his son Jamal to succeed as is usually done. And apart from referendums pertaining to presidency or extending the term thereof that must be actually held through free and honest elections characterized by the equality of the right to run for presidency amongst nationals without specifying exclusionary or detailed conditions suitable for a specific person. Referendum for a draft constitution or the amendment of certain articles of the constitution is not less dangerous nor lacks criticism, especially that the draft subject-matter of the referendum is set through a committee appointed by the Ruler, as was the case of the Syrian draft constitution of 2012.

The danger of the referendum lies in that its result is based on the actual voters. Should ten thousand persons participate, for example, and one million person boycott the referendum for lack of trust in the regime, the referendum shall be considered, despite not actually reflecting the will of the people. History has never registered a referendum in the Arab World on presidency or constitution whose results opposed the desire of the rulers.

In order for the referendum on a draft constitution to be productive, it must be based on several grounds, including: The draft constitution must be set by a constituent assembly or constituent society elected in free and honest elections surrounded by all the guarantees not to falsify the will of the people. And the people must be informed of the discussion held in the sessions of the constituent society, and the sessions must be public and the newspapers and media are able to publish the discussions of the members concerning the draft constitution. After the accomplishment of the draft constitution, the nationals must have the opportunity to understand its content before carrying out the referendum. Then, the actual practice of the freedom of

speech, freedom of public meeting, freedom of media and freedom of association in said state are guaranteed. Said freedoms are essential in order to study the draft constitution subjectively, and the national may form his opinion and elaborate his ideas thereon before heading to the referendum station. When the public media is distant from the referendum, the nationals are not directed to the approval or rejection of the draft constitution, and the programs thereon must be subjective and neutral. Finally: The independency of the committee supervising the referendum must be guaranteed and its supervision and management of the memorandum must be characterized in all its stages with neutrality, transparency and equality. We deem that without said grounds, the referendum is just a means in the hands of tyrants in order to add fake legitimacy to their tyranny and oppression.

Man proposes and God disposes

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