



Ambition Absent

The Social Contract Pact of
the Democratic Self-Management
in the northeast Syria

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Fraternity Foundation for Human Rights
Birati Foundation for Human Rights e.V

Policy Paper

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the Democratic Self-Management
in the northeast Syria**

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about FFHR-Birati

a non – governmental and independent organization founded in 2013. registered in accordance with German law for non-profit associations (Birati Foundation for human rights e.V) FFHR seeks to promote political freedom and focuses its effort on promoting and protecting the rights of Syrian people to freedom of peaceful assembly and of association in Syria and in the neighbouring countries. It also endeavours to raise awareness of political and civil freedoms to help Syrian communities recover from the effects of the conflict.

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The purpose of this paper

“ This paper discusses the problematic application of the Charter of the Social Contract for Democratic Self-Management in the north and northeast Syria in terms of the appropriateness of the text in terms of drafting and the expression of the aspirations of the people in the areas of self-management control. The Charter of the Social Contract establishes a legal status for Syria and its partners of other components in this region, within the framework of formation and protection of what is called "democratic self-management"

The Charter of the Social Contract and Self-Management are the subject of this paper and an attempt to find an objective equation for governance that regulates the relationship between the ruler (self-management) and the convicts (the components of the region with the Kurdish majority), and establishing a framework to regulate the relationship between them to establish an organized society according to established rules.

”

*Fraternity foundation for human rights,
Thanks all those who have contributed to this work*





It acts as the constitution of The Autonomous Democratic Administration, ratified on January 6, 2014, and issued by sole will of the ruling party in Autonomous Administration, which is known as "grant" of the ruler to the people in the drafting of the constitution.

The issuance of the constitution by the unilateral will of the ruler is one of the ways of issuing constitutions, or the agreement between the people and the ruler, including the constituent assembly to draft the constitution, as the method of a popular referendum is considered as the most democratic way of drafting constitutions.

The charter of the social contract of The Autonomous Democratic Administration consists of ninety-eight articles divided into nine sections:

The general principles, the basic principles, the rights and freedoms, the legislative council, the executive council, the judicial council, the higher electoral commission, the supreme constitutional court, and general provisions.

The social contract contains four amendments, issued in the form of annexes ratified by the legislative council, the first appendix on April 15, 2014, the approval of the structure of the judicial council.

The second annex of 10 June 2014 amending article 54, which states the governor should be a gender partner, and the third annex of 1 January 2016, the organizational structure of the executive council of Al-Jazira province.

The fourth annex of 13 June 2018, the executive council form of the joint presidency and a number of deputies and

bodies, as the joint presidency of the executive council may select some of the advisers from the legislative council. 3

Democratic Self-management:

It was established on 21 January 2014 by the "Democratic Society Movement" which is a coalition of political organizations, most notably the "Democratic Union Party PYD" includes Arab, Syriac and Kurdish parties involved in the governance of democratic self-management.

The administration opposes the "Kurdish National Council Parties" as a member of the opposition Syrian National Coalition.

The democratic self-management formed a committee of 19 personalities representing the political and social spectrum in the region. Its mission was to formulate the joint interim administration project, prepare the social contract document and prepare an electoral system. "Democratic Self-management" is divided into five sections: the Legislative Council, the High Electoral Commission, the Supreme Constitutional Court, the local councils, and the Executive Board of the management.

The General Council for Self-Management consists of 70 members, representatives of the local councils of the seven provinces. The mission of this department is to coordinate between the seven departments in each of the provinces of the Al Jazeera, the Euphrates, Afrin, and the local administrations in Al-tabqa, Raqqa, Manbij and Deir Al-Zour, and work under one administration to secure the needs of the people.



The criticisms

of the Fraternity Foundation for Human Rights on the social contract of self-management

a. The Prosaic drafting of the provisions of the social contract

In the drafting of the provision of the social contract, the auditor notes at first glance the prosaic drafting and the confusion between the "rights and freedoms" which did not come in a section or separate chapter, where the provisions of public rights and freedoms were divided between the second part "basic principles" and the sixth section "the Judicial Council". The drafting committee of the social contract did not apply the simplest rules of classification and organization of the provisions of the Contract. The sixth chapter, "Judicial Council" came in contravention of the rules of formation, independence and organization of the judiciary, and was written in general and weak terms. Chapter 6 refers to a set of general judicial rules in Articles (75:63), which include: The Judicial Council shall be constituted by law, and the trial must be fair and public and the judicial organization shall ensure the right to compensation for the error of the institutions and administrative bodies and criminalize the refraining from enforcement judicial decisions, prohibit the trial of civilians before military courts, forbidden the removal of judges without informing the Justice Council, and considering the representation of women by 40% in the institutions of the Judicial Council.

