



**THE NATIONAL CONSTITUTIONAL  
REVIEW COMMISSION**

**DRAFT**

**INTERIM NATIONAL CONSTITUTION  
OF  
THE REPUBLIC OF THE SUDAN  
2005**

## **PREAMBLE**

**We the people of the Sudan**

**Grateful** to Almighty God who has bestowed upon us the wisdom and will to reach a Comprehensive Peace Agreement that has definitively put an end to the longest running conflict in Africa,

**Having** survived the tragic consequences that have characterized that debilitating conflict,

**Mindful of** religious, racial, ethnic and cultural diversity in the Sudan,

**Committed to** establish a decentralized multi-party democratic system of governance in which power shall be peacefully transferred and to uphold values of justice, equality, human dignity and equal rights and duties of men and women,

**Further committed** to gearing governance, in the coming phase of our political advancement, towards the enhancement of economic development, promotion of social harmony, deepening of religious tolerance and building trust and confidence in the society generally,

**Committed** to the Comprehensive Peace Agreement of January 2005, guided by the 1998 Constitution and the Sudanese constitutional experience since independence and other relevant experiences,

**Cognizant** of all conferences and initiatives of inclusive popular dialogue and agreements of peace and national reconciliation, particularly the Cairo Agreement signed in June 2005, and prospects of other peace agreements to end conflicts in the country,

Do hereby adopt this Constitution as the supreme law by which the Republic of the Sudan shall be governed during the Interim Period; and we undertake to respect and protect it.

# **PART ONE**

## **THE STATE, THE CONSTITUTION AND GUIDING PRINCIPLES**

### **CHAPTER 1**

#### **THE STATE AND THE CONSTITUTION**

##### **Nature of the State**

- 1 (1) The Republic of the Sudan is an independent, sovereign State. It is a democratic, decentralized, multi-cultural, multi-lingual, multi-racial, multi-ethnic, and multi-religious country where such diversities co-exist.
- (2) The State is committed to the respect and promotion of human dignity; and is founded on justice, equality and the advancement of human rights and fundamental freedoms and assures multi-partism.
- (3) The Sudan is an all embracing homeland where religions and cultures are sources of strength, harmony and inspiration.

##### **Sovereignty**

- 2 Sovereignty is vested in the people and shall be exercised by the State in accordance with the provisions of this Constitution and the law, without prejudice to the autonomy of Southern Sudan and the states.

##### **Supremacy of the Interim National Constitution**

- 3 The Interim National Constitution shall be the supreme law of the land. The Interim Constitution of Southern Sudan, state constitutions and all laws shall comply with it.

##### **Fundamental Bases of the Constitution**

- 4 This Constitution is predicated upon and guided by the following principles:-
  - (a) the unity of the Sudan is based on the free will of its people, supremacy of the rule of law, decentralized democratic governance, accountability, equality, respect and justice,

- (b) religions, beliefs, traditions and customs are the source of moral strength and inspiration for the Sudanese people,
- (c) the cultural and social diversity of the Sudanese people is the foundation of national cohesion and shall not be used for causing division,
- (d) the authority and powers of government emanate from the sovereign will of the people exercised by them through referenda and in free, direct and periodic elections conducted through universal adult suffrage, using secret ballot.

### **Sources of Legislation**

- 5 (1) Nationally enacted legislation having effect only in respect of the Northern states of the Sudan shall have as its sources of legislation Islamic Sharia and the consensus of the people.
- (2) Nationally enacted legislation applicable to Southern Sudan or states of Southern Sudan shall have as its sources of legislation popular consensus, the values and the customs of the people of the Sudan, including their traditions and religious beliefs, having regard to Sudan's diversity.
- (3) Where national legislation is currently in operation or is to be enacted and its source is religion or custom, then a state, and subject to Article 26 (a) herein in the case of Southern Sudan, the majority of whose residents do not practice such religion or customs may:-
- (a) either introduce legislation so as to allow practices or establish institutions, in that state consistent with their religion or customs, or
  - (b) refer the law to the Council of States to be approved by a two-thirds majority of all the representatives or initiate national legislation which will provide for such necessary alternative institutions as may be appropriate.

### **Religious Rights**

- 6 The State shall respect the following religious rights:-
- (a) worship or assemble in connection with any religion or belief and to establish and maintain places for these purposes,
  - (b) establish and maintain appropriate charitable or humanitarian institutions,

- (c) acquire and possess movable and immovable property and make, acquire and use the necessary articles and materials related to the rites or customs of a religion or belief,
- (d) write, issue and disseminate religious publications,
- (e) teach religion or belief in places suitable for these purposes,
- (f) solicit and receive voluntary financial and other contributions from individuals, private and public institutions,
- (g) train, appoint, elect or designate by succession appropriate religious leaders called for by the requirements and standards of any religion or belief,
- (h) observe days of rest, celebrate holidays and ceremonies in accordance with the precepts of religious beliefs,
- (i) communicate with individuals and communities in matters of religion and belief at national and international levels.

### **Citizenship and Nationality**

- 7 (1) Citizenship shall be the basis for equal rights and duties for all Sudanese.
- (2) Every person born to a Sudanese mother or father shall have an inalienable right to enjoy Sudanese nationality and citizenship.
- (3) The law shall regulate citizenship and naturalization; no naturalized Sudanese shall be deprived of his/her acquired citizenship except in accordance with the law.
- (4) A Sudanese national may acquire the nationality of another country as shall be regulated by law.

### **Language**

- 8 (1) All indigenous languages of the Sudan are national languages and shall be respected, developed and promoted.
- (2) Arabic is a widely spoken national language in the Sudan.
- (3) Arabic, as a major language at the national level and English shall be the official working languages of the national government and the languages of instruction for higher education.
- (4) In addition to Arabic and English, the legislature of any sub-national level of government may adopt any other national language as an additional official working language at its level.
- (5) There shall be no discrimination against the use of either

Arabic or English at any level of government or stage of education.

### **National Symbols**

- 9 The law shall specify the national flag, national emblem, national anthem, public seal, medals, national festivals and commemorations of the State.

## **CHAPTER II GUIDING PRINCIPLES AND DIRECTIVES**

### **National Economy**

- 10 (1) The overarching aims of economic development shall be eradication of poverty, attainment of the Millennium Development Goals, guaranteeing the equitable distribution of wealth, redressing imbalances of income and achieving a decent standard of life for all citizens.
- (2) The State shall develop and manage the national economy in order to achieve prosperity through policies aimed at increasing production, creating an efficient and self-reliant economy and encouraging free market and prohibition of monopoly.
- (3) The State shall enhance regional economic integration.

### **Environment and Natural Resources**

- 11 (1) The people of the Sudan shall have the right to a clean and diverse environment; the State and the citizens have the duty to preserve and promote the country's biodiversity.
- (2) The State shall not pursue any policy, or take or permit any action, which may adversely affect the existence of any species of animal or vegetative life, their natural or adopted habitat.
- (3) The State shall promote, through legislation, sustainable utilization of natural resources and best practices with respect to their management.

## **Social Justice**

- 12 (1) The State shall develop policies and strategies to ensure social justice among all people of the Sudan, through ensuring means of livelihood and opportunities of employment. The State shall also encourage mutual assistance, self-help, co-operation and charity.
- (2) No qualified person shall be denied access to a profession or employment on the basis of disability; persons with special needs and the elderly shall have the right to participate in social, vocational, creative or recreational activities.

## **Education, Science, Art and Culture**

- 13 (1) (a) The State shall promote education at all levels all over the Sudan and shall ensure free and compulsory education at the primary level and in illiteracy eradication programmes.
- (b) Every person or group of persons shall have the right to establish and maintain private schools and other educational institutions at all levels in accordance with the conditions and standards provided by law.
- (2) The State shall mobilize public, private and popular resources and capabilities for education and development of scientific research, especially Research and Development.
- (3) The State shall encourage and promote craft and arts and foster their patronization by government institutions and citizens.
- (4) The State shall recognize the cultural diversity of the country and shall encourage such diverse cultures to harmoniously flourish and find expression, through the media and education.
- (5) The State shall protect Sudan's cultural heritage, monuments and places of national historic or religious importance, from destruction, desecration, unlawful removal or illegal export.
- (6) The State shall guarantee academic freedom in institutions of higher education and shall protect the freedom of scientific research within the ethical parameters of research.

### **Children, Youth and Sports**

- 14 (1) The State shall adopt policies and provide facilities for child and youth welfare and ensure that they develop morally and physically, and protect them from moral and physical abuse and abandonment.
- (2) The State shall promote sports and empower the youth to develop their potentials.
- (3) The State shall protect and support popular sports institutions and guarantee their independence.

### **Family, Women and Marriage**

- 15 (1) The family is the natural and fundamental unit of the society and is entitled to the protection of the law; the right of man and woman to marry and to found a family shall be recognized, according to their respective family laws, and no marriage shall be entered into without the free and full consent of its parties.
- (2) The State shall protect motherhood and women from injustice, promote gender equality and the role of women in family, and empower them in public life.

### **Morals and Public Integrity**

- 16 (1) The State shall enact laws to protect the society from corruption delinquency and social evils and steer the society as a whole towards virtuous social values consistent with religions and cultures of the Sudan.
- (2) The State shall enact laws and establish institutions to eliminate corruption, inhibit abuse of power and ensure integrity in public life.

### **Foreign Policy**

- 17 Foreign policy of the Sudan shall serve the national interest and shall be conducted independently and transparently with the view to achieving the following:
- (a) promotion of international cooperation, specially within the United Nations family and other international and regional organizations, for the purposes of consolidating universal



- peace, respect for international law, treaty obligations and fostering a just world economic order,
- (b) achievement of African and Arab economic integration, each within the ongoing regional plans and fora as well as promoting African and Arab unity and Afro-Arab cooperation as foreseen in those plans,
  - (c) enhancement of respect for human rights and fundamental freedoms in regional and international fora,
  - (d) promotion of dialogue among civilizations and establishment of international order based on justice and common human destiny,
  - (e) enhancement of economic cooperation among countries of the South,
  - (f) non-interference in the affairs of other States, promotion of good-neighbourliness and mutual cooperation with all neighbours and maintaining amicable and balanced relations with other countries,
  - (g) combating international and trans-national organized crime and terrorism.

### **Defence of the Country**

- 18 Defence of the Country is an honour and a duty of every citizen; the State shall care for the combatants, the afflicted in war, the families of martyrs and those missing in action.

### **Public Health**

- 19 The State shall promote public health and guarantee equal access and free primary health care to all citizens.

### **Fiscal Levies**

- 20 (1) No taxes, fees, tariffs or other fiscal dues, shall be levied save by law.
- (2) Zakat is a duty on Muslims; its collection, expenditure and administration shall be regulated in the Northern states by law.

### **National Reconciliation**

- 21 The State shall initiate a comprehensive process of national reconciliation and healing that shall promote national harmony and peaceful co-existence among all Sudanese.

## **Saving**

- 22 Unless this Constitution otherwise provides, or a duly enacted law guarantees the rights and liberties described in this Chapter, the provisions contained in this Chapter are not by themselves enforceable in a court of law; however, the principles expressed herein are basic to governance and the State is duty-bound to be guided by them, especially in making policies and laws.

### **CHAPTER III**

#### **DUTIES OF THE CITIZEN**

- 23 (1) It shall be the duty of every Sudanese citizen to pledge allegiance to the Republic of the Sudan, abide by this Constitution, respect the institutions created hereunder and safeguard the territorial integrity of the country.
- (2) In particular every citizen shall:
- (a) defend the country and respond to the call for national service within the terms of this Constitution and the law,
  - (b) abhor violence, promote harmony, fraternity and tolerance among all people of the Sudan in order to transcend religious, regional, linguistic, and sectarian divisions,
  - (c) preserve public funds and assets and respect legal and financial obligations towards the State,
  - (d) avert and thwart corruption and sabotage,
  - (e) participate fully in the development of the country,
  - (f) take part in the general elections and referenda as stipulated in this Constitution and the law,
  - (g) abide by law and co-operate with the appropriate agencies in the maintenance of law and order,
  - (h) preserve the natural environment,
  - (i) generally, be guided and informed in his/her actions by the interests of the nation and the principles enshrined in this Constitution.

## **CHAPTER IV THE DECENTRALIZED SYSTEM OF GOVERNANCE**

### **Levels of Government**

- 24 The Sudan is a decentralized State, with the following levels of government: -
- (a) The national level of government, which shall exercise authority with a view to protecting the national sovereignty and territorial integrity of the Sudan and promoting the welfare of its people,
  - (b) Southern Sudan level of government, which shall exercise authority in respect of the people and states in Southern Sudan,
  - (c) The state level of government, which shall exercise authority at the states throughout the Sudan and render public services through the level closest to the people,
  - (d) Local level of government, which shall be throughout the Sudan.

### **Devolution of Powers**

- 25 The following principles shall guide the devolution and distribution of powers between all levels of government:-
- (a) recognition of the autonomy of the Government of Southern Sudan and the states,
  - (b) affirmation of the need for norms and standards of governance and management at national, Southern Sudan and state levels, that reflect the unity of the country while asserting the diversity of the Sudanese people,
  - (c) acknowledgement of the role of the State in the promotion of the welfare of the people and protection of their human rights and fundamental freedoms,
  - (d) recognition of the need for the involvement and participation of all Sudanese people, particularly the people of Southern Sudan, at all levels of government as an expression of the national unity of the country,
  - (e) pursuit of good governance through democracy, transparency, accountability and the rule of law at all levels of government to consolidate lasting peace.

## Inter-Governmental Linkages

- 26 (1) In the administration of the decentralized system of the country, the following principles of inter-governmental linkages shall be respected:-
- (a) the linkage between the national government and the states in Southern Sudan shall be through the government of Southern Sudan,
  - (b) in their relationships with each other or with other government organs, all levels of government and particularly national, Southern Sudan and state governments shall observe the following:-
    - (i) respect each others' autonomy,
    - (ii) collaborate in the task of governing and assist each other in fulfilling their respective constitutional obligations.
  - (c) government organs at all levels shall perform their functions and exercise their powers so as:-
    - (i) not to encroach on the powers or functions of other levels,
    - (ii) not to assume powers or functions conferred upon any other level except as provided for by this Constitution,
    - (iii) to promote co-operation between all levels of government,
    - (iv) to promote open communication between all levels of government,
    - (v) to render assistance and support to other levels of government,
    - (vi) to advance good co-ordination of governmental functions,
    - (vii) to adhere to procedures of inter-governmental interaction,
    - (viii) to promote amicable settlement of disputes before attempting litigation,
    - (ix) to respect the status and institutions of other levels of government.
  - (d) the harmonious and collaborative interaction of the different levels of government shall be within the context of national unity and for the achievement of a better quality of life for all,

- (2) Any two or more states may agree on mechanisms or arrangements to enhance inter-state co-ordination and co-operation.

# **PART TWO**

## **BILL OF RIGHTS**

### **Nature of the Bill of Rights**

- 27 (1) The Bill of Rights is a covenant among the Sudanese people and between them and their governments at every level and a commitment to respect and promote human rights and fundamental freedoms enshrined in this Constitution; it is the cornerstone of social justice, equality and democracy in the Sudan.
- (2) The State shall protect, promote, guarantee and implement this Bill.
- (3) All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill.
- (4) Legislation shall regulate the rights and freedoms enshrined in this Bill and shall not detract from or derogate any of these rights.

### **Life and Human Dignity**

28. Every human being has the inherent right to life, dignity and the integrity of his/her person, which shall be protected by law; no one shall arbitrarily be deprived of his/her life.

### **Personal Liberty**

29. Every person has the right to liberty and security of person; no person shall be subjected to arrest, detention, deprivation or restriction of his/her liberty except for reasons and in accordance with procedures prescribed by law.

### **Sanctity from Slavery and Forced Labour**

- 30 (1) Slavery and slave trade in every form is prohibited. No person shall be held in slavery or servitude.
- (2) No person shall be required to perform forced or compulsory labour except as a penalty upon conviction by a competent court of law.

### **Equality before the Law**

- 31 All persons are equal before the law and are entitled without discrimination, as to race, colour, sex, language, religious creed, political opinion, or ethnic origin, to the equal protection of the law.

### **Rights of Women and Children**

- 32 (1) The State shall guarantee equal right of men and women to the enjoyment of all civil, political, social, cultural and economic rights, including the right to equal pay for equal work and other related benefits.
- (2) The State shall promote woman rights through affirmative action.
- (3) The State shall combat harmful customs and traditions which undermine the dignity and the status of women.
- (4) The State shall provide maternity and child care and medical care for pregnant women.
- (5) The State shall protect the rights of the child as provided in the international and regional conventions ratified by the Sudan.

### **Sanctity from Torture**

- 33 No person shall be subjected to torture or to cruel, inhuman or degrading treatment.

### **Fair Trial**

- 34 (1) An accused is presumed to be innocent until his/her guilt is proved according to the law.
- (2) Every person who is arrested shall be informed, at the time of arrest, of the reasons for his/her arrest and shall be promptly informed of any charges against him/her .
- (3) In all civil and criminal proceedings, every person shall be entitled to a fair and public hearing by an ordinary competent court of law in accordance with procedures prescribed by law.

- (4) No person shall be charged of any act or omission which did not constitute an offence at the time of its commission.
- (5) Any person shall be entitled to be tried in his/her presence in any criminal charge without undue delay; the law shall regulate trial in absentia.
- (6) Any accused person has the right to defend himself/herself in person or through a lawyer of his/her own choice and to have legal aid assigned to him/her by the State where he/she is unable to defend himself/herself in serious offences.

