



Sudan Resistance Committee Draft Charters: Where they stand, and where they may go

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I. Executive Summary

This paper is concerned with the two existing draft Charters produced by the Coordination of Resistance Committee in Khartoum (Charter for the Establishment of People’s Authority (CEPA) draft) and the Resistance Committees in the other states across Sudan (Revolutionary Charter for People Power (RCPP) draft). In particular, it seeks to evaluate (i) what are the existing differences and that must be reconciled between the two drafts if the resistance committees are to present a united vision in negotiations with Sudan’s military component, and (ii) what structural features of the drafts may pose a challenge to the transitional period should they be implemented in practice.

This paper does not take a position or make any specific recommendations on how the drafts should be amended or maintained. Rather, it merely seeks to raise awareness of some of the drafts’ merits and challenges that are likely to arise. It also does not purport to provide a comprehensive analysis; it seeks only to raise the most important structural concerns and features set out in the CEPA and RCPP drafts as they are currently written. The main conclusions and findings of this paper are:

- There are outstanding questions and differences about the actual **legal status** of the draft Charters themselves. It is not clearly specified what parts of their text are binding on the transition, and whether they will serve as a transitional constitution or simply lay the foundation for one to be written.
- Both draft Charters lay out a fairly identical transitional **system of government**, with a few divergences on the procedure for establishing the transitional legislature, the selection process for local government councils, and the establishment of a transitional judiciary. However, they are both so broad in their descriptions of the system of government that large gaps remain as to the structure, powers, and relationship of and between the transitional governing bodies.

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- The draft Charters present a nearly identical **process for reaching a comprehensive peace agreement** with the armed groups in Sudan. However, differences on particular details remain, such as the mandate of a proposed peace commission and agenda of a proposed peace conference.
- While the draft Charters largely agree on the **broad objectives of the transitional government**, with a few notable differences, those objectives remain so sweeping and broad as to likely be too vague to be implementable on their own, and/or too ambitious to be completed during a transitional period.
- While the draft Charters agree to a certain extent **on who may participate in the transitional government**, their approach risks creating spoilers out of excluded political coalitions and armed groups. Nothing in the draft Charters mentions a mechanism for alleviating this concern.
- The draft Charters agree broadly on the **sequencing of the transitional process**, but they differ on its length. Any discussion on the transition's length and termination must be linked to the breadth of the transition's objectives and the capacity of the transitional government to meet them.

II. Introduction

In 2019, a mass protest movement in Sudan led to the ouster of President Omar al-Bashir, ending his 30-year regime. After a months-long struggle for control of the transitional period between the protesters and the military component that forced out al-Bashir, the two signed a power-sharing deal in August 2019 to end the standoff. That political agreement, the Constitutional Declaration for the 2019 Transitional Period ('Constitutional Declaration'), outlined a 36-month transitional period led by a civilian prime minister and Sovereignty Council composed of an equal split between the military and the civilian coalition Forces for Freedom and Change ('FFC'). A military member, Lieutenant General Abdul Fattah al-Burhan, would chair the Sovereignty Council for the first 18 months and then hand over the position to an FFC member.

However, on 25 October 2021, the military under Chairman al-Burhan arrested and detained Prime Minister Abdalla Hamdok and several other civilian leaders, suspended the 2019 Constitutional Declaration's provisions composing the Sovereignty Council and Transitional Cabinet, and stated that it was taking over control of the government as a necessary "correction" in the face of political gridlock and a crippling economic crisis.² As much of Sudan's largest political stakeholders took to the streets en masse in fierce opposition to the coup, supported by an immense international outcry, it quickly became clear that the military had gravely miscalculated support for its actions. Those protests have now persisted into May 2022, and to date the military has been unable to form a government, finding domestic opposition to its actions nearly unified. While the civilian movement's persistence has allowed them to weather fierce political and violent crackdown by the military since fall 2021, the stalemate has only deepened the political crisis and plunged Sudan into an uncertain future.