Chapter 6 includes the reference to the independence of the judiciary, without specifying mechanisms for maintaining the independence of the judiciary. Chapter 6 did not include any reference to the "Public Prosecution" as one of justice's pillars, and a representative of the social body and a secretary of the criminal case.

b. Texts lacking in Chapter 6 "Judicial Council:

Fraternity Foundation for Human Rights sees that chapter 6 lacks of the customary rules in the democratic legal systems to ensure the independence of the judiciary.¹ Drafting chapter 6 shall be in accordance with the basic principles on the independence of the judiciary. Chapter 6 shall contain the following rules:

- * The lack of consistency of the judicial system as a whole with international standards of independence, neutrality and accountability.
- * Judicial system must ensure the judicial review of laws issued by the legislative and administrative authorities with the social contract.
- * Decisions of the Supreme Constitutional

¹ Basic Principles on the Independence of the Judiciary – adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders Held in Milan from August 26 / August to 6 September / December 1985, as adopted and made public by the General Assembly of the United Nations Resolution 40/32 dated November 29, 1985



Court should be final, not subject to any review or appeal, binding, and enforced by all public authorities.

* The judicial system shall include the independence of the Judicial Council as an independent body with needed authority to enhance the performance of the work of the judiciary and to ensure its independence and to ensure that the majority of the members of the Judicial Council are elected by the judiciary.

* To provide for the subordination of members of the judiciary to the supervision of the Judicial Council within a legal, practical and detailed framework for the independence of the judiciary in accordance with international standards and best judicial practices with regard to selection, appointment, supervision, training, transport, career progression, job security, personal safety and discipline.

* To provide for legal guarantees that regulate the isolate of judges only for health reasons, career or criminal misconduct through fair and equitable investigation, and defining the procedures of the disciplinary accountability, stop of work and isolate in accordance with established standards of judicial conduct.

* To provide for the explicit prohibition of any kind of discrimination in the selection process and the appointment of judges.

* It must include a requirement to allocate adequate resources for the judiciary and protected from abuse and cannot be exploited to control over the judiciary

* It must include the rules of the independence of the Public Prosecution, the actual independence of the General Attorney through appointed him independently and the appointment of members of the public prosecutor by the General Attorney, and drafting process of the appointment of members of the Public Prosecution must be in accordance with the "Guidelines principles concerning the role of the members of the Public Prosecution."²

* Ensuring that the Public Prosecution is not under the control of the Executive Authority and to practice its responsibilities impartially and independently in order to respect and promote human rights and combating impunity in cases of human rights violations

C . Chapter 8: "Supreme Constitutional Court" The legislative authority monitors the issued laws.:

Chapter 8 deals with the formation and the competences of the Supreme Constitutional Court, with articles from 77 to 80. Article 77 regulates the formulation of the court with seven-judge proposed by the Legislative Authority. It is a text that deals with the rule of separation of powers, because according to this text, the legislative authority appoint members of the Constitutional Court entrusted with the control of the constitutionality of laws issued by the legislative authority.

³ The drafting of Article 77 suspending the formation of the members of the Constitutional Court on the condition that "they are proposed by the Legislative Council",

² Guidelines principles on the Role of the members of the Public Prosecution—adopted by the Eighth United Nations Congress on the Prevention of Crime and criminals Held in Havana from 27 August to 7 September 1990

³Article (77) It consists of seven members, one of whom is a chairman, and they are proposed by the Presidency of the Legislative Council. They are competent, experienced and impartial judges, law professors and lawyers, and their practical experience shall not be less than 15 years.



drafting in this way will lead to practical problems, since the text of the article assumes that the seven members of the Court shall be appointed by the Legislative Council and the problematic question remains as follow:

- * What if the Legislative Council does not agree on the seven members?
- * What if they agreed on a certain number of members?
- * What if the Legislative Council does not hold? Or it was in a parliamentary holiday? Or disabled for any other reason?

These are all legitimate and verifiable questions in fact, and will result in one way or another to disrupt the formation of the Supreme Constitutional Court.

Article ⁴ 80 regulates methods of appeal against unconstitutionality. The text adopts the dual system of constitutional control, and with regard to the previous and subsequent censorship of the legal text. At the same time, the regional and international constitutional jurisprudence testifies to the violation of the rule of subsequent censorship.

Fraternity Foundation for Human Rights believes that the role and censorship of the Constitutional Court should be in accordance with the following principles:

- * Provide for detailed provisions with respect to the powers of the Constitutional Court, and the management of its business, and their legal status.

- * To provide for the selection and appointment of members of the Court where it shall be controlled by the Judicial Council only.