### **Right to Litigation**

- 35 The right to litigation shall be guaranteed for all persons; no person shall be denied the right to resort to justice.

### **Restriction on Death Penalty**

- 36 (1) No death penalty shall be imposed, save as retribution, hudud or punishment for extremely serious offences in accordance with the law.
- (2) The death penalty shall not be imposed on a person under the age of eighteen or a person who has attained the age of seventy except in cases of retribution or hudud.
- (3) No death penalty shall be executed upon pregnant or lactating women, save after two years of lactation.

### **Privacy**

- 37 The privacy of all persons shall be inviolable; no person shall be subjected to interference with his/her private life, family, home or correspondence, save in accordance with the law.

### **Freedom of Creed and Worship**

- 38 Every person shall have the right to the freedom of religious creed and worship, and to declare his/her religion or creed and manifest the same, by way of worship, education, practice or performance of rites or ceremonies, subject to requirements of law and public order; no person shall be coerced to adopt such



faith, that he/she does not believe in, nor to practice rites or services to which he/she does not voluntarily consent.

### **Freedom of Expression and Media**

- 39 (1) Every citizen shall have an unrestricted right to the freedom of expression, reception and dissemination of information, publication, and access to the press without prejudice to order, safety or public morals as determined by law.
- (2) The State shall guarantee the freedom of the press and other media as shall be regulated by law in a democratic society.
- (3) All media shall abide by professional ethics, shall refrain from inciting religious, ethnic, racial or cultural hatred and shall not agitate for violence or war.

### **Freedom of Assembly and Association**

- 40 (1) The right to peaceful assembly shall be guaranteed; every person shall have the right to freedom of association with others, including the right to form or join political parties, associations and trade or professional unions for the protection of his/her interests.
- (2) Formation and registration of political parties, associations and trade unions shall be regulated by law as is necessary in a democratic society.
- (3) No association shall function as a political party at national, Southern Sudan or state level unless it has:-
- (a) its membership open to any Sudanese irrespective of religion, ethnic origin or place of birth,
  - (b) a programme that does not contradict the provisions of this Constitution,
  - (c) democratically elected leadership and institutions,
  - (d) disclosed and transparent sources of funding.

### **Right to Vote**

- 41 (1) Every citizen shall have the right to take part in the conduct of public affairs, through voting as shall be regulated by law.
- (2) Every citizen who has attained the age specified by this Constitution or the law, shall have the right to elect and be elected in periodic elections, through universal adult

suffrage in secret ballot, which shall guarantee the free expression of the will of the electorate.

### **Freedom of Movement and Residence**

- 42 (1) Every citizen shall have the right to freedom of movement and the liberty to choose his/her residence except for reasons of public health and safety as shall be regulated by law.
- (2) Every citizen shall have the right to leave the country as shall be regulated by law and shall have the right of return.

### **Right to Own Property**

- 43 (1) Every citizen shall have the right to acquire or own property as regulated by law.
- (2) No private property may be expropriated save by law in the public interest and in consideration for prompt and fair compensation. No private property shall be confiscated save by an order of a court of law.

### **Right to Education**

- 44 (1) Education is a right for every citizen and the State shall provide access to education without discrimination as to religion, race, ethnicity, gender or disability.
- (2) Primary education is compulsory and the State shall provide it free.

### **Rights of Persons with Special Needs and the Elderly**

- 45 (1) The State shall guarantee to persons with special needs the enjoyment of all the rights and freedoms set out in this Constitution; especially respect for their human dignity, access to suitable education, employment and full participation in society.
- (2) The elderly shall have the right to the respect of their dignity. The State shall provide them with the necessary care and medical services as shall be regulated by law.

### **Public Health Care**

- 46 The State shall promote public health, establish, rehabilitate, develop basic medical and diagnostic institutions, provide free primary health care and emergency services for all citizens.

### **Ethnic and Cultural Communities**

- 47 Ethnic and cultural communities shall have the right to freely enjoy and develop their particular cultures; members of such communities shall have the right to practice their beliefs, use their languages, observe their religions and raise their children within the framework of their respective cultures and customs.

### **Sanctity of Rights and Freedoms**

- 48 Subject to Article 211 herein, no derogation from the rights and freedoms enshrined in this Bill shall be made. The Bill of Rights shall be upheld, protected and applied by the Constitutional Court and other competent courts; the Human Rights Commission shall monitor its application in the State pursuant to Article 142 herein.

# **PART THREE**

## **THE NATIONAL EXECUTIVE**

### **CHAPTER I**

#### **THE NATIONAL EXECUTIVE AND ITS POWERS**

##### **Composition of the National Executive**

49. The National Executive shall consist of the Presidency of the Republic and the National Council of Ministers.

##### **Powers of the National Executive**

50. The National Executive shall exercise the executive powers in Schedules A and D, read together with Schedules E and F herein and the competences conferred upon it by this Constitution.

### **CHAPTER II**

#### **THE PRESIDENCY OF THE REPUBLIC**

##### **Composition of the Presidency**

- 51 (1) The Presidency of the Republic shall consist of the President of the Republic and two Vice Presidents.
- (2) There shall be partnership and collegial decision-making within the Presidency in order to safeguard stability in the country and implement the Comprehensive Peace Agreement.

##### **The President of The Republic**

- 52 There shall be a President for the Republic of the Sudan to be directly elected by the people in national elections according to the law and the regulations set by the National Elections Commission.

##### **Eligibility for the President of the Republic**

- 53 A candidate for the office of the President of the Republic shall:-
- (a) be a Sudanese by birth,

- (b) be of sound mind,
- (c) be at least forty years of age,
- (d) be literate ,
- (e) not have been convicted of an offence involving honesty or moral turpitude.

### **Nomination and Election of the President of the Republic**

- 54 (1) Any eligible voter may nominate whoever he/she deems fit for the office of the President of the Republic; however, the Presidential candidate shall be seconded by a number of eligible voters as specified by law.
- (2) The Presidential candidate who wins more than fifty percent of the total votes of the polling electorate shall be the President elect.
- (3) Where the percentage mentioned in sub-Article (2) above is not attained, there shall be a run-off election between the two presidential candidates who have obtained the highest number of votes.

### **Postponement of Elections of the President**

- 55 (1) Where election of the President of the Republic is not possible for any reason, as shall be decided by the National Elections Commission according to the election law, the National Elections Commission shall fix a new date for the elections as soon as practicable, but not later than sixty days from the scheduled election date.
- (2) Pending the holding of the postponed elections, the incumbent President of the Republic shall continue as a caretaker President; and his tenure shall be extended until the President elect takes the oath of office.

### **Oath of the President**

- 56 To assume office, the President of the Republic elect shall take the following oath before the National Legislature:-

“ I.....swear by Almighty God, that as the President of the Republic of the Sudan, I shall be faithful and bear true allegiance to the Republic of the Sudan and shall diligently and honestly discharge my duties and responsibilities in a

consultative manner to foster the welfare and development of the nation; that I shall obey, preserve and defend the Constitution and abide by the laws of the Republic; and shall protect the sovereignty of the country, promote its unity, consolidate the democratic decentralized system of government and preserve the integrity and dignity of the people of the Sudan; and God is my witness ”.

### **Tenure of Office of the President of the Republic**

- 57 The tenure of office of the President of the Republic shall be five years, commencing from the date of assumption of office, and the same President may be re-elected for one more term only.

### **Functions of the President of the Republic**

- 58 (1) The President of the Republic is the Head of the State and Government and represents the will of the people and the authority of the State; he/she shall exercise the powers vested in him/her by this Constitution and the Comprehensive Peace Agreement and shall, without prejudice to the generality of the foregoing, perform the following functions:-
- (a) preserve the security of the country and protect its integrity,
  - (b) supervise the executive constitutional institutions and provide exemplary leadership in public affairs,
  - (c) appoint holders of constitutional and judicial posts in accordance with the provisions of this Constitution and the law,
  - (d) preside over the National Council of Ministers,
  - (e) summon, adjourn or prorogue the National Legislature,
  - (f) declare war in accordance with this Constitution and the law,
  - (g) declare and terminate the state of emergency in accordance with the provisions of this Constitution and the law,
  - (h) initiate constitutional amendments and legislations and assent to laws,
  - (i) approve death sentences, grant pardon, lift convictions and remit penalties according to this Constitution and the national law,

- (j) represent the State in its foreign relations, appoint ambassadors of the State and accept credentials of foreign ambassadors,
  - (k) direct and supervise the foreign policy of the State and ratify treaties and international agreements with the approval of the National Legislature,
  - (l) seek the opinion of the Constitutional Court on any matter in connection with the Constitution,
  - (m) any other functions as may be prescribed by this Constitution or the law.
- (2) Notwithstanding sub-Article (1) above, the President of the Republic shall, in respect of the following matters, take decisions with the consent of the First Vice President:-
- (a) declaration and termination of a state of emergency,
  - (b) declaration of war,
  - (c) appointments that the President of the Republic is required to make according to Appendix B1 of the Comprehensive Peace Agreement,
  - (d) summoning, adjourning or proroguing the National Legislature.

### **Vacancy of the Office of the President of the Republic**

- 59 The Office of the President of the Republic shall fall vacant in any of the following cases:-
- (a) expiry of his/her tenure of office,
  - (b) death,
  - (c) mental infirmity or physical incapacity as determined by a resolution of the National Legislature adopted by a three-quarters majority of all members,
  - (d) impeachment in accordance with the provisions of this Constitution,
  - (e) submission of his/her resignation to the National Legislature.

### **Immunity and Impeachment of the President and the First Vice President**

- 60 (1) The President of the Republic and the First Vice President shall be immune from any legal proceedings and shall not be charged or sued in any court of law during their tenure of office.

- (2) Notwithstanding sub-Article (1) above, and in case of high treason, gross violation of this Constitution or gross misconduct in relation to State affairs, the President or the First Vice President may be charged before the Constitutional Court upon a resolution passed by three quarters of all members of the National Legislature.
- (3) In the event of conviction of the President of the Republic or the First Vice President, in accordance with sub-Article (2) above, he/she shall be deemed to have forfeited his/her office.

### **Contesting Acts of the President or the Presidency**

- 61 Any person aggrieved by an act of the President of the Republic or the Presidency may contest such act:-
- (a) before the Constitutional Court, if the alleged act involves a violation of this Constitution, the Bill of Rights, the decentralized system of government, or the Comprehensive Peace Agreement,
  - (b) before a competent court of law, if the allegation is based on other legal grounds.

### **The two Vice President, Assistants and Advisors**

- 62 (1) The elected President of the Republic shall appoint two Vice President, one from Southern Sudan and the other from Northern Sudan. If the elected President is from the North, the position of the First Vice President shall be filled by the person who has been elected to the post of President of Government of Southern Sudan, as the President's appointee to the said position. In the event that a person from the South wins the Presidential elections, the elected President shall appoint the First Vice President from the North upon the recommendation of the party that won the highest number of northern seats in the National Assembly.
- (2) The two Vice Presidents shall satisfy the same conditions required for the office of the President of the Republic.
  - (3) The President of the Republic may appoint assistants and advisors and define their functions and seniorities.
  - (4) To assume their respective offices, the two Vice Presidents, assistants and advisors shall take before the President of the Republic the same oath taken by the President.



## **Functions of the two Vice President**

- 63 (1) The First Vice President shall have the following functions:-
- (a) act in the absence of the President of the Republic in accordance with the provisions of this Constitution,
  - (b) membership of the National Council of Ministers,
  - (c) membership of the National Security Council,
  - (d) membership of the Presidential Council in the pre-election period,
  - (e) chairmanship of the Presidential Council in the post election period in the event of the office of the President falling vacant,
  - (f) any other function or duty that may be assigned to him/her by the President of the Republic.
- (2) The Vice President shall have the following functions:-
- (a) act in the absence of the President of the Republic and the First Vice President in accordance with the provisions of this Constitution,
  - (b) membership of the National Council of Ministers,
  - (c) membership of the Presidential Council and Commander-in-Chief of Sudan Armed Forces should the office of the President of the Republic fall vacant according to Articles 65 and 66 herein,
  - (d) membership of the National Security Council,
  - (e) any other function or duty that may be assigned to him/her by the President taking into account the hierarchy within the Presidency.

## **Vacancy of the Office of the First Vice President**

64. Should the office of the First Vice President fall vacant, the President of the Republic shall appoint a new First Vice President in accordance with this Constitution.

**CHAPTER III**  
**INTERIM PROVISIONS FOR**  
**THE PRESIDENCY OF THE REPUBLIC**

**The Incumbent President and the First Vice President**

65. Prior to the elections that shall be held during the interim period:-
- (a) the incumbent President of the Republic, or his successor, shall be the President and Commander-in-Chief of the Sudan Armed Forces in accordance with this Constitution,
  - (b) the Chairman of the Sudan People's Liberation Movement, or his successor, shall be the First Vice President and shall at the same time be the President of Government of Southern Sudan and Commander-in-Chief of the Sudan People's Liberation Army in accordance with this constitution.

**Vacancy of the Office of the President before Elections**

66. Should the Office of the President of the Republic fall vacant before the elections:-
- (a) the functions of the President of the Republic shall be assumed by a Presidential Council comprising the Speaker of the National Assembly and the two Vice Presidents,
  - (b) the Speaker of the National Assembly shall be chairperson to the Presidential Council,
  - (c) the Presidential Council shall take its decisions by consensus,
  - (d) the Vice President shall be Commander-in-Chief of the Sudan Armed Forces,
  - (e) notwithstanding Article 52 above or any other provision in this Constitution, the Office of the President shall be filled by the nominee of the National Congress Party within two weeks of the date of the occurrence of such vacancy.

**Vacancy of the Office of the President after Elections**

67. Should the office of the President of the Republic fall vacant after the elections:-

- (a) the functions of the President of the Republic shall be assumed by the Presidential Council referred to in Article 66 (a) above,
- (b) the First Vice President shall be the chairperson of the Presidential Council,
- (c) the Presidential Council shall take its decisions by consensus,
- (d) the First Vice President or the Vice President, whoever of them is from the North, shall be the Commander-in-Chief of the Sudan Armed Forces,
- (e) the Post of the President of the Republic shall be filled through elections that shall be conducted within sixty days in accordance with Article 52 of this Constitution.

### **Vacancy of the Office of the First Vice President before Elections**

- 68 Should the office of the First Vice President fall vacant prior to elections, it shall be filled by the nominee of the Sudan People's Liberation Movement within two weeks of the occurrence of that vacancy.

### **Interim Provisions for Tenure of Office of the President and the First Vice President**

- 69 (1) Should the outcome of the referendum on self-determination confirm unity, the President of the Republic and the First Vice President shall complete the tenure of their offices.
- (2) In the event of a vote for secession by the people of Southern Sudan, the President of the Republic shall continue in office if he/her is from the North; however, if the President is from the South he/she shall be deemed to have resigned and the First Vice President shall assume the office of the President of the Republic to complete the tenure to the next elections.

# CHAPTER IV

## THE NATIONAL COUNCIL OF MINISTERS

### Composition and Competences of the National Council of Ministers

- 70 (1) The President of the Republic shall, after consultation within the Presidency, appoint the National Council of Ministers.
- (2) The President of the Republic and the two Vice Presidents shall be members of the National Council of Ministers.
- (3) Without prejudice to the powers vested in the President of the Republic and the Presidency under this Constitution, decisions of the Council of Ministers shall prevail over all other executive decisions.
- (4) The National Council of Ministers shall be the national executive authority in the State in accordance with the provisions of this Constitution and the law; its decisions shall be adopted by consensus or by simple majority.
- (5) There shall be national State ministers appointed by the President of the Republic, after consultation within the Presidency; they shall assist the national ministers and may act in their absence.
- (6) The national State ministers shall take the same oath of office of the national minister.

### Oath of the National Minister

- 71 The national minister shall, upon his/her appointment, assume the functions of his/her office by taking the following oath before the President of the Republic:-

“I ..... having been appointed a national minister, do hereby swear by Almighty God that I will at all times be faithful to the Republic of the Sudan; that I will obey, respect, and uphold the Constitution and abide by all laws of the country, loyally defend its independence, promote its unity and the democratic decentralized system of government established by the Constitution, and to faithfully serve the people and the country to the best of my ability; and God is my witness”.

## **Functions of the National Council of Ministers**

- 72 The National Council of Ministers shall have the following functions:-
- (a) planning State policy,
  - (b) implementation of the Comprehensive Peace Agreement,
  - (c) initiation of national legislative bills, national budget, international treaties, bilateral and multilateral agreements,
  - (d) receiving reports about national ministerial performance for review and action,
  - (e) receiving reports on executive performance of states for purposes of information and coordination, provided that in case of the states of Southern Sudan, reports shall be received through the Government of Southern Sudan,
  - (f) receiving reports on matters that are concurrent or residual and decides whether it is competent to exercise such power in accordance with Schedules E and F herein. If it so decides, it shall notify the other levels of government of its intention to exercise such power. In case any other level of government objects thereto, a committee shall be set up by the levels concerned to amicably resolve the matter before resorting to the Constitutional Court,
  - (g) any other functions assigned thereto by the President of the Republic and the law.