² Andrews Atta-Asamoah, *Sudan's coup plotters have miscalculated their options*, INST. FOR SEC. STUD. (Oct. 29, 2021), at <https://issafrica.org/iss-today/sudans-coup-plotters-have-miscalculated-their-options>.

In reaction to the crisis, several initiatives have attempted to coalesce the constellation of civilian and armed revolutionary groups into one camp, with the goal of presenting a united front against the military and a harmonized vision for the path forward. One of the most promising initiatives is a grassroots dialogue process led by the “resistance committees,” a web of hyper-local organizations who formed the organizing backbone of the 2018 revolution. After months of grassroots and participatory dialogue, largely two draft charters have emerged: the first is the Charter for the Establishment of People’s Authority (CEPA) which is primarily led by the Coordination of Khartoum Resistance Committees and the second is the Revolutionary Charter for People’s Power (RCPP) which is led by resistance committees from some 15 states across Sudan. With the crisis entering its seventh month, it is now up to the leaders of these resistance committees to reconcile the two documents into a single, cohesive draft that can be used as a viable roadmap out of the crisis.

This paper presents an analysis of the two draft charters. It evaluates the political and transitional arrangements put forward in both, outlines the differences that must be reconciled between the two, and points to outstanding ambiguities and inconsistencies that are likely to present challenges to the charters if adopted as written. In particular, the paper analyzes their provisions related to:

1. The legal status of the roadmaps
2. The transitional system of government
3. The mandates and objectives of the transitional government
4. The role of the main stakeholders in the transitional period
5. The future of the peace process
6. The sequencing of the transitional process

III. Legal status of the draft Charters

This section presents an analysis of the legal status and character of the CEPA and RCPP drafts. Upon first glance, it is not clear what legal status the drafters intended each document to have beyond a political agreement between the main civilian and armed stakeholders. The CEPA draft’s first chapter provides for the “abolition” of the 2019 Constitutional Declaration and the “creation of a constitutional status through a temporary constitutional declaration” based on the CEPA draft (Section 1.3). The RCPP draft, meanwhile, calls itself a “revolutionary pact” meant to “start a broad, rooted conversation.” It also briefly mentions the need to draft a transitional constitution based on its terms. As such, while neither the RCPP or CEPA appear to see themselves as an actual transitional constitution, they would remain binding on any future transitional constitution that is drafted.

This proposed binding status raises important questions of enforceability. Both drafts contain lengthy passages stretching multiple pages on the aspirations of the revolution, the political and social history of Sudan, and the changes to the fundamental structures of the state that must be

made. Regardless of whether a unified charter will stand as a political agreement that binds a future transitional constitution (CEPA), or as the transitional constitution itself (RCPP), the parties will need to decide on what should be the enforceability of these passages of text—and how any binding language on the transition should be enforced, be it through the courts or another mechanism.³ One answer is that this language should be taken as merely preamble or directive language that gives a spirit and tone to the objectives of the transitional government but is not necessarily binding on the transition. However, the language does not always match what is ordinarily conceived of as a directive principle. As just one example, the RCPP draft speaks at length about the economic history of Sudan and then demands that the structural adjustment programs be “completed retracted,” the IMF subsidies be lifted, and more. Such language reads more like a discrete policy for the transitional government to implement as part of its mandate. Thus, the parties will also need to reconcile the exact status of this language, and what is binding and what is not, or likely risk causing confusion and dispute down the road.

IV. The system of government

Both drafts lay out a transitional system of government, in which Sudan is a parliamentary federal system with a transitional legislative council (‘TLC’), a prime minister and cabinet, and local and state-level transitional legislative councils. The RCPP draft diverges slightly, providing for both a transitional judiciary and for a National Assembly composed of a representative from each of the 18 states, plus one from the displacement camps, to preside over the transition before the composition of the transitional legislative councils. In both drafts, a strong emphasis is placed on the decentralization of governance to existing subnational levels.