- * It must provide for the financial independence of the Constitutional Court, including confirmation of the requirement that sufficient resources be allocated for the performance of its functions.

- To provide for the independence of the Constitutional Court guarantees,, including the independence and immunity of members, and the independence of the appointment procedures for members of the Court.

- * To ensure that the decisions of the Constitutional Court are obligated on all authorities and ensure their application.

- * To ensure access for all persons to the former Constitutional Court, Compensation and treatment of victims, and to take action to uncover the truth and non-repetition.

d Commitment to human rights instruments: "incomplete commitment"

Article (20–22) of the Charter regulates the international conventions for the self-democratic management, considers international covenants complementary to the Charter of the Social Contract (article. 20). The self-management ensure human rights (article 21), and the legitimacy of human rights and other charters is an integral part of the Charter.

⁴ Article (80/1) If 20% of the members of the Legislative Council object to the constitutionality of a law before it is issued, it shall be suspended until the court decides it within fifteen days from the date of registration of the objection.



Are these texts guarantee the commitment of self-management to the promotion and protection of human rights? It does not live up to the level of commitment to the promotion and protection of human rights, But the texts came in the form of bombastic phrases which do not achieve the objective of their inclusion social contract, because the reference to human rights internationally recognized or adopted is not sufficient to achieve effective constitutional protection unless these texts contain binding drafting and supplemented by a package of legislation in line with international human rights standards.

It is not enough that the social contract charter includes a set of values, principles and rights to become adequate tools effective and efficient human rights to protect, but the Charter must include effective steps and measures to protect and enforce them in reality.

In order to apply the rights and are enforced by the authorities and monitor the implementation of judicial bodies, the rights must be formulated, and if this is not and the drafting is unclear there is a fear that the rights contained in the Charter will become meaningless at the local application level. If the Charter refers directly to international obligations, this would facilitate the process of representing obligations of international human rights in the decision-making process at the local application level.

The Charter of the Social Contract should favor the primacy of international human rights law over national law. To that end, the Charter must conclusively provide that national law could not be used as a justification for non-compliance with international treaties and conventions in concert with article 27 of the 1969 Vienna Convention on the Law of Treaties.⁵

It is noteworthy that "the rule of the primacy of international human rights law over national law" is one of the rules that have been developed recently in the constitutional law and international law, the constitutional legislator contributed to its development in many European and Arab countries, where they applied it and added to the constitutional document.⁶

E . Transitional Justice: Absent and Present:

Article 14 of the Charter provide a General⁷ formulate for the transitional justice, They put the term "transitional justice" and deliberately canceled the mechanisms and rules of transitional justice customary in transitional regimes and faced a bitter period of gross violations of human rights. Fraternity Foundation for Human Rights sees that the drafting committee of the social contract in respect of transitional justice to provide the following:

⁵ Article 27: Internal law and respect for treaties "shall not be a party to a treaty to invoke provisions of its internal law as justification for its failure to implement the treaty"

⁶ *The Constitution of Tunisia 2014 (Chapter 20) Treaties approved and approved by the Chamber of Deputies, and ratified by being higher than the laws and inferior to the constitution.

⁷ Article 14 "Self-administration shall adopt the principle of transitional justice by removing all racist projects and policies of discrimination against the inhabitants of the administration left by successive governments and tyrannical regimes and compensating the affected persons with fair compensation"



* To provide for the commitment of self-management to develop a comprehensive policy of transitional justice to address gross violations of human rights committed in the past and during the transition period.

* Action must be taken to strengthen the mechanisms of transitional justice: the right to know the truth, criminal trials, reparation of victims, compensation for victims, institutional reform, and commemoration. All actions and steps necessary to ensure that systematic human rights violations are not repeated.

* Introducing the right in a fair trial and the right to fair in a clear form in the rights and freedoms chapter of the Charter of the Social Contract.

* Must ensure that parliamentary, presidential, military immunity or any other form of immunity to protect a person accused of serious human rights violations and serious crimes under international law.

* To provide for self-management to ensure criminal accountability and prosecution of perpetrators of serious human rights violations and to ensure reparations to victims.

* To provide for the prohibition of amnesty for gross violations of human rights and serious violations of international humanitarian law.

* To provide for clear measures to ensure non-repetition, including the provision of human rights education and international

humanitarian law to all sectors of society and the training of law enforcement officials and the training of the armed forces and security forces.