## **Functions of the National Minister**

- 73 (1) The national minister shall be the head of his/her ministry, and his/her decisions shall prevail therein. However, the National Council of Ministers may review such decisions; the President of the Republic may suspend the decision of a national minister pending such review.
- (2) The national minister and corresponding ministers of Government of Southern Sudan and states shall collaborate and establish relations among themselves in fulfilling their respective constitutional obligations.
  - (3) Perform any public or political role and provide leadership in public affairs to achieve the objectives of national policy.
  - (4) Any other functions or powers assigned by law or delegation.

## **Collective and Individual Responsibility of National Ministers**

- 74 (1) The national minister shall be answerable to the President of the Republic, the National Council of Ministers and the National Assembly.
- (2) The national ministers shall be collectively and individually responsible before the National Assembly for the performance of the National Council of Ministers.
- (3) The national minister shall be bound by the decisions of the National Council of Ministers.

## **Declaration of Wealth and Prohibition of Private Business**

- 75 (1) All executive and legislative constitutional office holders, Justices, and senior civil service officials shall, upon assumption of their offices, make confidential declarations of their assets and liabilities including those of their spouses and children in accordance with the law.
- (2) The President of the Republic, the two Vice Presidents, assistants and advisors, the President of Government of Southern Sudan, national ministers, and other constitutional office holders shall, during their tenure of offices, neither practice any private profession, transact commercial business, nor receive compensation or accept employment of any kind from any source other than the National Government, the Government of Southern Sudan or a state government as the case may be.

## **Vacancy of the Office of the National Minister**

- 76 The office of the national minister shall fall vacant in any of the following cases:-
- (a) acceptance of resignation by the President of the Republic,
- (b) relief from office by the President of the Republic after consultation within the Presidency,
- (c) death.

## **Confidentiality of Deliberations of the National Council of Ministers**

- 77 Deliberations of the National Council of Ministers shall be confidential; no minister shall disclose, communicate or reveal such deliberations save by permission of the Council of Ministers.

### **Contesting Ministerial Acts**

- 78 Any person aggrieved by an act of the National Council of Ministers or a national minister may contest such act:
- (a) before the Constitutional Court, if the alleged act involves a violation of this Constitution, the Bill of Rights, the decentralized system of government, or the Comprehensive Peace Agreement,
  - (b) before the competent authority or court of law if the allegation is based on other legal grounds.

## **CHAPTER V**

### **THE GOVERNMENT OF NATIONAL UNITY**

#### **Objectives of the Government of National Unity**

- 79 Prior to the elections and notwithstanding Article 70 (1) of this Constitution, the President of the Republic, in consultation with the First Vice President, shall form a Government of National Unity, which shall implement the Comprehensive Peace Agreement, reflecting the need for inclusiveness, the promotion of national unity and the protection of national sovereignty.

#### **Allocation of Seats of Government of National Unity**

- 80 The seats of the Government of National Unity shall be allocated according to the seventy percent to thirty percent North/South ratio, as follows:-
- (a) the National Congress Party shall be represented by fifty two percent (forty-nine percent for Northerners and three percent for Southerners),
  - (b) the Sudan People's Liberation Movement shall be represented by twenty eight percent (twenty-one percent for Southerners and seven percent for Northerners),
  - (c) other Northern Political forces shall be represented by fourteen percent,

- (d) other Southern Political forces shall be represented by six percent.

### **Sharing of National Ministerial Portfolios**

- 81 Portfolios in the National Council of Ministers, as clustered in Appendix (D) of the Comprehensive Peace Agreement, shall be shared equitably and qualitatively in accordance with the provisions of Article 80 above.

### **Duties of the Government of National Unity**

- 82 The Government of National Unity shall undertake the following duties:-
  - (a) administration and functioning of the State and the formulation and implementation of national policies in accordance with the provisions of this Constitution,
  - (b) establishment of a decentralized democratic system of governance taking into account the cultural, ethnic, racial, religious, and linguistic diversity and gender equality,
  - (c) implementation of the Comprehensive Peace Agreement in a manner that makes the unity of the Sudan an attractive option especially to the people of Southern Sudan, and pave the way for the exercise of the right of self-determination according to Part Sixteen of this Constitution,
  - (d) implementation of an information campaign throughout the Sudan in all national languages to popularize the Comprehensive Peace Agreement, foster national unity, reconciliation and mutual understanding,
  - (e) taking all necessary measures to ensure that peace and stability prevail throughout the country,
  - (f) devising a comprehensive solution that addresses economic and social problems, replacing conflict not just with peace, but also with social, political and economic justice and respect the fundamental freedoms and rights of the people of the Sudan,
  - (g) formulation of a repatriation, relief, rehabilitation, resettlement, reconstruction and development plan to address the needs of the areas affected by the conflict and redress the imbalances in development and resource allocation



# PART FOUR

## THE NATIONAL LEGISLATURE

### CHAPTER I

#### COMPOSITION AND FUNCTIONING OF THE NATIONAL LEGISLATURE

##### **Composition of the National Legislature**

- 83 (1) There shall be established a National Legislature composed of the following two chambers:-
- (a) The National Assembly and
  - (b) The Council of States.
- (2) The National Legislature shall conduct its business as prescribed in this Constitution in joint sittings of the two Chambers, chaired by the Speaker of the National Assembly and deputized by the Speaker of the Council of States.
- (3) Vote count shall be separate for each Chamber and governed by the quorum specified in this Constitution.
- (4) Each Chamber shall sit separately to conduct its business as prescribed in this Constitution.
- (5) The National Legislature, as well as each of its Chambers, shall make its own internal regulations.

##### **Composition of the National Assembly**

- 84 (1) The National Assembly shall be composed of members elected in free and fair elections.
- (2) The National Elections Law shall determine the number of members and composition of the National Assembly.

##### **Composition of the Council of States**

- 85 (1) The Council of States shall be composed of two representatives from each state, elected by the state legislature in accordance with the National Elections Law and regulations set forth by the National Elections Commission.
- (2) Abyei Area shall have two observers at the Council of States, elected by Abyei Area Council.

## **Eligibility for Membership of the National Legislature**

- 86 (1) The candidate for membership of either Chamber of the National Legislature shall:-
- (a) be a Sudanese,
  - (b) be at least twenty-one years of age,
  - (c) be of sound mind,
  - (d) be literate,
  - (e) not have been convicted during the previous seven years of an offence involving honesty or moral turpitude.
- (2) Membership of the National Assembly shall not be combined with representation at the Council of States.
- (3) Members of Southern Sudan Assembly or Executive, Governors and members of state legislatures or executives, shall not be eligible for membership of the National Legislature while occupying any of the aforementioned positions.
- (4) Representation at the Council of States shall not be combined with membership of the National Council of Ministers.

## **Lapse of Membership of the National Legislature**

- 87 (1) Membership of the National Legislature shall lapse by a resolution passed by the appropriate Chamber in any of the following cases:-
- (a) mental infirmity or physical incapacity,
  - (b) conviction for an offence involving honesty or moral turpitude,
  - (c) absence from one full session of the appropriate Chamber without permission or acceptable excuse,
  - (d) announcement of his/her written resignation in the appropriate Chamber,
  - (e) change of political affiliation, identity or party on which he/she was elected to the National Assembly,
  - (f) relief by the appropriate state legislature by a decision supported by two-thirds of its members in the case of representatives at the Council of States,
  - (g) assumption of the office of minister in the Government of Southern Sudan, Governor or state minister,
  - (h) death.

- (2) Upon vacation of the seat of a member or representative, his/her successor shall be elected in the appropriate manner prescribed by this Constitution within a period of ninety days.

### **Seat of the National Legislature**

- 88 (1) The National Legislature shall convene at the seat of the National Assembly. However, the two Speakers may agree, for exceptional reasons, to convene a sitting of the National Legislature elsewhere.
- (2) The National Assembly shall convene at its seat in Omdurman; however its Speaker may exceptionally call it to convene elsewhere.
- (3) The Council of States shall have its seat in Omdurman, however, it may also hold sessions in the Capital City of Southern Sudan or of any state, as may be decided by its Speaker or the majority of the representatives.

### **Oath of Member of the National Legislature**

- 89 To assume his/her functions, every member of the National Legislature shall take the following oath before the appropriate Chamber:

“I.....having been elected as Member of the National Assembly / Representative at the Council of States, do hereby swear by Almighty God that I will bear faith and allegiance to the Republic of the Sudan and its people; that I will obey and, respect the Constitution of the country and abide by the law; and that I will faithfully and conscientiously discharge my duties as a member of the National Legislature and serve the people to the best of my ability; and God is my witness”.

### **Term of the National Legislature**

- 90 The term of each Chamber of the National Legislature shall be five years commencing from the date of its first sitting.

### **Functions of the National Legislature**

- 91 (1) The National Legislature represents the will of the people and shall foster national unity, exercise national legislative functions, oversee the National Executive, and promote the decentralized system of government.

- (2) Without prejudice to the generality of sub-Article (1) above, the National Legislature shall convene for the following purposes to:-
- (a) amend this Constitution and approve amendments affecting the Comprehensive Peace Agreement that are presented by its signatories in accordance with Article 224 of this Constitution,
  - (b) discuss addresses by the President of the Republic,
  - (c) authorize annual allocation of resources and revenues, in accordance with Article 110 of this Constitution,
  - (d) reconsider a bill which has been rejected by the President of the Republic under Article 108 (2) herein,
  - (e) promulgate the Southern Sudan Referendum Act provided for in Article 220 (1) herein,
  - (f) approve declaration of war,
  - (g) confirm declaration of state of emergency or termination thereof,
  - (h) impeach the President of the Republic or the First Vice President,
  - (i) perform any other function determined by this Constitution or law.
- (3) The National Assembly shall be competent to:
- (a) assume legislation in all national powers, subject to sub-Article (5) (b),
  - (b) approve plans, programmes and policies relating to the State and society,
  - (c) approve the annual national budget,
  - (d) ratify international treaties, conventions and agreements,
  - (e) oversee the performance of the National Executive,
  - (f) adopt resolutions on matters of public concern,
  - (g) summon national ministers to present reports on the executive performance of the government in general or of specified ministries or particular activities,
  - (h) interrogate, at will, national ministers about their performance or the performance of their ministries and may recommend to the President of the Republic, in a subsequent sitting, the removal of a national minister, if he/she is deemed to have lost the confidence of the National Assembly.
- (4) The Council of States shall be competent to:
- (a) initiate legislations on the decentralized system of government and other issues of interest to the states and

- pass such legislations with two-thirds majority of all representatives,
- (b) issue resolutions and directives that may guide all levels of government in accordance with the provisions of Articles 24, 25 and 26 of this Constitution,
  - (c) approve by two-thirds majority of all representatives, the appointment of the Justices of the Constitutional Court,
  - (d) approve, by a two-thirds majority, national legislation referred to in Article 5 (3) (a) of this Constitution or initiate national legislation which will provide for such necessary alternative institutions, according to Article 5 (3) (b) of this Constitution, as appropriate,
  - (e) supervise the National Reconstruction and Development Fund,
  - (f) decide on objections by states referred to it by the National Petroleum Commission according to the provisions of Article 191 (4) (d) of this Constitution,
  - (g) request statements from national ministers concerned regarding effective implementation of the decentralized system and devolution of powers.
- (5) While sitting separately to transact business that falls within its competence, each Chamber shall observe the following rules:-
- (a) any bill on a matter falling within the competence of either Chamber, shall be tabled in that Chamber,
  - (b) a bill passed by the National Assembly shall be referred to a standing Inter-Chamber Committee for scrutiny and decision on whether it affects the interests of the states. Should the Committee decide that the bill affects the interest of the states, the bill shall be referred to the Council of States,
  - (c) should the Council of States introduce any amendments in the referred bill, by a two-thirds majority of the representatives or pass it as is, the bill shall be sent to the President of the Republic for his/her assent without being returned to the National Assembly,
  - (d) no Chamber shall discuss any business of which the other Chamber is seized, until it is finally referred to it.

### **Immunity of Members of the National Legislature**

- 92 (1) Except where he/she is caught in the act of crime, no criminal proceedings shall be initiated against a member of the National

Legislature; neither shall any measure be taken against his/her person or belongings without permission from the Speaker of the appropriate Chamber.

- (2) In case the member or representative is charged with a serious crime the appropriate Chamber may waive the immunity of the accused member or representative.

### **Sessions of the National Legislature**

- 93 (1) Each Chamber of the National Legislature shall hold its first sitting upon convocation by the President of the Republic within thirty days following the official declaration of the results of the elections. The first sitting shall be chaired by the eldest of the members/ representatives present.
- (2) Without prejudice to Article 58(2) (d), each Chamber shall determine the commencement and closure dates of its sessions.
- (3) Either Chamber may convene an emergency or extraordinary session on the request of half of its members or representatives or upon call from the President of the Republic.

### **Officers of the National Legislature**

- 94 (1) Each Chamber shall have a Speaker and Deputy Speakers to be elected from among its members at the first sitting.
- (2) The Speaker shall preside over sittings of his/her Chamber, control order and supervise the administrative affairs thereof. He/she shall represent the Chamber inside and outside the Sudan.
- (3) Each Chamber of the National Legislature shall elect its leaders, chairpersons and members of the specialized committees and any other committee as may be determined by the internal regulations.
- (4) The Speaker shall, upon approval of his/her Chamber, appoint a Secretary General for the Chamber; who shall not be a member or a representative. The Secretary General shall be responsible for preparing the sessions of the Chamber and running its administrative affairs under the supervision of the Speaker.
- (5) The National Assembly may consider broad inclusiveness in the apportionment of its positions.

### **Committees of the National Legislature**

- 95 (1) Each Chamber, in accordance with its internal regulations, shall have standing specialized committees and ad hoc committees.
- (2) The two Chambers may form inter-chamber standing or ad hoc committees for specific matters that are of concern to the two Chambers.

### **Regulations of the National Legislature**

- 96 (1) Each Chamber of the National Legislature shall, on the initiative of its Speaker, make regulations for the conduct of its business.
- (2) The National Legislature shall make internal regulations on the initiative of the Speakers of the two Chambers.

### **Quorum**

- 97 (1) The ordinary quorum for the sittings of the National Assembly shall be more than half of the members; however, internal regulations may provide for a reduced quorum that may not apply for the final presentation of bills.
- (2) The quorum for the sittings of the Council of States shall be more than half of the representatives.

### **Publicity of Sitzings of the National Legislature**

- 98 The sittings of the National Legislature and either of the two Chambers shall be open to the public; their proceedings shall be published and may also be broadcast. However, the National Legislature or either Chamber, may decide according to its internal regulations that certain deliberations take place in camera.

### **Passing Legislative Resolutions**

- 99 Resolutions of the National Legislature and either Chamber shall, whenever possible, be taken by unanimity or consensus. Alternatively, resolutions shall be passed by simple majority of those present, save in cases where this Constitution provides otherwise.

### **Prerogative of Members of the National Legislature**

100. Members of the National Legislature shall freely and responsibly express their opinions, subject only to the provisions of the regulations of the appropriate Chamber. No legal proceedings shall be initiated against any member, nor shall he/she be accountable before any court of law only by reason of views or opinions that he/she may have expressed in the course of performing his/her duties.

### **Address by the President of the Republic**

101. The President of the Republic may personally or by a message address the National Legislature or any of its Chambers. The National Legislature shall accord priority to such request over any other business. The President of the Republic may also request the opinion of the National Legislature on any subject.

### **Addresses by the Two Vice Presidents and Statements by National Ministers and Governors**

- 102 (1) Any of the two Vice President of the Republic or the President of the Government of Southern Sudan may request to address either Chamber of the National Legislature. The concerned Chamber shall provide an opportunity for hearing such address as promptly as possible.
- (2) A national minister may request to deliver a statement before either Chamber of the National Legislature, whereas a Governor may request to make a statement before the Council of States.

### **Addressing Questions by Members of the National Legislature**

- 103 Members of the National Legislature may, in either Chamber, within the competence of that Chamber and subject to its regulations, address questions to a national minister on any subject relating to his/her duties; the said minister shall provide the appropriate Chamber with a prompt reply.



### **Requesting Statements**

- 104 Subject to the regulations of the concerned Chamber, either Chamber of the National Legislature or any of its committees may request a national minister to deliver a statement on any matter of concern.

### **General Summons**

- 105 (1) The National Assembly or any of its committees may summon any public official or any person, other than the President of the Republic and the two Vice President to testify before it, give opinion to the Assembly or any of its committees.
- (2) Inquiry on any matter that falls within the direct responsibility of the National Executive may only be made after notifying the President of the Republic.

### **Tabling of Bills**

- 106 (1) The President of the Republic, the Presidency, the National Council of Ministers, a national minister or a committee of the National Legislature may table a bill before either Chamber of the National Legislature subject to their respective competences.
- (2) A member of the National Legislature may table a private bill before the Chamber to which he/she belongs on a matter that falls within the competence of that Chamber.
- (3) A private member bill shall not be tabled before the appropriate Chamber save after being referred to the concerned committee to determine whether it involves an issue of important public interest.

### **Procedures for Presentation and Consideration of Bills**

- 107 (1) Bills presented to either Chamber of the National Legislature shall be submitted for the first reading by being cited by title and thereby deemed to be tabled with the appropriate Chamber. The bill shall then be submitted for a second reading for general deliberation and approval in principle. Should the bill be passed in the second reading, there shall be a third reading for deliberation in detail and introduction of,

and decision upon, any amendment. The bill shall then be submitted in its final form for the final reading, at which stage the text of the bill shall not be subject to further discussion and shall be passed section by section and then passed as a whole.