The transitional legislative council (‘TLC’). Under the CEPA draft, the TLC will be made up of “all the forces of the living revolution” agreed to by the resistance committees and signatories of the draft. As a result, the TLC will be appointed by the main civilian and armed stakeholders included in the draft, rather than directly elected. The mandate of the TLC will include the power to dismiss the

Governing Bodies	RCPP	CEPA
Transitional legislature	✓	✓
Prime Minister	✓	✓
Cabinet	✓	✓
Local and state legislatures	✓	✓
Transitional judiciary	✓	✗
Transitional National Assembly	✓	✗

transitional government, monitor its performance, enact and review legislation, approve the budget, ratify bilateral regional and international agreements and treaties; and establish independent commissions and monitor their performance (Section 3.1.2).

The RCPP draft provides far less detail regarding the Transitional National Legislative Council (‘TNLC’), providing that it is the “supreme authority of the state” that will be formed in accordance with the draft. The draft states merely that the TNLC’s mandate is to supervise the

³ This appears to be a common question with other transitional charters, such as Myanmar’s ‘Federal Democracy Charter.’

process of popular referendum on the permanent constitution, although elsewhere it gives the TNLC further roles, such as the appointment of the prime minister and approval of his/her cabinet nominees.

As such, while there are a great number of similarities between the drafts, such as the appointment procedures of the TLC/TNLC, the parties will need to reach agreement on the exact mandate and functions of the body, in addition to its relation to other structures within the system of government.

The transitional government. Under the CEPA draft, the transitional prime minister will be selected by the TLC. The prime minister will then form his/her government, who must be approved by the TLC. The RCPP draft is largely the same, although the prime minister must be selected by the TLC from a list of 5 nominees, which are prepared by the signatories of the roadmap. It also includes a list of 14 ministerial positions. Both drafts' government formation process is an inversion of the process under the 2019 Constitutional Declaration, in which the government was created first and took over the legislative function until the formation of the TLC. Many blamed this particular sequence for the failure of the TLC to ever be formed during the transitional period.

State and local transitional legislative councils. Both drafts place enormous importance on decentralized governance and the enhancement of local voices in government. As the RCPP draft notes, one of the core objectives of the transition is "strengthening and localizing the systems and culture of local government to enhance the direct link between citizens and state agencies" (Section 2.4). They also both name state and local TLCs as a centerpiece of that decentralized governance during the transitional period.

Under the CEPA draft, like the national TLC, the state and local TLCs will be formed according to formulas agreed upon by the resistance committees and draft signatories and under the existing boundaries of the 18 states. The draft gives them the mandate to "appoint and approve local and state executive bodies and monitor their performance until a conference is organized for the system of governance and administration that establishes a federal system of government." As such, it appears that the CEPA draft sees the state and local TLCs as time-bound institutions that may expire and be subsequently replaced during the transition itself, potentially after the conference on governance. However, the exact sequencing implications of the provisions is unclear.

The RCPP draft similarly adheres to the previous state borders. However, the process for the state and local TLC's selection is different. While the RCPP draft provides for the local councils to be organized by the Charter signatories, like the CEPA draft, it then opts for having those signatories then organize a direct election for council members (above 18). As such, under the RCPP draft, state and local TLCs will be elected rather than appointed. This is a key difference between the drafts that requires resolution. The RCPP draft also says nothing about the mandate of the state and local TLCs, which will also need to be reconciled with the CEPA draft.

The transitional judiciary. Only the RCPP draft mentions a “transitional judicial power”, and it does so only broadly. The CEPA mentions the need for the formation of the High Judicial Council, the Constitutional Court, and the Supreme Council of the Public Prosecution, but it is unclear whether these bodies will be permanent or purely transitional. The RCPP states that the judiciary “must be restructured to ensure that it is not subject to any influence” on its independence. It also calls for law reform to areas like criminal law, banking, and personal status law to be completed during the transitional period. On its own, the provisions are so broad and ambitious that, even if they were capable of being completed in the transitional period, it is not clear what that restructuring of the judiciary should look like. No more detail is given on the specific bodies to be created, their jurisdiction, composition, or their relationship to each other. These ambiguities, as well as any diverging positions by the drafters of the CEPA draft, likely need to be resolved.