* To include a text emphasizing the commemoration of victims, the establishment of institutions for them and the strengthening of monitoring and prevention mechanisms to deal with situations leading to social and ethnic conflicts and to contribute to early solutions to them, to avoid and protect society from the serious effects of such conflicts.

f An independent human rights body: it has no place in the Charter of the Social Contract:

Reviewing and checking the provisions of the Charter shows that it does not provide for the establishment of a national human rights institution, which is concerned with the protection and promotion of human rights, and enjoy effective independence, comprehensive powers and guarantees for independence, and is established in accordance with the Paris Principles on national human rights institutions (NHRIs).⁸



⁸ Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) Commission on Human Rights resolution 48/134 of 20 December 1993



Charter of the social contract an attempt to reform and adjust the drafting

A. Classifying and arranging the sections of the Charter of the Social Contract

The Charter of the Social Contract for Democratic Self-Management consists of ninety-eight articles divided into nine sections: General Principles, Basic Principles, Rights and Freedoms, Legislative Council, Executive Council, Judicial Council, Supreme Electoral Commission, Supreme Constitutional Court, General Provisions.

In view of the articles contained in the Social Contract document, both Part One of the General Principles and Part Two on Basic Principles may have one idea, which in modern constitutions can be called the basic constituents of society.

The Legislative Council, the Executive Council, the Judicial Council and the Supreme Constitutional Court can be grouped under one section on the system of government, which is divided into a number of chapters. The first chapter deals with legislative authority, the second by the executive authority and the third by the judiciary.

B. Interference between the provisions of the Charter

The articles guaranteeing rights and

freedoms have been divided and overlapping between Part I of the General Principles and Part Two on Fundamental Principles.

For example, Article 6:

All members and components of democratic self-management are equal before the law in rights and duties. It addresses three distinct topics and different from each other, first concerns the equality of all individuals in rights and duties, the second equality before the law, and the third is the collection of individuals and components of self-management in equality before the law, which is a matter of the rule of law.

Article (16): The law prohibits the protection of any work or administrative decision from the supervision of the judiciary. This article is in the chapter on the judiciary.

In the same way, Article (18): No crime and no penalty except by a legal text. This article has its place in the section on rights and freedoms or an independent chapter on the rule of law.

Article 20: international covenants on human rights are an essential and integral part of this contract. The natural theme of this article is the section on rights and freedoms.

C. Order of the list of rights and freedoms

Rights and freedoms are based on the five paramount values of freedom, dignity, equality, justice and tolerance. Whether these values are in the rights and freedoms chapter or in the preamble or in the basic elements chapter, there is a list of rights and freedoms arranged in a coherent to be relied on and implemented. Some of these rights are called fundamental rights, because they are inalienable, or disruption or restriction even in wars and emergency time, such as the right to life and the physical integrity of the individual. There are general liberties practiced by the individual within a group including freedom of organization, Associations, unions and parties, and freedom of peaceful assembly.

It can be divided into civil, political, economic, social and cultural rights and the rights of special groups such as the rights of women, children and persons with disabilities. There are rights and freedoms that are restricted to citizens, such as participation in the management of public affairs, the right to hold public office, to vote and to be elected. A range of rights and freedoms are available to all citizens, whether they are citizens or non-citizens.

Therefore it is better to introduce the order of rights and freedoms as follows:

The right to equal enjoyment of rights and freedoms and non-discrimination due to race, color, sex, language, belief or social origin,

The right to life and physical safety. the prevention of torture, and medical or scientific experiments on the person or the exploitation of his organs without his consent. Prevention of slavery, forced labor and trafficking in human beings, freedom and personal safety. Inadmissibility of arrest, inspection or arbitrary detention without a legal warrant, the right of each presentation being held in the judiciary and enable him to contact his family and his lawyer, and to inform him of the reasons for the arrest.

The right of recourse to justice and equality before the law and the judiciary

The right to fair and legal trial

Rights of prisoners and other detainees, and treating them with respect and respect for the inherent dignity of man

Freedom of thought, religion and belief

Freedom of speech

Right to organize (freedom of association, unions and parties)

The right to participate in the management of public affairs (impeachment, nomination, election)

The right to social security

Right to health

Rights of Persons with Disabilities or



H . Drafting and consistency

The constitutional document should be understood by the people and can be used by politicians and bureaucrats and can be interpreted by the courts. So it is important that the constitutional document be written in clear language. It is important not only in words but also that the idea should be clear within the constitution, and in the world of constitutional ideas.

For example, Article (20): Administration adopts Universal Declaration of Human Rights and the International Covenant on Civil, political, cultural, social and economic rights and other relevant conventions which are integral part of this Charter. International human rights law is a composite term that includes the Universal Declaration of Human Rights, In addition to international covenants of civil, political, economic, social and cultural rights, It is called the International Bill of Human Rights, which has a number of specialized international charters and conventions, They are seven other conventions called the core human rights treaties or international human rights law.





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