- (2) After the first reading, the Speaker shall refer the bill to the appropriate committee which shall make a general evaluation report for the purpose of the second reading. The committee shall also present a report on the amendments that the committee might or might not have endorsed in the third reading; the Speaker may also refer the bill once again to the appropriate committee to prepare a report on the final drafting in preparation for the final reading.
- (3) The Speaker or the appropriate committee, may seek expert opinion on the viability and rationale of the bill; an interested body may also be invited to present views on the impact and propriety of the bill.
- (4) The Chamber may by a special resolution, decide on any bill as a general committee or by summary proceedings.

### **Assent of the President of the Republic**

- 108 (1) Any bill approved by the National Legislature shall not become law unless the President of the Republic assents to it and signs it into law. If the President withholds assent for thirty days without giving reasons, the bill shall be deemed to have been so signed.
- (2) Should the President of the Republic withhold assent to the bill and give reasons within the aforementioned thirty days, the bill shall be re-introduced to the National Legislature to consider the observations of the President of the Republic.
  - (3) The bill shall become law if the National Legislature again passes it by a two-thirds majority of all the members and representatives of the two Chambers; the assent of the President of the Republic shall not be required for that bill to come into force.

### **Provisional Orders**

- 109 (1) Should the National Legislature not be in session, the President of the Republic may, on an urgent matter, issue a provisional order having the force of law; however, such

provisional order shall be submitted to the appropriate Chamber of the National Legislature as soon as it is convened. Where the National Legislature ratifies the provisional order as it is, it shall be promulgated as law, but where the same is rejected by either Chamber or where the parliamentary session ends without it being ratified, the provisional order shall lapse with no retrospective effect.

- (2) Notwithstanding sub-Article (1) above, the President of the Republic shall not make any provisional order on matters affecting the Comprehensive Peace Agreement, the Bill of Rights, the decentralized system of government, general elections, annual allocation of resources and financial revenues, penal legislations, international conventions or agreements altering the borders of the State.
- (3) Every law which was repealed or amended pursuant to a provisional order that later lapsed, shall revive into force as it is, starting from the date when the provisional order lapsed.
- (2) The National Assembly may delegate to the President of the Republic the power to ratify international conventions and agreements while the National Assembly is not in session; however, such ratified conventions or agreements shall not be subject to subsequent ratification by the National Assembly and shall be deposited before the National Assembly as soon as it is convened.

### **Allocation of Resources and Revenues Bill**

- 110 The President of the Republic shall cause to be presented to the National Legislature, before the beginning of the financial year, a bill of the allocation of resources and revenues in accordance with the provisions of this Constitution. The National Legislature shall convene to approve that bill.

### **National Budget Bill**

- 111 (1) The President of the Republic shall cause to be presented to the National Assembly before the beginning of the financial year the bill on the general budget of the State, including a general evaluation of the economic and financial situation of the country, detailed estimates of proposed revenues and expenditure for the forthcoming year compared to those of the previous financial year, a statement of the general budget,

any reserve funds, transfers thereto or allocations therefrom, explanations of any special budgets or financial estimates, policies or measures to be taken by the State in the financial and economic affairs within the framework of the general budget.

- (2) The President of the Republic shall cause to be submitted to the National Assembly proposals of total expenditure entered into the budget as an appropriation bill and proposals for taxes, fees and other levies as well as borrowing, investment or State saving bonds as financial bills.
- (3) The National Assembly shall adopt the general budget bill, chapter by chapter including schedules, and it shall adopt the total appropriation bill. Where the law is passed, detailed estimates as specified in the general budget shall not be exceeded save by a supplementary law. Surplus funds over revenue estimates and funds out of the legal reserve shall not also be spent save by a supplementary appropriation law.

### **Private Member Financial Bills**

- 112 No member of the National Assembly shall, outside the context of the deliberations of the draft general budget, present any private financial bill that entails abolition, remittance or alteration of any tax, fee or other public revenue source or appropriation or levy upon public funds other than service fees or pecuniary penalties.

### **Provisional and Supplementary Financial Measures**

- 113 (1) Notwithstanding the provisions of Article 109 (2) above, the President of the Republic may wherever he/she deems it appropriate for public interests, make a presidential order having the force of law, providing that the imposition of any tax, or fee or the amendment thereof shall come into force, pending submission of a bill requiring the same to the National Assembly. When that financial bill is adopted or rejected, the force of the presidential order shall cease without the rejection or amendment of the bill having retrospective effect.
- (2) Where the procedure of adopting the general budget and the appropriation bill is delayed beyond the beginning of the

financial year, expenditure shall continue pending adoption of the general budget, in accordance with the estimates approved for the previous year, as if the same has been appropriated by law for the new year.

- (3) Whenever new circumstances occur or a matter of public concern proves not to have been satisfactorily addressed by the general budget, the President may during the financial year cause to be submitted a financial bill, a supplementary appropriation or an allocation out of the reserve funds, to which shall apply the same provisions set out in respect of the general budget bill.

### **Final Accounts**

- 114 the President of the Republic shall cause to be presented to the National Assembly during the six months following the end of the financial year, final accounts for all revenues and expenditure as are set forth in that year, as well as expenditure withdrawn from the reserve funds; the Auditor General shall present his/her report on such accounts to the National Assembly.

### **Delegation of Powers of Subsidiary Legislation**

- 115 The National Legislature or any of its Chambers may, by law, delegate to the President of the Republic, the National Council of Ministers or any public body, the power to make any subsidiary regulations, rules, orders or any other subsidiary instrument having the force of law; provided that such subsidiary legislation shall be tabled before the concerned Chamber and be subject to adoption or amendment by a resolution of that Chamber in accordance with the provisions of its regulations.

### **Validity of the Proceedings of the National Legislature**

116. No court or other authority shall call into question the validity of any proceedings of the National Legislature or any of its Chambers on the basis of violation of its internal regulations. A certificate duly signed by the appropriate Speaker shall be deemed to be conclusive evidence of the validity of the said proceedings.

## CHAPTER II

### INTERIM PROVISIONS FOR THE

### NATIONAL LEGISLATURE

#### **Composition of National Legislature Prior to Elections**

- 117 (1) Pending elections, the National Assembly shall be composed of four hundred and fifty members who shall be appointed by the President of the Republic in consultation with the First Vice President, according to the seventy percent and thirty percent north/south ratio, as follows:-
- (a) The National Congress Party shall be represented by fifty two percent (forty nine percent for Northerners and three percent for Southerners),
  - (b) Sudan People's Liberation Movement shall be represented by twenty eight percent (twenty one percent for Southerners and seven percent for Northerners),
  - (c) Other Northern political forces shall be represented by fourteen percent,
  - (d) Other Southern political forces shall be represented by six percent.
- (2) Until the elections are held, the representatives of states at the Council of States and observers of Abyei Area shall be appointed by the President of the Republic after consultation within the Presidency and, in the case of Southern Sudan, on the recommendation of the President of Government of Southern Sudan after consultation with state institutions.

#### **Interim Provisions for Tenure of the National Legislature**

- 118 (1) Should the outcome of the referendum on self-determination confirm unity, the National Legislature shall complete its tenure in accordance with the provisions of this Constitution.
- (2) In the event of a vote for secession by the people of Southern Sudan, the seats of the members and representatives of Southern Sudan in the National Legislature shall be deemed to have fallen vacant and the National Legislature, being so reconstituted, shall complete its tenure to the next elections.

**PART FIVE**  
**THE NATIONAL JUDICIAL ORGANS**

**CHAPTER I**

**THE CONSTITUTIONAL COURT**

**Establishment of the Constitutional Court**

- 119 (1) There shall be established in accordance with the provisions of this Constitution a Constitutional Court of nine Justices of sufficient experience, proven competence, integrity, credibility and impartiality.
- (2) The Constitutional Court shall be independent of Legislature and Executive and separate from the National Judiciary; the law shall determine its rules of procedure and execution of its judgements.
- (3) Subject to Article 121 herein, the President and Justices of the Constitutional Court shall be appointed for a term of seven years, subject to renewal. Their emoluments shall be determined by law.
- (4) The Justices of the Constitutional Court shall perform their functions and apply the law without interference, fear or favour.

**Appointment of the President of the Constitutional Court and Vacancy of Office**

- 120 (1) The President of the Constitutional Court shall be appointed by the President of the Republic with the consent of the First Vice President, from justices approved according to Article 121(1) herein. He/she shall be answerable to the Presidency.
- (2) The office of the President of the Constitutional Court shall fall vacant upon death, resignation or removal.
- (3) The President of the Constitutional Court shall not be removed from office except for incapacity or conduct incompatible with his/her status and only upon a decision by the President of the Republic approved by two-thirds of all representatives at the Council of States.

## **Justices of the Constitutional Court**

- 121 (1) All Justices of the Constitutional Court shall be appointed by the President of the Republic in accordance with Article 58 (2) (c) herein and upon the recommendation of the National Judicial Service Commission and subject to approval by a two-thirds majority of all the representatives at the Council of States.
- (2) Southern Sudan shall be adequately represented in the Constitutional Court.
- (3) A Justice of the Constitutional Court may only be removed upon an order of the President of the Republic on the recommendation of the President of the Constitutional Court and approved by a two-thirds majority of the representatives of the Council of States.

## **Competence and Jurisdiction of the Constitutional Court**

- 122 (1) The Constitutional Court shall be the custodian of this Constitution, the constitutions of southern Sudan and the states; its decisions shall be final and binding, it shall:-
- (a) interpret constitutional provisions at the instance of the President of the Republic, the National Government, the Government of Southern Sudan, any state government, the National Assembly, or the Council of States,
  - (b) have original jurisdiction to decide disputes that arise under this Constitution and the constitutions of Northern states at the instance of government, juridical entities or individuals,
  - (c) decide on appeals against the decisions of Southern Sudan Supreme Court on the Interim Constitution of Southern Sudan and the constitutions of Southern Sudan states,
  - (d) protect human rights and fundamental freedoms,
  - (e) adjudicate on the constitutionality of laws or provisions in accordance with this Constitution, the Interim Constitution of Southern Sudan or the relevant state constitutions,
  - (f) adjudicate on constitutional disputes between levels and organs of government, in respect of areas of exclusive, concurrent or residual competence.



- (2) The Constitutional Court shall have criminal jurisdiction over the President of the Republic and the First Vice President in accordance with Article 60 (2) herein, it shall also have criminal jurisdiction over the Vice President, the Speakers of the National Legislature and the Justices of the National Supreme Court and Southern Sudan Supreme Court.

## **CHAPTER II**

### **THE NATIONAL JUDICIARY**

#### **The National Judicial Authority**

- 123 (1) The National judicial authority in the Republic of the Sudan shall be vested in the National Judiciary.
- (2) The National Judiciary shall be independent of the Legislature and the Executive, with the necessary financial and administrative independence.
- (3) The National Judiciary shall have judicial competence to adjudicate on disputes and render judgments in accordance with the law.
- (4) The Chief Justice of the Republic of the Sudan, who is the head of the National Judiciary and the President of the National Supreme Court, shall be answerable to the President of the Republic for the administration of the National Judiciary.
- (5) All organs and institutions of the State shall execute the judgments and orders of the courts.

#### **The Structures of the National Judiciary**

- 124 The National Judiciary shall be structured as follows:
  - (a) The National Supreme Court,
  - (b) National Courts of Appeal,
  - (c) Other national courts.

## **The National Supreme Court**

- 125 (1) The National Supreme Court shall:
- (a) be a court of cassation and review in respect of any criminal, civil and administrative matters arising out of, or under national laws, or personal matters,
  - (b) have criminal jurisdiction over the Justices of the Constitutional Court,
  - (c) review death sentences imposed by any court in respect to matters arising out of, or under national laws,
  - (d) have such other jurisdiction as determined by this Constitution and the law.
- (2) The Chief Justice of the Republic of the Sudan may establish panels for the purposes of considering and deciding on matters requiring special expertise, including commercial, personal or labour matters.

## **National Courts of Appeal**

- 126 The number, competences and procedures of National Courts of Appeal shall be determined by the law.

## **Other National Courts**

- 127 Other national courts shall be established by law as deemed necessary.

## **Independence of Justices and Judges**

- 128 (1) All Justices and Judges are independent in the performance of their duties and have full judicial competence with respect to their functions; and they shall not be influenced in their judgments.
- (2) Justices and Judges shall uphold the Constitution and the rule of law and shall administer justice diligently, impartially and without fear or favour.
- (3) Tenure of office of Justices and Judges shall not be affected by their judgements.

## **The National Judicial Service Commission**

- 129 (1) The President of the Republic, after consultation within the Presidency, shall establish a commission to be known as the National Judicial Service Commission to undertake the overall management of the National Judiciary; its composition and functions shall be prescribed by law in accordance with the provisions of the Comprehensive Peace Agreement.
- (2) The Chief Justice of the Republic of the Sudan, as the head of the National Judiciary, shall chair the National Judicial Service Commission.
- (3) The National Judicial Service Commission shall regulate the relations between judiciaries at the National, Southern Sudan and states level. In the case of Southern Sudan, the regulation shall be made in consultation with the President of the Supreme Court of Southern Sudan.

## **Appointment of Justices, Judges and their Terms and Conditions of Service**

- 130 (1) Having regard to competence, integrity and credibility, the Chief Justice of the Republic of the Sudan, his/her deputies, Justices and Judges shall be appointed by the President of the Republic in accordance with Article 58 (2) (c) herein, where applicable, and upon the recommendation of the National Judicial Service Commission.
- (2) The law shall determine the terms of service, discipline and immunities of Justices and Judges.
- (3) Southern Sudan shall be adequately represented in the National Supreme Court and other national courts that are situated in the National Capital.

## **Discipline of Justices and Judges**

- 131 (1) Discipline of Justices and Judges shall be exercised by the Chief Justice in accordance with the law.
- (2) Justices and Judges may only be removed by an order of the President of the Republic for gross misconduct, incompetence and incapacity in accordance with the law

and upon recommendation of the Chief Justice and with approval of the National Judicial Service Commission.

### **Appointment of Justices and Judges of Southern Sudan**

- 132 The President of Government of Southern Sudan shall, within one week after the adoption of the Interim Constitution of Southern Sudan, appoint, without prejudice to Article 130 (1) herein, the President and Justices of Southern Sudan Supreme Court, Judges of Courts of Appeal and other courts having regard to competence, integrity, credibility and impartiality as shall be determined by that Constitution and the law.

## **PART SIX**

### **PUBLIC ATTORNEYS AND ADVOCACY**

#### **Public Attorneys**

- 133 (1) The public attorneys and the State legal advisors shall be under the National Minister of Justice to advise the State, represent it in public prosecution, litigation and adjudication, and conduct pre-trial proceedings. They shall recommend law reform, strive to protect public and private rights, advise on legal matters and render legal aid.
- (2) The National Minister of Justice is the chief legal advisor of the National Government, he/she shall be the prosecuting authority at the national level and at the northern states and may perform any such other functions of legal character as may be prescribed by law.
- (3) The State legal advisors shall perform their duties faithfully and impartially according to this Constitution and the law.
- (4) Functions, immunities, emoluments, terms and conditions of service of the State legal advisors shall be prescribed by law.
- (5) In the interest of justice and effectiveness in the execution of their legal duties, the National Ministry of Justice and the Ministry of Legal Affairs and Constitutional Development of Southern Sudan shall co-ordinate, co-operate and assist each other in the fulfillment of their functions and may to this end, establish the necessary mechanisms and channels of implementation.

#### **Advocacy**

134. (1) Advocacy is an independent private profession and shall be regulated by law.
- (2) Advocacy shall promote, protect and advance the fundamental rights of citizens. Advocates shall serve to prevent injustice, defend the legal rights and interests of their clients, seek conciliation between adversaries and may render legal aid for the needy according to law.

## **PART SEVEN**

### **THE NATIONAL CIVIL SERVICE**

#### **Principles and Guidelines for the National Civil Service Employees**

##### **The National Civil Service**

- 135 (1) The National Civil Service shall consist of all employees at the national level of government who shall impartially carry out the functions assigned to them according to law.
- (2) The law shall determine terms and conditions of service, duties and rights of employees of the National Civil Service.

##### **Guidelines for Inclusiveness in the National Civil Service**

- 136 The National Civil Service, notably at the senior and middle-levels, shall be representative of the people of the Sudan; to ensure this, the following principles and guidelines shall be recognized and observed:-
- (a) imbalances and disadvantages in recruitment shall be redressed,
  - (b) merit is important and training is necessary,
  - (c) no level of government shall discriminate against any qualified Sudanese citizen on the basis of religion, ethnicity, region or gender,
  - (d) fair competition for jobs,
  - (e) application of affirmative action and job training to achieve targets for equitable representation within a specified time frame,
  - (f) creation of additional training opportunities for conflict-affected people.

##### **The National Civil Service Commission**

- 137 (1) A National Civil Service Commission shall be established and shall be composed of persons of proven competence, experience, integrity and impartiality.
- (2) The National Civil Service Commission shall advise the national government in the formulation and execution of

policies related to public service employment and employees.

- (3) The National Civil Service Commission shall address imbalances in the National Civil Service in order to create a sense of national belonging.

### **Interim Tasks of the National Civil Service Commission**

- 138 The National Civil Service Commission shall have the following tasks:-
- (a) formulation of policies for training and recruitment into the national civil service, targeting between twenty to thirty percent of the positions to be confirmed upon the outcome of the census referred to herein for people of Southern Sudan who qualify,
  - (b) ensuring that not less than twenty percent of the middle and upper level positions in the national civil service, including the positions of undersecretaries, are filled with qualified persons from Southern Sudan within the first three years of the Interim Period and achieving twenty five percent in five years and the final target figure referred to in sub-Article (a) above, within six years,
  - (c) reviewing, after the first three years of the Interim Period, the progress made in implementing the formulated policies and setting new goals and targets as necessary, taking into account the census results.