Other outstanding questions. In addition to the ambiguities and inconsistencies mentioned above, some outstanding questions that the parties will likely have to address together. Those questions include but are not limited to:

Mandate of each governing body.	A few details are given regarding the main priorities of the transition (e.g., the constitutional process, the peace process, etc.). However, it mentions nothing regarding which body is in charge of delivering key government services during the transitional period, and what is the scope of that breakdown of authority.
Decision making and procedural rules of each governing body.	Neither charter says anything meaningful about the procedures for the government and TLC, including rules regarding the calling of sessions, proposal of bills, voting, quorum, oversight over the government, passage of no confidence votes, and more.
Structure of local government.	Neither charter says anything in meaningful detail about how state and local councils are to be structured , including the number of members, their voting procedures, oversight and auditing mechanisms by the national level, and more. It also says nothing about their substantive competencies, and as a result it is unclear which powers the state and local levels actually have.
Accountability and oversight over the legislature.	Neither charter gives any powers to the government to dismiss or hold TLC members to account , or to at least exercise some form of oversight. As a result, TLC members will be given permanent positions with no termination date, and no method for dismissal should they engage in illegal or unethical conduct.
Mechanisms for overcoming gridlock.	The TLC during the transitional period before the 25 October coup was never formed, in part due to an inability of the FFC to agree on a list of TLC members. Each draft now proposes the selection of TLC members by an even broader coalition of actors, and it is unclear how they will not run into the same problem as before. Gridlock over the selection of the TLC would impede the establishment of

the government, in turn likely leading to the breakdown of the entire process.

Inclusion of other actors.

Both drafts only allow signatories and resistance committees to take part in forming the TLC and subsequently the government. Those who have not signed on (or are barred from doing so for their participation in the coup) thus will have no ability to participate in the government's formation. This may lead to a situation by which the excluded parties are incentivized to spoil the process, either via violence or through garnering political opposition. Nothing in either draft seems to attempt to account for this risk.

V. The future of the peace process

A little over a year into the transition, as part of the government's objective to reach a comprehensive peace with Sudan's constellation of armed groups, the transitional government signed the Juba Agreement for Peace in Sudan ('Juba Agreement') on 3 October 2020. The Agreement was a 245-page peace agreement signed between the transitional government and a series of armed groups. The first part of the agreement, the "Agreement on National Issues," is (as its name suggests) a nationwide agreement between the transitional government and all the signatories on issues of national importance. The remainder of the peace agreement is an aggregation of various bilateral agreements between the transitional government and each party, which includes a coalition of armed groups in Darfur (the 'Darfur Track'), the SPLM-N faction led by Malik Agar, Masar al-Sharq, Masar al-Shamal, Masar al-Wasat, and Al-Jabaha al-Thalitha -Tamazaj.

The Agreement not only dictated modalities on ceasefires and other security-related issues, but also the political arrangements of the transitional period, the armed group's participation in the transitional government, and the future of the transitional period and eventual structures of the permanent constitution. With the 25 October 2021 coup and the apparent consensus among the civilian opposition that the 2019 Constitutional Declaration is now void, the Juba Agreement's future has been thrown into doubt as well. Reconciliation on its status and future is needed, as well as further agreement with the armed groups who signed the Agreement, several of whom remained in the government after the 25 October coup and are thus excluded from many of the decision-making processes under the CEPA and RCPP drafts.

The CEPA draft establishes a peace commission under the TLC to "manage the peace file" and review the Juba Agreement "in its entirety." The draft attributes the shortcomings of the Juba Agreement to the "non-involvement of the stakeholders in peace" and the "fragmentation of the one national issue into different tracks, which led to the explosion of the various conflicts in the country." The draft then creates a national peace conference that will bring stakeholders ranging from displaced persons to professional societies together "to address the issue of war and peace in a radical way."