### **National Employees Justice Chamber**

- 139 (1) There shall be established by law a National Employees Justice Chamber and shall be composed of chairperson and members of proven competence, experience, integrity and impartiality.
- (2) The National Employees Justice Chamber shall, without prejudice to the right of resorting to courts, be competent to consider and determine grievances by national public service employees.
- (3) The supervision over the Chamber and appointment of its chairperson shall be made by the President of the Republic.

## **PART EIGHT**

### **INDEPENDENT NATIONAL INSTITUTIONS AND COMMISSIONS**

#### **The National Constitutional Review Commission**

- 140 (1) The National Constitutional Review Commission shall continue to perform its functions as prescribed by the Comprehensive Peace Agreement.
- (2) The Presidency may review the composition and functions of the National Constitutional Review Commission.

#### **National Elections Commission**

- 141 (1) There shall be established, within one month after the adoption of the National Elections Law, a National Elections Commission composed of nine independent, competent, non-partisan, impartial and representative personalities to be selected and appointed by the President of the Republic in accordance with Article 58 (2) (c) herein.
- (2) The National Elections Commission shall be the only body to assume the following functions:-
- (a) prepare the general electoral roll and pursue its annual revision,
  - (b) organize and supervise, in accordance with the law, the elections for the President of the Republic, the President of Government of Southern Sudan, Governors, the National Legislature, Southern Sudan Assembly and state legislatures in accordance with the law,
  - (c) organize and supervise any referendum in accordance with this Constitution without prejudice to Articles 183 (3) and 220 (2) herein,



- (d) perform any other relevant electoral functions as may be prescribed by law.
- (3) The National Elections Law shall specify general rules and procedures to govern elections as well as functions and terms and conditions of service of the National Elections Commission.

### **Human Rights Commission**

- 142 (1) The President of the Republic shall, after consultation within the Presidency, establish an independent Human Rights Commission consisting of fifteen independent, competent non-partisan and impartial members. Their appointment shall be representative. It shall be independent in decision making.
- (2) Representative of relevant government organs shall take part in the deliberations of the Commission in advisory capacity.
- (3) The Human Rights Commission shall monitor the application of the rights and freedoms provided for in the Bill of Rights and shall receive complaints on violations thereof.
- (4) The Human Rights Commission may express opinion or present advice to State organs on any issue related to human rights.
- (5) The law shall specify the functions, powers, procedures, terms and conditions of service of the Commission.

### **Public Grievances Chamber**

- 143 (1) There shall be established an independent body, to be known as the Public Grievances Chamber. Its chairperson and members shall be nominated by the President of the Republic from among persons of competence and integrity and approved by the National Assembly. The Chamber shall be responsible to the President of the Republic and the National Assembly.
- (2) Without prejudice to the finality of judgments, the Chamber shall consider complaints relating to grievances suffered by citizens in relation to State institutions. The Chamber shall consider grievances only after exhausting all means and stages of litigation by the complainant.

- (3) The Chamber shall make recommendations or propose remedies to the Presidency. The Chamber may on its own motion recommend to the Presidency or the National Assembly any measures it deems fit to ensure efficiency, justice or probity in the performance of the national governmental institutions in coordination with the various State organs.
- (4) The law shall regulate the functions, procedures, terms and conditions of service of the members and employees of the Chamber.

## **PART NINE**

# **ARMED FORCES, LAW ENFORCEMENT AGENCIES AND NATIONAL SECURITY**

## **CHAPTER I**

### **THE NATIONAL ARMED FORCES**

#### **Status of Forces**

- 144 (1) The Sudan Armed Forces and the Sudan People's Liberation Army shall remain separate, regular, professional and non-partisan armed forces and shall be treated equally as the Sudan National Armed Forces.
- (2) The mission of the Sudan National Armed Forces is to defend the sovereignty and secure the territorial integrity of the country and participate in its reconstruction and assist in addressing national disasters in accordance with this Constitution. The law shall stipulate the conditions in which the civil authority may resort to the engagement of the armed forces in missions of non-military nature.
- (3) The Sudan National Armed Forces and the Joint/Integrated Units shall defend the constitutional order, respect the rule of law, the civilian government, democracy, basic human rights and the will of the people; they shall undertake the responsibility of the defence of the country against external and internal threats in their respective areas of deployment and shall be involved in addressing constitutionally specified emergencies.
- (4) The military service, military courts and military legal services shall be regulated by law for the Sudan Armed Forces, the Sudan People's Liberation Army and the Joint/Integrated Units.

#### **Joint/ Integrated Units**

- 145 (1) There shall be formed Joint/Integrated Units consisting of equal numbers, from the Sudan Armed Forces and the Sudan People's Liberation Army. The Joint/Integrated Units shall constitute a nucleus of the post-referendum army of the

Sudan, should the result of the referendum confirm unity; otherwise they would be dissolved and the component parts integrated into their respective forces.

- (2) Character, functions, size and deployment of the Joint/Integrated Units shall be governed by the Comprehensive Peace Agreement.

### **Command and Control of Joint/Integrated Units and Coordination between the Armed Forces**

- 146 (1) The Joint Defence Board, that shall be established in accordance with the Comprehensive Peace Agreement, shall assume command and control of the Joint/Integrated Units.
- (2) Coordination between the Sudan Armed Forces and the Sudan People's Liberation Army shall be the function of the Joint Defence Board.

### **The Permanent Ceasefire**

- 147 (1) The permanent ceasefire, provided for in the Comprehensive Peace Agreement, shall be fully enforced.
- (2) The permanent ceasefire shall be internationally monitored and fully respected by all Sudanese.

## **CHAPTER II**

### **THE LAW ENFORCEMENT AGENCIES**

#### **The Police**

- 148 (1) The Police is a regular service force whose mission is to maintain law and order; its service shall be open to all Sudanese to reflect the diversity and multiplicity of the Sudanese society; it shall discharge its duties with impartiality and integrity in compliance with the law and the nationally and internationally accepted standards.
- (2) The Police shall be decentralized in accordance with the Comprehensive Peace Agreement as follows:
  - (a) The national level, the powers and functions of which shall be prescribed by law in accordance with this Constitution,

- (b) The southern Sudan level, the powers and functions of which shall be prescribed by the Interim Constitution of Southern Sudan and the law,
- (c) The state level, the powers and functions of which shall be prescribed by state constitution and the law,
- (3) The police at national, southern Sudan and state levels, shall co-ordinate, co-operate and assist each other in the discharge of their functions, and to that end, shall recommend, through their respective authorities to the Presidency the establishment of these necessary mechanisms.

### **Prisons and Wildlife Services**

- 149 (1) (a) There shall be established at the National, Southern Sudan and state levels, prison services whose functions, terms and conditions of service shall be prescribed by law,
- (b) Prisons are correctional and rehabilitative institutions; treatment that is cruel, inhuman, degrading of the prisoners' dignity, or that may expose their health to danger shall be prohibited and punishable by law.
- (2) Pursuant to Article 11(2) of this Constitution, there shall be established at the National, Southern Sudan and state levels, wildlife protection service whose functions and terms and conditions of services shall be prescribed by law.

## **CHAPTER III**

### **THE NATIONAL SECURITY**

#### **The National Security Council**

- 150 (1) There shall be at the national level a National Security Council, the composition and functions of which shall be determined by a National Security Act.
- (2) The National Security Council shall define the national security strategy based on the analysis of all threats to security of the Sudan.
- (3) There shall be established security committees at the Government of Southern Sudan and state levels; their

composition and functions shall be prescribed by the National Security Act.

### **The National Security Service**

- 151 (1) There shall be established a National Security Service that shall be charged with the external and internal security of the country; its mission, mandate, functions, terms and conditions of service shall be prescribed by the National Security Act.
- (2) The National Security Service shall be representative of the people of the Sudan; Southern Sudan shall, in particular, be equitably represented therein.
- (3) The National Security Service shall be professional and its mandate shall focus on information gathering, analysis and advice to the appropriate authorities.
- (4) There shall be established National Security Service offices throughout the Sudan.
- (5) The National Security Service shall be under the supervision of the Presidency.

## **PART TEN**

### **THE NATIONAL CAPITAL**

#### **The National Capital**

152 Khartoum shall be the National Capital of the Republic of the Sudan, and shall be a symbol of national unity that reflects the diversity of the country.

#### **Administration of the National Capital**

- 153 (1) The administration of the National Capital shall be representative. The parties signatory to the Comprehensive Peace Agreement shall be adequately represented therein.
- (2) The adequate representation shall be determined by the Presidency in consultation with the Governor of Khartoum.

#### **Respect for Human Rights in the National Capital**

154 Human rights and fundamental freedoms as specified in this Constitution, including respect for all religions, beliefs and customs, being of particular significance in the National Capital, which symbolizes national unity, shall be guaranteed and enforced in the National Capital.

#### **Law Enforcement Agencies in the National Capital**

155 Law enforcement agencies of the National Capital shall be representative of the population of the Sudan and shall be adequately trained and made sensitive to the cultural, religious and social diversity in the Sudan.

#### **Dispensing Justice in the National Capital**

- 156 Without prejudice to the competence of any national institution to promulgate laws, judges and law enforcement agencies shall, in dispensing justice and enforcing law in the National Capital, be guided by the following:-
- (a) tolerance shall be on the basis of peaceful coexistence between the Sudanese people of different cultures, religions and traditions,
  - (b) behaviour based on cultural practices and traditions, which does not disturb public order, is not disdainful of other

- traditions and not in violation of the law, shall be deemed in the eyes of the law as an exercise of personal freedoms,
- (c) personal privacy is inviolable and evidence obtained in violation of such privacy shall not be admissible in the court of law,
  - (d) the judicial discretion of courts to impose penalties on non-Muslims shall observe the long-established Sharia principle that non-Muslims are not subject to prescribed penalties and therefore remitted penalties shall apply according to law,
  - (e) leniency and granting the accused the benefit of the doubt are legal principles of universal application and required by the circumstances of the Sudan.

### **The Non-Muslims Rights Special Commission**

- 157 (1) The Presidency shall establish in the National Capital a special commission for the rights of Non-Muslims which shall have the following functions:-
- (a) to ensure that the rights of Non-Muslims are protected in accordance with the general principles provided for under Articles 154 and 156 of this Constitution,
  - (b) ensure that Non-Muslims are not adversely affected by the application of the Sharia law in the National Capital.
- (2) The special commission shall submit its observations and recommendations to the Presidency.

### **Mechanism for Guarantees**

- 158 A system shall be established to guarantee the implementation of Article 156 above, which includes:-
- (a) judicial circulars to guide the courts as to how to observe the foregoing principles,
  - (b) establishment of specialized courts to conduct trials in accordance with the principles referred to above,
  - (c) establishment of specialized public attorneys to conduct investigations and pre-trial proceedings in accordance with the principles referred to above.



# **PART ELEVEN**

## **GOVERNMENT OF SOUTHERN SUDAN**

### **CHAPTER I**

#### **Establishment of Government of Southern Sudan**

##### **Organs of the Government of Southern Sudan**

- 159 There shall be established in southern Sudan, as per its boundaries of January 1<sup>st</sup>, 1956, a government to be known as the Government of Southern Sudan which shall have legislative, executive and judicial organs.

##### **Interim Constitution of Southern Sudan**

- 160 (1) The Government of southern Sudan shall function in accordance with the Interim Constitution of Southern Sudan, which shall be drafted by an inclusive Drafting Committee and adopted by a transitional Southern Sudan Assembly by a two-thirds majority of all members. The Interim Constitution of Southern Sudan shall conform to this Constitution.
- (2) The Southern Sudan Assembly may amend the Interim Constitution of Southern Sudan by a two-thirds majority vote of all members.

##### **The Powers of the Government of Southern Sudan**

- 161 The powers of Government of Southern Sudan shall be as set forth in Schedules B and C, read together with Schedules E and F of this Constitution, the Interim Constitution of Southern Sudan, and the Comprehensive Peace Agreement.

##### **Primary Responsibilities of the Government of Southern Sudan**

- 162 The primary responsibilities of the Government of Southern Sudan shall be to promote good governance, development and justice, exercise authority in respect of southern Sudan and the states of southern Sudan, act as the link between the National Government and the states of southern Sudan and to ensure the protection of rights and interests of the people of southern Sudan.

## CHAPTER II

### THE EXECUTIVE OF SOUTHERN SUDAN

#### **The President of the Government of Southern Sudan**

- 163 (1) The President of the Government of Southern Sudan shall be elected directly by the people of southern Sudan, according to the Interim Constitution of Southern Sudan. Such elections shall be in accordance with the provisions set forth by the National Elections Commission.
- (2) The tenure of office of the President of the Government of Southern Sudan shall be five years commencing from the date of assumption of office; he/she may be re-elected for one additional term only.
- (2) Should the post of the President of the Government of Southern Sudan fall vacant, pending the elections within sixty days, and swearing in of the President elect, the functions of the President of the Government of Southern Sudan shall be assumed by the Vice President of the Government of Southern Sudan.

#### **The Vice President of the Government of Southern Sudan**

164. The Vice President of the Government of Southern Sudan shall be appointed in accordance with the provisions of the Interim Constitution of Southern Sudan.

#### **Southern Sudan Council of Ministers**

- 165 (1) There shall be established a Southern Sudan Council of Ministers to be appointed by the President of Government of Southern Sudan, in consultation with the Vice President and approved by Southern Sudan Assembly. The Government of Southern Sudan shall be established with due regard to the need for inclusiveness in recognition of ethnic, religious diversity and gender.
- (2) The President and Vice President of the Government of Southern Sudan shall be members of Southern Sudan Council of Ministers.

### **Accountability of Southern Sudan Council of Ministers**

- 166 Southern Sudan Council of Ministers shall be accountable to the President of the Government of Southern Sudan and the Southern Sudan Assembly, in the performance of its functions, and may be removed by a motion supported by a two-thirds of all members of the Southern Sudan Assembly.

### **Special Obligations of the Government of Southern Sudan**

- 167 The Government of Southern Sudan shall discharge its duties and exercise its powers as set forth in this Constitution, the Interim Constitution of Southern Sudan, the Comprehensive Peace Agreement and any other agreement relating to the development and reconstruction of Southern Sudan.

### **Southern Sudan Independent Institutions and Commissions**

- 168 (1) The Government of Southern Sudan shall establish such independent institutions as provided for by the Comprehensive Peace Agreement, this Constitution and the Interim Constitution of Southern Sudan. It shall be empowered to establish such other commissions and institutions compatible with its powers as it deems necessary to promote the welfare of its people, good governance and justice.
- (2) Without prejudice to the generality of sub-Article (1) above, there shall be established at Southern Sudan level, a Southern Sudan Civil Service Commission, Public Grievances and Restitution Board and Employees Justice Chamber; their functions and terms of service shall be regulated by law.

## **CHAPTER III**

### **THE LEGISLATURE OF SOUTHERN SUDAN**

#### **Establishment of Southern Sudan Legislative Assembly**

- 169 (1) There shall be established the Southern Sudan Legislative Assembly in accordance with the Interim Constitution of Southern Sudan.
- (2) Prior to elections, there shall be constituted, in accordance with Article 176 (4) herein, a transitional Southern Sudan

Legislative Assembly to adopt the Interim Constitution of Southern Sudan; it shall thereafter be reconstituted into the Southern Sudan Legislative Assembly.

### **Assignment of Powers to the Government of Southern Sudan**

- 170 When enacting the Interim Constitution of Southern Sudan, the transitional Southern Sudan Legislative Assembly shall assign to the Government of Southern Sudan such powers as set forth in Schedules B and D, read together with Schedules E and F herein.

### **Powers of Southern Sudan Assembly**

- 171 (1) Apart from applicable national legislation on matters that fall within the sole authority of the National Government as set forth in Schedule (A), legislative authority in Southern Sudan shall be vested in Southern Sudan Legislative Assembly.
- (2) The Southern Sudan Legislative Assembly shall determine its rules of procedure, elect its Speaker, Deputy Speaker and other officers as shall be provided for by the Interim Constitution of Southern Sudan.

## **CHAPTER IV THE JUDICIARY OF SOUTHERN SUDAN**

### **The Structure of the Judiciary of Southern Sudan**

- 172 (1) Judicial competence in southern Sudan shall be vested in an independent institution to be known as the Judiciary of Southern Sudan.
- (2) The Judiciary of southern Sudan shall be independent of the executive and the legislature.
- (3) The Judiciary of Southern Sudan shall be structured as follows:-
- (a) The Supreme Court of Southern Sudan,
  - (b) Courts of Appeal,
  - (c) Other courts or tribunals as deemed necessary to be established in accordance with the Interim Constitution of Southern Sudan and the law.

### **The Supreme Court of Southern Sudan**

- 173 (1) The Interim Constitution of Southern Sudan shall provide for the establishment of the Supreme Court of Southern Sudan which shall be the highest judicial institution in Southern Sudan.
- (2) Appeals may be submitted from Southern Sudan courts, state courts or other courts to the Supreme Court of Southern Sudan on matters brought under or relating to national, Southern Sudan and state laws as may be determined by the Interim Constitution of Southern Sudan and the law.

### **Competences of the Supreme Court of Southern Sudan**

- 174 The Supreme Court of Southern Sudan shall:-
- (a) be the court of final judicial instance in respect of any litigation or prosecution under Southern Sudan or state law, including statutory and customary law, save that any decisions arising under national laws shall be subject to review and decision by the National Supreme Court,
  - (b) have original jurisdiction to decide on disputes that arise under the Interim Constitution of Southern Sudan and the Constitutions of Southern Sudan states at the instance of individuals, juridical entities or government,
  - (c) adjudicate on the constitutionality of laws and set aside or strike down laws or provisions of laws that contradict the Interim Constitution of Southern Sudan or the constitutions of Southern Sudan states,
  - (d) be a court of review and cassation in respect of any criminal or civil matter arising out of or under Southern Sudan laws,
  - (e) have criminal jurisdiction over the President and Vice President of the Government of Southern Sudan and the Speaker of Southern Sudan Legislative Assembly,
  - (f) review death sentences imposed by Southern Sudan courts in respect of matters arising out of or under Southern Sudan laws,
  - (g) have such other jurisdiction as shall be determined by the Interim Constitution of Southern Sudan, the Comprehensive Peace Agreement or the law.

## **Justices and Judges of Southern Sudan**

- 175 (1) Justices and Judges of Southern Sudan are independent and shall perform their functions without interference, administer justice and apply the law without fear or favour. The provisions of the Interim Constitution of Southern Sudan and the law shall protect their independence.
- (2) Southern Sudan Legislative Assembly shall provide for appointments, terms and conditions of service and dismissal of Southern Sudan appointed Justices and Judges.

## **CHAPTER V**

### **INTERIM PROVISIONS FOR SOUTHERN SUDAN**

- 176 Prior to elections the following arrangements shall apply:-
- (1) The Chairman of the Sudan People's Liberation Movement, or his successor, shall be the President of Government of Southern Sudan and Commander-in-Chief of the Sudan People's Liberation Army.
- (2) Should the office of the President of Government of Southern Sudan fall vacant, notwithstanding Article 163 (3) above, the office shall be filled, within two weeks, by the nominee of the Sudan People's Liberation Movement.
- (3) Representation in the Government of Southern Sudan shall be as follows:-
- (a) the Sudan People's Liberation Movement shall be represented by seventy percent,
  - (b) the National Congress Party shall be represented by fifteen percent,
  - (c) the other Southern Sudan political forces shall be represented by fifteen percent.
- (4) The transitional Southern Sudan Assembly shall be an inclusive Constituent Legislature composed of one hundred and seventy members appointed by the President of the Government of Southern Sudan after broad consultation with the relevant political forces in accordance with the following:-
- (a) seventy percent representing the Sudan People's Liberation Movement,

- (b) fifteen percent representing the National Congress Party,
- (c) fifteen percent representing the other southern Sudan political forces.

## **PART TWELVE**

### **THE STATES AND ABYEI AREA**

#### **States of the Sudan**

- 177 (1) The Republic of the Sudan shall be decentralized and composed of states.
- (2) The National Legislation shall determine the number of states as well as their names, capitals and geographical boundaries; provided that such legislation shall be issued and amended in accordance with the provisions of Article 91 (4) (a) herein. However, the January 1<sup>st</sup>, 1956 boundary between the North and the South shall be inviolable subject to Article 183 (4) of this Constitution.

#### **State Organs**

- 178 (1) There shall be legislative, executive and judicial organs at state level which shall function in accordance with this Constitution, the relevant state constitution and, in respect of the states of Southern Sudan, also in accordance with the Interim Constitution of Southern Sudan.
- (2) The state shall promote and empower local government. Organization of the local government and elections to its respective institutions shall be conducted in accordance with the relevant state constitution.

#### **State Executive**

- 179 (1) The state executive shall be headed by a Governor elected by the people in the state, in compliance with the procedures prescribed by the National Elections Commission and in accordance with this Constitution, the Interim Constitution of Southern Sudan where applicable, the relevant state constitution and the law.
- (2) (a) The state legislature may, in accordance with the state constitution, pass, by three quarters majority of all its members, a vote of no confidence in the Governor,
- (b) Should the state legislature pass a vote of no confidence as stated in sub-Article (a) above, the President of the Republic shall call the state electorate for snap elections of the Governor to be conducted



- within sixty days. If the concerned state is a Southern Sudan state, the President of the Republic shall act upon a request that shall be made by the President of the Government of Southern Sudan,
- (c) The Governor elected in the snap elections shall serve for the remainder of the original tenure,
  - (d) Should the Governor who was subjected to the vote of no-confidence be re-elected, the state legislature shall be deemed to have been dissolved. A new state legislature shall be elected within three months to complete the tenure of the dissolved legislature,
  - (e) A vote of no-confidence in the Governor shall not be passed before he/she spends twelve months in office.
- (3) The state council of ministers shall be appointed by the Governor in accordance with the state constitution.
  - (4) The state ministers shall be individually and collectively accountable to the Governor and the state legislature in the performance of their functions; a state minister shall be removed by the Governor or on a motion supported by two-thirds of all the members of the state legislature.
  - (5) The Governor shall, together with the state council of ministers appointed by him, exercise the executive powers of the state which shall be in respect of the functional areas in Schedules C and D read together with Schedules E and F herein and such other executive competences as are conferred upon the state by this Constitution, the Interim Constitution of Southern Sudan and the state constitution.

### **State Legislature**

- 180 (1) The state shall have a state legislature composed of members elected in accordance with the state constitution and the law and as set forth by the National Elections Commission.
- (2) The state legislature shall prepare and adopt the state interim constitution provided that it shall be in conformity with this Constitution, the Interim Constitution of Southern Sudan where applicable and the Comprehensive Peace Agreement.

- (3) The state legislature shall have law-making competence in respect of the functional areas listed in Schedules C and D read together with Schedules E and F herein.
- (4) The state legislature shall decide its own rules of procedure, appoint its committees and elect its speaker and other officers.
- (5) Governors and members of state councils of ministers and legislatures shall have immunities as are provided for by law.

### **State Judiciary**

- 181
- (1) The state constitution shall provide for the establishment of such state courts by the state judiciary as necessary.
  - (2) State courts shall have civil and criminal jurisdiction in respect of state, Southern Sudan, and national laws, save that a right of appeal shall lie as provided in this Constitution, the Interim Constitution of Southern Sudan whenever applicable, however, national legislation shall determine the civil and criminal procedures in respect of litigation or prosecution under National laws in accordance with this Constitution.
  - (3) State legislations shall provide for:-
    - (a) the appointment and dismissal of lay magistrates,
    - (b) guarantees for the independence and impartiality of state judiciary and ensure that Judges are not subjected to any interference.
  - (4) The structures and powers of the courts of the states of Southern Sudan shall be subject to the provisions of this Constitution and the Interim Constitution of Southern Sudan and the constitution of the state concerned.

### **Southern Kordofan and Blue Nile States**

- 182
- (1) Without prejudice to any of the provisions of this Constitution, the Agreement on the Resolution of the Conflict in Southern Kordofan and Blue Nile States, shall apply with respect to those two states.
  - (2) Agreement on the Resolution of the Conflict in Southern Kordofan and Blue Nile States shall be subject to popular consultation by the people of the two states through their

respective democratically elected legislatures in accordance with the provisions stated therein.

### **Abyei Area**

- 183 (1) Without prejudice to any of the provisions of this Constitution and the Comprehensive Peace Agreement, the Protocol on the Resolution of the Conflict in Abyei Area shall apply with respect to Abyei Area.
- (2) Abyei Area shall be accorded special administrative status under the Presidency, in which residents of Abyei Area shall be citizens of both Southern Kordofan and Bahr el Ghazal.
- (3) Simultaneously with the referendum for southern Sudan, the residents of Abyei Area shall vote in a separate referendum, which shall present the residents of Abyei Area, irrespective of the results of the Southern Sudan Referendum, with the following choices:-
- (a) that Abyei Area retain its special administrative status in the north,
- (b) that Abyei Area be part of Bahr el Ghazal.
- (4) The January 1<sup>st</sup>, 1956 line between the north and the south shall be inviolable, except as agreed in sub-Article (3) above.

### **Interim Provisions for States**

- 184 (1) Pending the elections referred to in Article 216 herein:
- (a) Governors shall be appointed by the President of the Republic in consultation with the First Vice President. In the case of Southern Sudan, the President of Government of Southern Sudan in consultation with Vice President of Government of Southern Sudan,
- (b) The Governor of one Southern Sudan state shall be a nominee of the National Congress Party and one Deputy Governor in a different Southern Sudan state shall also be a nominee of the National Congress Party.
- (2) Without prejudice to the provisions of sub-Article (3) below, seats of the legislatures and executives of the states shall be allocated as follows:-
- (a) The National Congress Party shall have seventy percent of the seats in the Northern states, and the Sudan People's Liberation Movement shall have

- seventy percent of the seats in the Southern Sudan states,
- (b) The remaining thirty percent of the seats in the Northern and Southern Sudan states shall be allocated as follows:-
    - (i) ten percent of the seats in Southern Sudan states to be filled by the National Congress Party,
    - (ii) ten percent of the seats in the Northern Sudan states to be filled by the Sudan People's Liberation Movement,
    - (iii) twenty percent of the seats in Northern and Southern Sudan states to be filled by representatives of other Northern and Southern Sudan political forces, respectively.
- (3) Seats of the legislatures and executives of Southern Kordofan and Blue Nile states shall be allocated in accordance with the Agreement on the Resolution of Conflict in Southern Kordofan and Blue Nile states.

# **PART THIRTEEN**

## **FINANCE AND ECONOMIC MATTERS**

### **CHAPTER I**

#### **Guiding Principles for Equitable Sharing of Resources and Common Wealth**

- 185 (1) Resources and common wealth of the Sudan shall be shared equitably to enable each level of government to discharge its legal and constitutional responsibilities and duties and to ensure that the quality of life, dignity and living conditions of all citizens are promoted without discrimination on grounds of gender, race, religion, political affiliation, ethnicity, language or region.
- (2) The sharing and allocation of the resources and common wealth of the Sudan shall be based on the premise that all parts of the country are entitled to development.
- (3) The National Government shall fulfil its obligations to provide financial transfers to the Government of Southern Sudan, and shall, except as otherwise provided herein, apportion revenues equitably among other states;
- (4) The State recognizes that Southern Sudan, Southern Kordofan, Blue Nile, Abyei Area and other conflict affected areas face serious needs; they shall be enabled to perform basic government functions, establish civil administration, rehabilitate and reconstruct the social and physical infrastructure in a post-conflict Sudan.
- (5) There shall be established a National Reconstruction and Development Fund and a Southern Sudan Reconstruction and Development Fund to bring up Southern Sudan, other conflict affected areas and the least developed areas to the national average level of socio-economic and public services standards.
- (6) Revenue sharing shall reflect a commitment to devolution of powers and decentralisation of decision-making in regard to development, service delivery and governance.
- (7) The development of infrastructure, human resources, sustainable economic growth and the capacity to meet human needs shall be conducted within a framework of transparent and accountable governance.

- (8) The best known practices in the sustainable utilization and management of natural resources shall be adopted by the State.
- (9) This Constitution sets out the various types of income, revenue, taxes and other sources of wealth to which the respective levels of government are entitled.
- (10) All taxes and duties set out in this Constitution shall be regulated by law to ensure coordination, fairness, equity, transparency and to avoid excessive tax burden on the citizens, private sector and investors.
- (11) No level of government shall withhold any allocation or financial transfers due to any other level of government. In case of dispute, any level of government, after attempting amicable solution, may initiate proceedings in the Constitutional Court and before Southern Sudan Supreme Court in the case of governments in Southern Sudan.

## **CHAPTER II**

### **LAND RESOURCES**

#### **Land Regulation**

- 186 (1) The regulation of land tenure, usage and exercise of rights thereon shall be a concurrent competence, exercised at the appropriate level of government.
- (2) Rights in land owned by the Government of the Sudan shall be exercised through the appropriate or designated level of Government.
- (3) All levels of government shall institute a process to progressively develop and amend the relevant laws to incorporate customary laws, practices, local heritage and international trends and practices.

#### **National Land Commission**

- 187 (1) Without prejudice to the jurisdiction of the courts, there shall be established a National Land Commission that shall have the following functions:-
- (a) arbitrate between willing contending parties on claims over land,

- (b) entertain claims, at its discretion, in respect of land, be they against the relevant government or other parties interested in the land. The parties to the arbitration shall be bound by the decision of the Commission on the basis of mutual consent and upon registration of the award in a court of law,
  - (c) enforce the law applicable to the locality where the land is situated or such other law as the parties to the arbitration agree, including principles of equity,
  - (d) accept references on request from the relevant government or in the process of resolving claims, make recommendations to the appropriate level of government concerning land reform policies and recognition of customary rights or customary land law,
  - (e) assess appropriate land compensation including but not limited to monetary compensation, for applicants in the course of arbitration or in the course of a reference from a court,
  - (f) advise different levels of government on how to coordinate policies on national projects affecting land or land rights,
  - (g) study and record land use practices in areas where natural resource development occurs,
  - (h) conduct hearings and formulate its own rules of procedure,
- (2) The National Land Commission shall be independent and representative of all levels of government.
  - (3) Membership, appointment, terms and conditions of service of the National Land Commission shall regulated by law. The Chairperson of the National Land Commission shall be appointed by the President of the Republic with the consent of the First Vice President.
  - (4) The National Land Commission shall be accountable to the Presidency which shall approve the budget of the Commission.

### **Southern Sudan Land Commission**

188 In accordance with this Constitution and without prejudice to the jurisdiction of the courts, there shall be established a Southern

Sudan Land Commission which shall have the functions specified in the Comprehensive Peace Agreement and the Interim Constitution of Southern Sudan.

### **Cooperation between National and Southern Sudan Land Commissions**

- 189 (1) The National Land Commission and Southern Sudan Land Commission shall co-operate and co-ordinate their activities so as to use their resources efficiently.
- (2) The National Land Commission and the Southern Sudan Land Commission shall agree:-
- (a) to exchange information and decisions of each other,
  - (b) on how to resolve conflict between their findings or recommendations.
- (3) The Southern Sudan Land Commission may carry out certain functions of the National Land Commission, including collection of data and research.
- (4) In the case of conflict between the findings or recommendations of the National Land Commission and Southern Sudan Land Commission which cannot be resolved or reconciled by agreement pursuant to sub-Article (2) (b ) above, the matter shall be referred to the Constitutional Court.

## **CHAPTER III**

### **DEVELOPMENT AND MANAGEMENT OF THE PETROLEUM SECTOR**

#### **The Framework for Petroleum Management**

- 190 The basis for a definitive framework for the management and development of the petroleum sector shall include:-
- (a) sustainable utilization of oil as a non-renewable natural resource consistent with:-
- (i) the national interest and the public good,
  - (ii) the interest of the affected states,
  - (iii) the interest of the local population in affected areas,
  - (iv) national environmental policies, biodiversity conservation guidelines and cultural heritage protection principles,



- (b) empowerment of the appropriate levels of government to develop and manage, in consultation with the relevant communities, the various stages of oil production within the overall framework for the management of petroleum development,
- (c) give due attention to enabling policy environment for the flow of foreign direct investment by reducing risks associated with uncertainties regarding the outcome of the referendum on self-determination at the end of the Interim Period,
- (d) persons enjoying rights in land, shall be consulted and their views shall duly be taken into account in respect of decisions to develop subterranean natural resources from the area in which they have rights. They shall share in the benefits of that development,
- (e) persons enjoying rights in land are entitled to equitable compensation on just terms arising from acquisition or development of land for the extraction of subterranean natural resources from the area in respect of which they have rights,
- (f) the communities in whose areas development of subterranean natural resources occurs have the right to participate, through their respective states, in the negotiation of contracts for the development of those resources,
- (g) regardless of the contention over the ownership of land and associated natural resources, there shall be a framework for the regulation and management of petroleum development in the Sudan during the Interim Period.

### **National Petroleum Commission**

- 191 (1) An independent National Petroleum Commission shall be established and its decision shall be by consensus.
- (2) The National Petroleum Commission shall be constituted as follows:-
- (a) the President of the Republic and President of Government of Southern Sudan as co-chairs,
  - (b) four permanent members representing the National Government,

- (c) four permanent members representing the Government of Southern Sudan,
  - (d) not more than three non-permanent members representing oil producing state or states in which petroleum development is being considered.
- (3) The National Petroleum Commission shall have the following functions:-
- (a) formulate public policies and guidelines in relation to the development and management of the petroleum sector,
  - (b) monitor and assess the implementation of the policies mentioned in (a) above to ensure that they work in the best interests of the people of Sudan,
  - (c) develop strategies and programs for the petroleum sector,
  - (d) negotiate and approve all oil contracts for the exploration and development of oil in the Sudan, and ensure that they are consistent with its principles, policies and guidelines,
  - (e) develop its internal regulations and procedures.
- (4) In performing the functions referred to in sub-Article (3) above, the National Petroleum Commission shall take into account relevant considerations, including the following:-
- (a) the extent to which the contract provides benefits to local communities affected by the development,
  - (b) the extent to which the views of the state and the affected groups are incorporated in the proposed contracts,
  - (c) if the National Petroleum Commission decides to approve the contract, persons holding rights in land who are aggrieved by the decision shall seek relief through arbitration or in a court of law,
  - (d) if the non-permanent members of the National Petroleum Commission representing the oil producing state or states collectively disagree with the decision of the National Petroleum Commission to approve the contract related to their state/states, the National Minister in charge of petroleum shall not sign the contract and shall refer the matter to the Council of States. If the Council of States rejects the objection by two-thirds majority, the National Minister in charge of petroleum shall sign the contract. If the Council of

States does not reject the objection by two-thirds majority within twenty four (24) sitting days of receiving it, the Council of States shall remit the objection within that period to a mechanism established by it with two-thirds majority to arbitrate on the objection. The arbitration decision shall be made within six calendar months of referral to arbitration. The arbitration decision shall be final and binding,

- (e) if the National Petroleum Commission approves the contract, the National Minister responsible of Petroleum shall sign the contract on behalf of the Government of the Sudan,
- (f) in performing functions (a), (b) and (c) of sub-Article (3) above, the National Petroleum Commission shall include only its permanent members,
- (g) in performing function (d) of sub-Article (3) above, the National Petroleum Commission shall include, in addition to its permanent members, representatives of oil producing state or states in which contracts for the exploration and development of the petroleum are being negotiated and considered for approval.