The RCPP draft similarly creates a peace commission, albeit with a more detailed mandate. That mandate includes taking inventory of the existing war zones, addressing the “causes of displacement and wars,” preparing and supervising the peace conferences that have an emphasis on local issues and ensure IDP participation, and supervising the implementation of the peace conferences. The RCPP draft also names the problem of land and historical possessions as one of the core issues of the conflict that need resolution and calls for amendments to the land law and *hawakir*⁴ as part of that peace process.

The two drafts are thus quite similar in their approaches. While the parties will need to reach consensus on certain details, such as the mandate of the peace commission and the agenda of the peace conference, among others, there exist no fundamental inconsistencies between them. However, the largest question looming on the horizon regarding the peace process is likely the issue of the excluded armed groups, as mentioned above. One of the core issues of the Juba Agreement concerned enhancing their participation in the transitional bodies. Now that some are expressly barred from doing just that, it is unclear what path forward in the peace process the parties may be able to find.

VI. Objectives and mandate of the government

Many observers attribute the challenges that were faced by the government of Prime Minister Abdallah Hamdok to the extensive list of objectives and files the government was aiming to address, to the extent some described it as “wish-list”. However, despite this acknowledgement, both charters seem to have fallen into the same trap again, particularly the RCPP draft. Both RC charters list eleven objectives for the transition. The RCPP draft speaks more about the ideologies that will guide the transition but does not go into detail about what each objective entails. However, the document suggests that an appendix[?] will be released to elaborate on the proposed programme for the transitional period. The CEPA draft explains what they mean by each objective in more detail and the logic is more pragmatic and less ideological.

In general, both charters broadly agree on the objectives of the transition. They both mention that transition should address the issues of achieving comprehensive peace, security sector reform, mechanisms for transitional justice, combating corruption, protecting human rights and public freedom, conduct a national census, enact wide ranging economic and social reforms, reform the civil service and judicial sector, strengthen the system of local governance, draft a permanent constitution, and arrange for elections to end the transitional period.

The main shared and separate objectives of each draft are laid out in the table below.

Shared Transitional Objectives

- Create a new political system that promotes the rule of law and disassembles the system of elite control.

⁴ Customary system of tribal land ownership

- Strengthen local governments to promote the link between citizens and local government, and to empower them to act on greater set of responsibilities, such as land distribution.
- Combat state corruption and dismantle empowerment ('tamkeen').
- Establish a legal framework for transitional justice.
- Reform and restructure the judicial authority.
- Unification of the national army and implementation of DDR programmes.
- Hold security apparatus accountable and restructure the security state.
- Establish legal protections for unions and civil society.
- Halt the deterioration of the economy.
- Create a national economic plan that promotes comprehensive and equitable economic development.
- Enact law reform on a wide variety of sectors, including land law and hawakir.
- Conduct a comprehensive population census.
- Establish a permanent constitution.
- Reach a comprehensive peace agreement.
- Draft an elections law and hold elections.
- Try those involved in human rights violations and atrocities since the 1989 coup d'état.
- Adopt a balanced foreign policy framework that meets the country's interests on a variety of issues.
- Establish a foundation of public freedoms and rights and abolish laws restricting them.
- Take action to protect the environment.
- Facilitate the return of refugees and displaced persons.
- Civil service reform.
- Work on reforming the tax system.
- Clearly delineate and mark all state borders.
- Promote policies for the advancement of women, youth, and people with disabilities.

Separate Transitional Objectives	
RCCP Draft	CEPA Draft
<ul style="list-style-type: none"> - Reduce violence and control lawlessness. - Reduce spending on military expenditures and increase spending on other sectors (agriculture, education, health, etc.). - Restructure the central bank and banking system. 	<ul style="list-style-type: none"> - Investigate crimes related to the war economy and distribute reparations and compensations. - Review the Juba Peace Agreement. - Restructure the police. - Establish a political parties law. - Ban the military's ownership of private companies. - Review all economic agreements and investments. - Reform and rehabilitate financial management and oversight institutions. - Withdraw participation in the war in Yemen. - Work to review the laws on Sudanese citizenship. - Enact laws regarding access to information.

In their current shape, both charters do not present a clear mandate or well-defined objectives for the transitional period. Rather, they provide for a wide range of issues that the transitional government should work on. Many of these objectives are so broad as to either be too vague to implement or likely too ambitious to be achieved during the transitional period. Moreover, the two drafts often differ on the details of objectives that otherwise broadly overlap, creating a risk of confusion and dispute if those differences are not resolved. Ideally, these objectives would to be unified, narrowed, and defined with more specific, actionable milestones.

VII. The place of main stakeholders in the government

The CEPA and RCPP charters agree to a large extent on the place and role of main political actors in the transitional arrangements. Both documents suggest that the structures of the transitional government will be formed and monitored by the “revolutionary forces” that undersigned the respective charters, although it is unclear what this monitoring will entail. All political actors that are considered to be pro-democracy and have taken stances against the coup will be allowed to sign the charter and consequently take part in the transitional government, with the exception of political parties that were part of the Bashir regime when it was toppled down, as well as parties and armed movements that supported the 25th October coup.

However, neither charter refers to prominent political coalitions, such as the Forces of Freedom and Change (‘FFC’), the civilian actor that negotiated the 2019 Constitutional Declaration and then presided in the ousted transitional government. Furthermore, the CEPA draft entails that trade unions may sign the charter a coalition, but political parties and armed movements may only sign individually. It is probably that this provision is a precautionary measure to avoid entering a constitutional vacuum should political coalitions get dissolved, given the FFC’s struggles to function properly as a coalition after signing the 2019 Declaration. This approach raises questions about the extent to which the FFC would agree to such an arrangement and how strong the new “political incubator” would be if it is mostly formed of individual and less consolidated parties. Furthermore, the absolute exclusion of armed movements that supported the 25 October military coup (most the JPA signatories) would add further complications to the transition, as they might act as spoilers to the process and instigate further conflict in the country.

VIII. Sequencing of elections and constitution-making

The CEPA and RCPP charters suggest a similar sequencing for constitution-making and elections. They both suggest that a permanent constitution should be written and produced before the end of the transition, followed by elections at the end of the transition. Although both charters do not go into a great level of detail with regard to these two processes, they both suggest the following sequence of event:

Constitutional arrangements. Once the charters are signed and adopted, the 2019 Declaration will be abrogated and the Transitional Legislative Council will write and endorse a transitional constitution on the basis of the signed charter. Then the transitional government will implement and oversee the permanent constitution-building process, which will be comprised of inclusive

consultations and dialogues across Sudan. The outcome of this will feed into the national constitutional conference in order to produce a draft permanent constitution, which will undergo a national public vote before it is adopted.

Elections. The transitional government should hold the national census and then draft and endorse the elections law. At the end of the transition and after the final constitution has been drafted and adopted, fair and democratic elections should be held to elect the new government.

As such, both drafts’ proposed sequences would look like the following:



However, a key difference between the charter is the duration of the transition, which will affect when elections will be held. The CEPA draft suggests a 2-year transitional period, while the RCPP draft suggests a 4-year transitional period. There are various debates on the length of the transition, but that discussion should be linked to the proposed objectives of the transition as well as the capacity of any transitional government to take on the monumental task of drafting a final constitution and successfully holding elections that result in the peaceful transition of power. Although a longer transition would allow for objectives to be properly addresses, comparative knowledge suggests a lengthy transition in such a complex context would increase the risk of failure. Rather, it is possible for any permanent constitution also provide for a longer post-transitional, implementation phase in which it sets out a set of broader goals and timelines related to democratic consolidation that an elected government would be bound to implement.

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