### **Sharing Oil Revenue**

- 192 (1) The framework for sharing wealth from the extraction of natural resources, emanating from Southern Sudan shall balance the needs for national development and reconstruction of Southern Sudan.
- (2) Net revenue from oil shall be the sum of the net revenue:-
    - (a) from exports of government oil, and
    - (b) from deliveries of government oil to the local refineries.
  - (3) Exports shall be valued at the actual Free on Board export prices less the charges to deliver the oil to any export destination including pipeline and management charges. Oil delivered to the local refinery shall be valued at the average Free on Board export prices during the last calendar month in which there was an export sale less the charges that would have been incurred to deliver the oil to any export destination including pipeline and management charges.
  - (4) An Oil Revenue Stabilization Account shall be established from government oil net revenue derived from actual export sales above an agreed benchmark price. The benchmark

price will be established annually as part of the national budget.

- (5) At least two percent of oil revenue shall be allocated to the oil producing states in proportion to output produced in the state, without prejudice to the special arrangements of Abyei Area.
- (6) After the payment to the Oil Revenue Stabilization Account and to the oil producing states, fifty percent of net oil revenue derived from oil producing wells in Southern Sudan shall be allocated to the Government of Southern Sudan as of the beginning of the pre-interim period and the remaining fifty percent to the National Government and states in Northern Sudan.
- (7) A Future Generation Fund shall be established once national oil production reaches one million barrels per day.
- (8) All funds and special accounts referred to in this Constitution and future accounts shall be on-budget operations in accordance with the public budget.

## **CHAPTER IV**

### **SOURCES OF REVENUE**

#### **Sources of National Revenue**

193 The National Government may legislate for raising revenue or collecting taxes from the following sources:-

- (a) national personal income tax,
- (b) corporate or business profit tax,
- (c) custom duties and import taxes,
- (d) sea-ports and airports revenue,
- (e) service charges,
- (f) oil revenues,
- (g) national government enterprises and projects,
- (h) grants and foreign financial assistance,
- (i) value added tax or general sales tax or other retail taxes on goods and services,
- (j) excise duties,
- (k) loans, including borrowing from the Central Bank of Sudan and the public,
- (l) any other tax as determined by law.

### **Sources of Southern Sudan Revenue**

- 194 The Government of Southern Sudan may legislate for raising revenue or collecting taxes from the following sources:-
- (a) the national revenue allocation to the Government of Southern Sudan and states from the National Revenue Fund as set out in Article 197 of this Constitution,
  - (b) revenue from any of the sources listed as state revenue sources referred to in Article 195 of this Constitution,
  - (c) oil revenues as set out in Article 192 of this Constitution,
  - (d) taxes of Southern Sudan Government, which do not encroach on the exclusive National Government taxing powers,
  - (e) service charges of Government of Southern Sudan,
  - (f) enterprises and projects of Government of Southern Sudan,
  - (g) grants-in-aid and foreign financial assistance,
  - (h) taxes and levies on small and medium businesses,
  - (i) excise duties on goods within Southern Sudan deemed to be luxury consumables,
  - (j) personal income tax of southern Sudan,
  - (k) loans and borrowing in accordance with Article 203 of this Constitution,
  - (l) any other taxes as may be determined by law.

### **Sources of States Revenue**

- 195 The states may legislate for raising revenue or collecting taxes from the following sources:-
- (a) state land and property tax and royalties,
  - (b) service charges for state services,
  - (c) licences,
  - (d) state personal income tax,
  - (e) levies on tourism,
  - (f) state share of oil revenue as is set out in Article 192(4) of this Constitution,
  - (g) state government projects and national parks,
  - (h) stamp duties,
  - (i) agricultural taxes,
  - (j) grants-in-aid and foreign aid,
  - (k) excise duties,
  - (l) border trade charges or levies in accordance with national legislation,

- (m) other state taxes, which do not encroach on National or Southern Sudan Government taxes,
- (n) loans and borrowing in accordance with Article 203 of this Constitution,
- (o) any other tax as may be determined by law.

### **Southern Sudan Non-oil Revenue Allocation**

- 196 (1) Notwithstanding the provisions of Articles 192, 193 and 194 herein, the National Government shall allocate fifty per cent of the national non-oil revenue collected in Southern Sudan, as provided for under Article 193 above, to the Government of Southern Sudan to partially meet the development costs during the interim period. This arrangement shall be reviewed, during the mid-term review, with the view to National Government allocating additional resources to the Government of Southern Sudan if need arises.
- (2) The Government of Southern Sudan and states shall retain and dispose of such other income raised and collected under their own taxing powers.

## **CHAPTER V**

### **FISCAL AND FINANCIAL MECHANISMS**

#### **National Revenue Fund**

- 197 (1) All revenues collected nationally for or by the National Government shall be pooled in a National Revenue Fund administered by the National Treasury. Such Fund shall embrace all accounts and sub-funds, into which monies due to the Government are collected, reported or deposited.
- (2) All the revenues and expenditures of the Government shall be on-budget operations and made public.

#### **Fiscal and Financial Allocation and Monitoring Commission**

- 198 (1) A Fiscal and Financial Allocation and Monitoring Commission shall be established, to ensure transparency and fairness both in regard to the allocation of nationally collected funds to the Government of Southern Sudan and the states.

- (2) The Fiscal and Financial Allocation and Monitoring Commission shall undertake the following duties and responsibilities:-
  - (a) monitor and ensure that equalization grants from the National Revenue Fund are promptly transferred to respective levels of government,
  - (b) guarantee appropriate utilization and sharing of financial resources,
  - (c) ensure that revenues allocated to conflict affected areas are transferred in accordance with agreed formulae,
  - (d) safeguard transparency and fairness in the allocation of funds to the Government of Southern Sudan and the states according to established ratios or percentages stipulated in this Constitution.
- (3) The Fiscal and Financial Allocation and Monitoring Commission shall be composed of representatives from the National Government and the Government of Southern Sudan and the states as follows:-
  - (a) three representatives of the national government,
  - (b) three representatives of Government of Southern Sudan,
  - (c) all finance ministers in all states of the Sudan.
- (4) The Chairperson of the Fiscal and Financial Allocation and Monitoring Commission shall be appointed by the President of the Republic with the consent of the First Vice President.
- (5) The Fiscal and Financial Allocation and Monitoring Commission shall set its rules and procedures, which shall be approved by the Presidency.
- (6) The Fiscal and Financial Allocation and Monitoring Commission shall quarterly report to the Presidency about its analysis and findings, confirming that nationally collected funds are allocated according to sub-Article (2) above, without prejudice to Article 185 (10) of this Constitution, the Presidency shall take appropriate remedial action in case of failure by the National Treasury to discharge any of the functions stipulated in that Article.

### **National Reconstruction and Development Fund**

- 199 There shall be established by the National Treasury, a National Reconstruction and Development Fund having the mission of developing the conflict affected areas and the least developed areas of Northern Sudan. It shall be managed by a committee with appropriate representation from such areas and a member of the Southern Sudan Ministry of Finance. A report on the income and expenditure for the projects supported by the Fund shall be tabled before the National Assembly and the Council of States.

### **Southern Sudan Reconstruction and Development Fund**

- 200 (1) There shall be established a Southern Sudan Reconstruction and Development Fund to solicit, raise and collect funds from domestic and international donors and disburse such funds for the reconstruction, rehabilitation and construction of the infrastructure of Southern Sudan, for the resettlement and reintegration of internally and externally displaced persons, and to address past imbalances in regional development and infrastructure.
- (2) A monitoring and evaluation system shall be established to ensure accountability, transparency, efficiency, equity and fairness in the utilization of resources.
- (3) The Government of Southern Sudan shall be responsible for expenditure from the fund and shall be entitled to raise additional funds by way of donation from foreign States, multilateral organizations or other bodies for the purposes of the reconstruction and development of Southern Sudan states. The Fund shall be transparently administered and professionally managed subject to an oversight by Southern Sudan Assembly and a committee appointed by the Government of Southern Sudan but having on it a representative of the National Ministry of Finance and of the National Audit Chamber.



## CHAPTER VI

### BANKING

#### The Dual Banking System

- 201 (1) The Central Bank of Sudan shall be responsible for the formulation and conduct of monetary policy. All banking institutions shall be subject to rules and regulations set by the Central Bank of Sudan.
- (2) A dual banking system shall be established, and shall consist of an Islamic banking system that shall operate in Northern Sudan and a conventional banking system to operate in southern Sudan.
- (3) There shall be established the Bank of Southern Sudan as a branch of the Central Bank of Sudan to provide, *inter alia*, conventional banking services.

#### Restructuring and Management of the Central Bank of Sudan

- 202 (1) The Central Bank of Sudan shall be restructured so as to reflect the duality of the banking system in the Sudan. The Central Bank of Sudan shall use and develop two sets of banking instruments, one Islamic and the other Conventional, to regulate and supervise the implementation of a single monetary policy through:-
- (a) an Islamic financing window in Northern Sudan under a Deputy Governor of the Central Bank of Sudan using Islamic financing instruments to implement the national monetary policy in Northern Sudan, and
- (b) the Bank of Southern Sudan, headed by a Deputy Governor of the Central Bank of Sudan, to manage the conventional window using conventional financing instruments in implementing the same national monetary policy in southern Sudan.
- (2) The primary responsibility and mandate of the Central Bank of Sudan shall be ensuring price stability, maintaining stable exchange rate, sound banking system and issuance of currency. The monetary policy shall rely primarily on market-based instruments instead of administrative allocation of credit.

- (3) The Central Bank of Sudan shall be fully independent in its pursuit of monetary policy.
- (4) There shall be established an independent Board of Directors for the Central Bank of Sudan, which shall be responsible to the Presidency. It shall consist of nine members as follows:-
  - (a) Governor of the Central Bank of Sudan, Chairperson,
  - (b) two Deputies, and
  - (c) six highly qualified Sudanese to be appointed by the President of the Republic in accordance with Article 58 (2) (c) herein.
- (5) Decisions of Board of Directors on matters that may affect adversely the interests of the clientele of either banking window shall be by consensus.
- (6) The Governor of the Central Bank of Sudan and his/her two Deputies shall be appointed by the President of the Republic in accordance with Article 58 (2) (c) herein. The Governor of the Central Bank of Sudan shall appoint, in consultation with the Board of Directors and his/her two Deputies, other senior officers within the Central Bank of Sudan.
- (7) The Bank of Southern Sudan shall be responsible for chartering and supervising financial institutions in southern Sudan.
- (8) All financial institutions shall be subject to internationally recognized regulatory and prudential standards for Islamic and conventional finance, as set by the Central Bank of Sudan.
- (9) All financial institutions shall be bound to implement monetary policies set by the Central Bank of Sudan.

### **Government Borrowing**

- 203 (1) The Government of Southern Sudan and the states may borrow money. Neither the National Government nor the Central Bank of Sudan shall be required or expected to guarantee borrowing by sub-national levels of government.
- (2) The Government of Southern Sudan and all sub-national levels of government shall report financial and fiscal data to the relevant National Government bodies for statistical purposes.

- (3) The Government of Southern Sudan and the states may borrow money from foreign sources based on their respective credit worthiness.
- (4) Foreign borrowing by all sub-national levels of government shall be in a manner that does not undermine national macroeconomic policies and shall be consistent with the objective of maintaining external financial viability. All foreign borrowing transactions of sub-national levels of government shall conform to the Central Bank of Sudan specifications.

## **CHAPTER VII**

### **ACCOUNTING STANDARDS**

#### **Accounting Procedures, Standards and Fiscal Accountability**

- 204(1) All levels of government shall comply with generally accepted accounting procedures, standards and fiscal accountability to ensure that public funds are allocated and expended according to the budget of such level of government.
- (2) All levels of government shall hold all incomes and revenues received in public accounts and subject to public scrutiny and accountability.
  - (3) The accounting procedures, standards and fiscal accountability shall be regulated by law.

#### **National and Southern Sudan Audit Chambers**

- 205 (1) There shall be established an independent National and an independent Southern Sudan Audit Chambers.
- (2) The National Audit Chamber shall set auditing standards for the whole country and supervise the financial performance of the national government, including revenue collection and expenditure, in accordance with the budgets approved by the national and state legislatures.
  - (3) The President of the Republic, with the approval of a two-thirds majority of the National Assembly shall appoint the National Auditor General from qualified professionals, who shall head the National Audit Chamber and shall take oath before the President of the Republic. The National Auditor

General shall not be removed except in the same manner in which he/she is appointed.

- (4) The National Audit Chamber shall assume auditing of the accounts of the National Executive, the National Legislature, the National Judiciary and the accounts of northern states, public institutions, corporations, companies and any other institutions as may be determined by law.
- (5) The Auditor General shall present an annual report to the President of the Republic and the National Assembly.
- (6) The National Auditor General shall be prohibited from engaging in all businesses in which constitutional office holders are not allowed to engage in pursuant to Article 75 of this Constitution.
- (7) The Southern Sudan Auditor Chamber shall be established according to the Southern Sudan Interim Constitution.
- (8) The law shall organize the National and Southern Sudan Audit Chambers and shall specify the functions, terms and conditions of service of their employees.

## **CHAPTER VIII**

### **INTERSTATE COMMERCE**

- 206 (1) Free interstate commerce is guaranteed by this Constitution. No legislation shall impede interstate commerce, the flow of goods and services, capital or labour between the states.
- (2) There shall be no levies or fees or any other charges on interstate trade.

## **CHAPTER IX**

### **TRANSITIONAL PROVISIONS FOR FINANCE AND BANKING**

#### **New Currency**

- 207 (1) The Central Bank of Sudan shall issue a new currency, the design of which shall reflect the cultural diversity of the Sudan.

- (2) Until a new currency is issued on the recommendation of the Central Bank of Sudan, the circulating currencies in Southern Sudan shall be recognised.

### **Existing Oil Contracts**

- 208 (1) The Sudan People's Liberation Movement representatives appointed to have access to all existing oil contracts, shall finish their functions and duties which are prescribed by the Comprehensive Peace Agreement as soon as practicable.
- (2) The term "existing oil contracts" means contracts signed before the date of signature of the Comprehensive Peace Agreement.
- (3) The existing oil contracts shall not be subject to re-negotiation.
- (4) If existing oil contracts are deemed to have caused fundamental social consequences and environmental problems the National Government shall implement necessary remedial measures.
- (5) Persons whose rights have been violated by existing oil contracts shall be entitled to compensation. Upon establishment of these violations through due legal process, the parties to the oil contracts shall be liable to compensate the affected persons to the extent of the damage caused.

### **Government Liabilities and Assets**

- 209 (1) Any debt or liability incurred by any level of government shall be the responsibility of that level of government.
- (2) There shall be a fair and equitable division of government assets. An asset shall in the first instance be allocated to the level of government responsible for the function in respect of which the asset is related. In the event of a dispute, such dispute shall be referred to a committee comprising a representative of each of the parties involved in the dispute and a mutually agreed expert. The decision of the committee shall be final and binding.

## **PART FOURTEEN**

### **STATE OF EMERGENCY AND DECLARATION OF WAR**

#### **Declaration of State of Emergency**

- 210 (1) The President of the Republic, with the consent of the First Vice President, may upon the occurrence of an imminent danger, whether it is war, invasion, blockade, natural disaster or epidemics, as may threaten the country, or any part thereof or the safety or economy of the same, declare a state of emergency in the country, or in any part thereof, in accordance with this Constitution and the law.
- (2) The declaration of a state of emergency shall be submitted to the National Legislature within fifteen days of the issuance of the declaration. When the National Legislature is not in session, an emergency session shall be convoked.
- (3) When the National Legislature approves the declaration of a state of emergency, all laws, exceptional orders or measures issued or taken by the President of the Republic pursuant to the state of emergency shall continue to remain in force.

#### **Powers of the President in the State of Emergency**

- 211 The President of the Republic, with the consent of the First Vice President, may during the state of emergency take, by virtue of law or exceptional order, any measures that shall not derogate from the provisions of this Constitution and the Comprehensive Peace Agreement except as may be provided herein:-
- (a) to suspend part of the Bill of Rights. However, there shall be no infringement on the right to life, sanctity from slavery, sanctity from torture, the right of non-discrimination on the basis of race, sex, religious creed, the right in litigation or the right to fair trial,
- (b) to dissolve or suspend any of the state organs or suspend such powers, as may be conferred upon the states under this Constitution. The President of the Republic with the consent of the First Vice President shall assume the functions of such organs and exercise the powers or prescribe the manner in which the affairs of the state concerned may be managed,

- (c) to take any such measures as deemed necessary to the state of emergency, which shall have the force of law.

### **Duration of the State of Emergency**

- 212 The duration of the measures relating to the state of emergency shall expire in the following cases:-
- (a) lapse of thirty days as from the date of issuance of the declaration if the National Legislature does not approve by a resolution the extension of its duration,
  - (b) lapse of the duration approved by the National Legislature,
  - (c) Issuance of a declaration by the President of the Republic with the consent of the First Vice President lifting the state of emergency.

### **Declaration of War**

- 213 The President of the Republic, with the consent of the First Vice President, shall declare war whenever they decide that the country is under external aggression. Such declaration shall be legally enforceable upon approval by the National Legislature.

**PART FIFTEEN**  
**CENSUS AND ELECTIONS**

**CHAPTER I**

**CENSUS**

**The Population Census Council**

- 214 (1) There shall be established by the President of the Republic, after consultation within the Presidency, a Population Census Council.
- (2) The Population Census Council shall:-
- (a) plan for the population census,
  - (b) set standards and criteria for the Central Bureau of Statistics,
  - (c) follow-up on the preparations leading to the population census and oversee the actual census operation,
  - (d) report to the Presidency regarding the Population Census.

**Population Census**

- 215 (1) A population census throughout the Sudan shall be conducted and completed by the end of the second year of the Interim Period.
- (2) The Census shall be conducted by the Central Bureau of Statistics and the Southern Sudan Centre for Statistics and Evaluation.

**CHAPTER II**

**ELECTIONS**

**Time of Elections**

- 216 General Elections at all levels of government shall be held not later than the end of the fourth year of the Interim Period.



### **Referendum**

- 217 (1) The President of the Republic or the National Assembly, by resolution passed by more than half of the members, may refer to referendum any matter of national or public interest.
- (2) The National Elections Commission shall conduct the referendum for all the electorate; the subject submitted to referendum would achieve the confidence of the people by obtaining more than half of the number of votes cast.
- (3) Any resolution which has achieved the consent of the people by referendum shall have authority above any other legislation. It shall not be annulled save by another referendum.

### **Condition for Contesting Election**

- 218 Whoever runs in any elections shall respect, abide by and enforce the Comprehensive Peace Agreement.

## **PART SIXTEEN**

### **SOUTHERN SUDAN RIGHT TO SELF-DETERMINATION**

#### **Affirmation of the Right to Self Determination by the People of Southern Sudan**

219 The people of Southern Sudan shall have the right to self-determination through a referendum to determine their future status.

#### **Southern Sudan Referendum Commission**

- 220 (1) A Southern Sudan Referendum Act shall be promulgated by the National Legislature at the beginning of the third year of the interim period.
- (2) The Presidency shall, as soon as Southern Sudan Referendum Act is issued, establish Southern Sudan Referendum Commission.

#### **The Assessment and Evaluation Commission**

- 221 (1) An independent Assessment and Evaluation Commission shall be established by the President of the Republic with the consent of the First Vice President to monitor the implementation of the Comprehensive Peace Agreement during the interim period.
- (2) The Commission shall conduct a mid-term evaluation of the unity arrangements established under the Comprehensive Peace Agreement.
- (3) The Parties to the Comprehensive Peace Agreement shall work with the Commission during the interim period with a view to improving the institutions and arrangements created under that Agreement and to make the unity of the Sudan attractive to the people of Southern Sudan.

#### **The Referendum on Self-Determination**

- 222 (1) Six months before the end of the six year interim period, there shall be an internationally monitored referendum, for the people of Southern Sudan organized by Southern

Sudan Referendum Commission in cooperation with the National Government and the Government of Southern Sudan,

- (2) The people of Southern Sudan shall either:-
  - (a) confirm unity of the Sudan by voting to sustain the system of government established under the Comprehensive Peace Agreement and this Constitution, or
  - (b) vote for secession.

## **PART SEVENTEEN**

### **MISCELLANEOUS PROVISIONS**

#### **Coming into Force**

- 223 (1) This Constitution shall be cited as the Interim National Constitution of the Republic of the Sudan, 2005; its Arabic and English versions are equally official and authentic. Any reference in it to the masculine denotes also reference to the feminine.
- (2) Upon the adoption of this Constitution by the National Assembly and the National Liberation Council of the Sudan People's Liberation Movement; it shall be submitted to the President of the Republic accompanied by certificates of adoption by each of the said legislatures. It shall come into force on the date of signature by the President of the Republic.

#### **Amendment of the Constitution**

- 224 (1) This Constitution shall not be amended unless the amendments are approved by three-quarters of all the members of each Chamber of the National Legislature sitting separately and only after introduction of the draft amendment at least two months prior to deliberations.
- (2) Any amendment affecting the provisions of the Comprehensive Peace Agreement shall be introduced only with the approval of both Parties signatory to the Comprehensive Peace Agreement.

#### **Incorporation of the Comprehensive Peace Agreement**

- 225 The Comprehensive Peace Agreement is deemed to have been duly incorporated in this Constitution; any provisions of the Comprehensive Peace Agreement which are not expressly incorporated herein shall be considered as part of this Constitution.

### **Transitional and Miscellaneous Provisions**

- 226.(1) This Constitution is based on the Comprehensive Peace Agreement and the Constitution of the Republic of the Sudan 1998.
- (2) The incumbent President of the Republic shall take oath of office before the Chief Justice and assume his duties by virtue of this Constitution. The First Vice President and President of the Government of Southern Sudan and the Vice President shall take oath of office before the President of the Republic and the Chief Justice and assume their duties in accordance with this Constitution.
- (3) Pending the establishment of the executive organs contemplated in this Constitution, the President of the Republic shall authorize the continuation of the current administrations as care-taker administrations. The President of the Government of Southern Sudan shall, after consultations, also take necessary measures for the creation of a care-taker administration in Southern Sudan and Southern Sudan states, pending the adoption of the Interim Constitution of Southern Sudan.
- (4) For the purposes of this Constitution and the Comprehensive Peace Agreement, the Interim Period shall commence as from July 9<sup>th</sup> 2005, and any measures taken or institutions established by the signatories to the Comprehensive Peace Agreement pursuant to the same prior to the adoption of this Constitution shall be deemed to have been taken or established by virtue of this Constitution.
- (5) All current laws shall remain in force and all judicial and civil servants shall continue to perform their functions, unless new actions are taken in accordance with the provisions of this Constitution.
- (6) The law shall determine the salaries, emoluments, privileges and remunerations of the President of the Republic, the two Vice Presidents, the President of Government of Southern Sudan, the Speakers, members of the National Legislature and all holders of Constitutional posts at the National, Southern Sudan and state levels.
- (7) The Presidency shall establish an ad-hoc committee to look into grievances of those retired or dismissed for political reasons and present its recommendations to the Presidency.

- (8) The National Ministry of Justice shall, within two weeks from the date of receipt, declare the compatibility of the Interim Constitution of Southern Sudan and state constitutions with the Interim National Constitution.
- (9) This Constitution shall govern the Interim Period, subject to any amendment or review in accordance with Article 224 herein and shall continue in force until a permanent constitution is adopted.
- (10) If the outcome of the referendum on self-determination favours secession, the parts, chapters, articles, sub-articles and schedules of this Constitution that provide for southern Sudan institutions, representation, rights and obligations shall be deemed to have been duly repealed.

# **SCHEDULES**

## **Schedule (A)**

### **National Powers**

The exclusive legislative and executive powers of the national level of government shall be as follows:

1. National Defence, National Security and Protection of the National Borders;
2. Foreign Affairs and International Representation;
3. Nationality and Naturalization;
4. Passports and Visas;
5. Immigration and Aliens;
6. Currency, Coinage and Exchange Control;
7. Constitutional Court and other National Courts;
8. National Police (including Criminal Investigation Department – CID, coordination of international, regional and bilateral criminal matters, and standards and regulations including the standards for training the police in the National Capital);
9. The fixing of and providing for salaries and allowances of civil and other officers of the National Government;
10. Postal Services;
11. Civil Aviation;
12. Maritime shipment;
13. Beacons;
14. Navigation and Shipment;
15. National Lands and National natural resources;
16. Central Bank, the Incorporation of National banks and issuing of paper money;
17. Bills of Exchange and Promissory Notes;
18. Weights, Measures and Standards, Dates and Standards of Time;
19. Meteorology;
20. Establishment and Maintenance of National Prisons;
21. National Institutions as envisaged under the Peace Agreement or as set forth in this Constitution;
22. Customs, Excise and Export Duties;
23. Intellectual Property Rights, including Patents and Copyright;
24. National Flag, National Emblem and National Anthem;
25. Signing of International Treaties on behalf of the Republic of the Sudan;
26. National Debt and borrowing on public credit;
27. National Census, National Surveys and National Statistics;

28. National States of Emergency;
29. International and Inter-State Transport, including roads, airports, waterways, harbours and railways;
30. National Public Utilities;
31. National Museums and National Heritage Sites;
32. National Economic Policy and Planning;
33. Nile Water Commission, the management of the Nile Waters, trans-boundary waters and disputes arising from the management of interstate waters between Northern states and any dispute between Northern and Southern states;
34. National information, publications, telecommunications regulations;
35. National Taxation and National Revenue Raising;
36. National Budget;
37. Laws providing for National elections and their supervision by the National Elections Commission;
38. Issuance of National Identity Card.

## **Schedule (B)**

### **Powers of the Government of Southern Sudan**

The exclusive legislative and executive powers of Government of Southern Sudan shall be as follows:

1. The adoption and amendment of the Constitution of the Government of Southern Sudan;
2. Police, Prisons and Wildlife Services;
3. Security and military forces during the Interim Period;
4. Legislation relating to the Government of Southern Sudan structures for the delivery of services at all levels of Government of Southern Sudan;
5. Borrowing of money on the sole credit of the Government of Southern Sudan within the national macro-economic policy;
6. Planning for Southern Sudan Government services including health, education, and welfare, etc;
7. The appointment, tenure and payment of Government of Southern Sudan (GOSS) officers and civil servants;
8. Development of financial resources for the Government of Southern Sudan;
9. The co-ordination of Southern Sudan services or the establishment of minimum Southern Sudan standards or the establishment of Southern Sudan uniform norms in respect of any matter or service referred to in Schedule C or Schedule D, read together with Schedule E, with the exception of Item 1 of Schedule C, including but not limited to, education,



health, welfare, police (without prejudice to the National Standards and Regulations), prisons, state public services, such authority over civil and criminal laws and judicial institutions, lands, reformatories, personal law, intra-state business, commerce and trade, tourism, environment, agriculture, disaster intervention, fire and medical emergency services, commercial regulation, provision of electricity, water and waste management services, local Government, control of animal diseases and veterinary services, consumer protection, and any other matters referred to in the above Schedules;

10. Any power that a state or the National Government requests it to exercise on its behalf, subject to the agreement of the Government of Southern Sudan or that for reasons of efficiency the Government of Southern Sudan itself requests to exercise in Southern Sudan and that other level agrees;
11. Referenda in Southern Sudan on matters affecting Southern Sudan within the competencies of Southern Sudan Government;
12. Taxation and revenue raising in Southern Sudan;
13. Southern Sudan Budget;
14. Public utilities of Government of Southern Sudan;
15. Government of Southern Sudan flag and emblem;
16. Reconstruction and development of the Southern Sudan;
17. Government of Southern Sudan information, publications, media and telecommunications utilities;
18. Rehabilitation and benefits to disabled war veterans, orphans, widows and care for the dependents of deceased war fallen heroes;
19. Any matter relating to an item referred to in schedule D that cannot be dealt with effectively by a single state and requires Government of Southern Sudan legislation or intervention including, but not limited to the following:-
  - (1) Matters relating to businesses, trade licenses and conditions of operation;
  - (2) Natural resources and forestry;
  - (3) Town and rural planning;
  - (4) Disputes arising from the management of interstate waters within Southern Sudan;
  - (5) Fire fighting and ambulance services;
  - (6) GOSS reformatory institutions;
  - (7) Firearms licenses within Southern Sudan; and
  - (8) Government of Southern Sudan recreation and sports.
20. Such matters relating to taxation, royalties and economic planning as is specified in the Agreement on Wealth Sharing;
21. Southern Sudan census and statistics within the competence of the Southern Sudan Government;

22. Issuance of identity cards within Southern Sudan, driving licenses and any other appropriate documentation.

## **Schedule (C)**

### **Powers of States**

The exclusive executive and legislative powers of a state of the Sudan shall be as follows:-

1. The Constitution of the state, subject to compliance with the National Constitution, and, as relevant, the Constitution of Southern Sudan;
2. State Police, prisons;
3. Local Government;
4. State information, state publications and state media;
5. Social Welfare including state pensions;
6. The Civil Service at the state level;
7. The State Judiciary and administration of justice at state level including maintenance and organization of state Courts, and subject to national norms and standards, civil and criminal procedure;
8. State Land and state Natural Resources;
9. Cultural matters within the state;
10. Regulation of religious matters;
11. Internal and external borrowing of money on the sole credit of the state within the National macro-economic framework;
12. The establishment, tenure, appointment, and payment of state officers;
13. The management, lease and utilization of lands belonging to the state;
14. The establishment, maintenance and management of reformatory institutions;
15. The establishment, regulation, and provision of health care, including hospitals and other health institutions;
16. Regulation of businesses, trade licenses, working conditions, hours, and holidays within the state;
17. Local works and undertakings;
18. Registration of marriage, divorce, inheritance, births, deaths, adoption and affiliations;
19. Enforcement of state laws;
20. Statutes enacted under the penal law power, save for the penalization for the breach of National laws relating to the national competencies;
21. The development, conservation and management of state natural resources and state forestry resources;

22. Primary and secondary schools and education administration in regard thereto;
23. Laws in relation to agriculture within the state;
24. Airstrips other than international and national airports within civil aviation regulations;
25. Intrastate public transport and roads;
26. Population policy and family planning;
27. Pollution control;
28. State statistics, and state surveys;
29. State referenda;
30. Charities and endowment;
31. Quarrying regulations;
32. Town and rural planning;
33. State cultural and heritage sites, state libraries, state museums, and other historical sites;
34. Traditional and customary law;
35. State finances;
36. State irrigation and embankments;
37. State Budget;
38. State archives, antiquities, and monuments;
39. Direct and indirect taxation within the state in order to raise revenue for the state;
40. State public utilities;
41. Vehicle licensing;
42. Fire fighting and ambulance services;
43. Recreation and sport within the state;
44. Firearms Licenses;
45. Flag and emblem of the state.

## **Schedule (D)**

### **Concurrent Powers**

The National Government, the Government of Southern Sudan and state governments, shall have legislative and executive competencies on any of the matters listed below:-

1. Economic and Social Development in Southern Sudan;
2. Legal and other professions and their associations;
3. Tertiary education, education policy and scientific research;
4. Health policy;
5. Urban development, planning and housing;
6. Trade, commerce, Industry and industrial development;

7. Delivery of public services;
8. Banking and insurance;
9. Bankruptcy and insolvency;
10. Manufacturing licenses;
11. Airports, only with respect to the Government of Southern Sudan in accordance with Civil Aviation standards and regulations;
12. River transport;
13. Disaster preparedness, management and relief and epidemics control;
14. Traffic regulations;
15. Electricity generation and water and waste management;
16. Information, Publications, Media, Broadcasting and Telecommunications;
17. Environmental management, conservation and protection;
18. Relief, Repatriation, Resettlement, Rehabilitation and Reconstruction;
19. Without prejudice to the National Regulation, and in the case of Southern states, the regulation of Government of Southern Sudan, the initiation, negotiation and conclusion of International and Regional Agreements on culture, sports, trade, investment, credit, loans, grants and technical assistance with foreign governments and foreign non-governmental organizations;
20. Financial and economic policies and planning;
21. Women's empowerment;
22. Gender policy;
23. Pastures, veterinary services, and animal and livestock diseases control;
24. Consumer safety and protection;
25. Residual powers, subject to schedule E;
26. Mother, Child protection and care;
27. Water Resources other than interstate waters;
28. Notwithstanding Schedules A, B and C, such matters relating to taxation, royalties and economic planning;
29. Southern Sudan and state Courts responsible for enforcing or applying National laws;
30. Such matters relating to taxation, royalties and economic planning as a matter or matters in regard to which the Government of Southern Sudan is accorded concurrent authority;
31. Human and animal drug quality control.
32. Regulation of land tenure, usage and exercise of rights in land.

## **Schedule (E)**

## **Residual Powers**

The residual powers shall be dealt with according to its nature (e.g., if the power pertains to a national matter, requires a national standard, or is a matter which cannot be regulated by a single state, it shall be exercised by the National Government. If the power pertains to a matter that is usually exercised by the state or local government, it shall be exercised by the state). Where a matter is susceptible to Southern Sudan regulation, in respect of the states of Southern Sudan, it shall be exercised by the Government of Southern Sudan.

## **Schedule (F)**

### **Resolution of Conflicts in Respect of Concurrent Powers**

If there is a contradiction between the provisions of Southern Sudan law and/or a state law and/or a National law, on the matters referred in Schedule D, the law of the level of government which shall prevail shall be that which most effectively deals with the subject matter of the law, having regard to:-

- (1) The need to recognize the sovereignty of the Nation while accommodating the autonomy of Southern Sudan or of the states;
- (2) Whether there is a need for National or Southern Sudan norms and standards;
- (3) The principle of subsidiarity;
- (4) The need to promote the welfare of the people and to protect each person's human rights and fundamental freedoms.

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