

THE DRAFT CONSTITUTIONAL TEXT

16TH OF March, 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,

Committed to establish a decentralized democratic system of governance in which power shall be peacefully transferred,

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,

Fully recognizing the right of self-determination for the people of Southern Sudan so that the unity of the country is based on the free will of its people and is made an attractive option; and

Guided by the Comprehensive Peace Agreement of January 2005, the 1998 Constitution, erstwhile Sudanese constitutional experiences and other relevant experiences;

DO HEREBY ADOPT THIS CONSTITUTION

PART ONE

THE STATE, CONSTITUTION AND GUIDING PRINCIPLES

CHAPTER I

THE STATE AND THE CONSTITUTION

Nature of the State

1. The Republic of the Sudan is a sovereign, democratic, decentralized, multi-cultural, multi-racial, multi-ethnic, multi-religious, and multi-lingual State; committed to the respect and promotion of human dignity and founded on justice, equality and the advancement of human rights and freedoms. It is an all embracing homeland wherein races and cultures coalesce and religions co-exist in harmony;

The 1998 Constitution: Article 1
Machakos Protocol: 1.1 and Preamble.

Sovereignty

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

Power Sharing: 1.4.1, Schedule F.

Supremacy of the Interim National Constitution

3. This 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;

Machakos Protocol : 3.1.
Power Sharing: 2.12.11 and 2.12.12

Fundamental Bases of the Constitution

4. This Constitution is predicated upon and guided by the following principles:
 - (a) The unity of the Sudan shall be based on the free will of its people, the rule of law, democratic governance, accountability, equality, respect and justice for all citizens,

- (b) Religion, beliefs, customs and traditions are a source of moral strength and inspiration for the Sudanese people,
- (c) The cultural and social diversity of the Sudanese people shall be 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 in free, direct, and periodic elections conducted through universal adult suffrage in secret balloting;

Machakos Protocol: 1.1, 1.4

Sources of Legislation

- 5. (1) Nationally enacted legislation having effect only in respect of the states outside Southern Sudan shall have as its sources of legislation *Sharia* and the consensus of the people;
- (2) Nationally enacted legislation applicable to Southern Sudan and/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 the Sudan's diversity;
- (3) Where national legislation is currently in operation or is enacted and its source is religious or customary law, then a state, and subject to Article 26 (a) herein in 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 or provide for institutions or practices in that state consistent with their religion or customs, or
 - (b) Refer the law to the Council of States for it to approve by a two-thirds majority or initiate national legislation which will provide for such necessary alternative institutions as is appropriate;

Machakos Protocol : 3.2.2 and 3.2.3

Religious Rights

- 6. The State shall respect the following religious rights:
 - (a) To worship or assemble in connection with a religion or belief and to establish and maintain places for these purposes,
 - (b) To establish and maintain appropriate charitable or humanitarian institutions,
 - (c) To make, acquire and use the necessary articles and materials related to the rites or customs of a religion or belief,
 - (d) To write, issue and disseminate religious publications,
 - (e) To teach religion or belief in places suitable for these purposes,
 - (f) To solicit and receive voluntary financial and other contributions from individuals and private and public institutions,

- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief,
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of religious beliefs,
- (i) To communicate with individuals and communities in matters of religion and belief at national and international levels;

Machakos Protocol: 6.5

Nationality and Citizenship

- 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 a non-alienable 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 a nationality of another country as shall be regulated by law;

Two Areas: Preamble

The 1998 Constitution: Article 22

Language

- 8. (1) All indigenous languages of the Sudan are national languages and shall be respected, developed and promoted;
- (2) Arabic language is the 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(s) as additional official working language(s) 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;

Power Sharing: 2.8

National Symbols

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

The 1998 Constitution: Article 5 and Schedule A : 24

CHAPTER II

GUIDING PRINCIPLES AND DIRECTIVES

National Economy

10. The State shall develop and manage the national economy in order to promote prosperity, create an efficient and self-reliant economy; it shall also enhance regional economic integration. The overarching aim of economic development shall be the eradication of poverty within the Millennium Development Goals, the minimization of inequalities of income, and promotion of a decent quality of life for all citizens;

The 1998 Constitution: Article 8.

Wealth Sharing: 1.4

Environment and Natural Resources

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

Wealth Sharing Agreement: 1.10

Social Justice

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

The 1998 Constitution: 11.

Education, Science, Art, Culture and Cultural Heritage

13. (1) (a) The State shall promote education at the primary, secondary and tertiary levels, all over the Sudan and shall ensure free education at the primary level and in illiteracy eradication programme The State, within the limits of its economic capacity, shall make education affordable at other levels;
- (b) Any 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 capacities for enhancement of education and development of scientific research, especially Research and Development and information technology;
- (3) The State shall encourage and promote art and craft and performing arts and foster their patronization by government institutions and individual citizens;
- (4) The State shall recognize the richness of the Sudan's cultural diversity and shall encourage such multiple cultures to harmoniously flourish and find expression, especially through the official media and education;
- (5) The State shall protect the Sudan's cultural heritage, such as monuments and places and objects of national, historic or religious importance, from destruction, discretion, unlawful removal or illicit export;

The 1998 Constitution: Article 12

Two Areas: Preamble

Children, Youth and Sports

14. (1) The State shall direct policies and provide facilities for youth welfare and ensure that they develop morally and physically; the State shall also protect children from moral and physical abuse and abandonment;
- (2) The State shall promote sports, especially in public educational institutions and through community centres, and facilitate for the youth to develop their potentials and enjoy their leisure in a healthy environment;

The 1998 Constitution: 14.

Family, Women and Marriage

15. (1) The family is the natural and fundamental group unit of society and is entitled to the protection of law; the right of men and women of marriageable age 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 the intending spouses;

- (2) The State shall emancipate women from injustice, promote gender equality and encourage the role of women in family and public life;

The 1998 Constitution: 15

Power Sharing: 1.6.2.10

Morals and Public Integrity

16. (1) The State shall enact laws to protect society from corruption, delinquency, and social evils and steer the society as a whole towards acceptable social values consistent with cultural and religious diversity of the Sudan;
- (2) To ensure integrity in public life, the State shall create institutions and enact laws to eliminate corruption and inhibit abuse of power;

The 1998 Constitution: 16.

Foreign Policy

17. (1) The foreign policy of the Sudan shall serve, first and foremost, the national interest. Foreign policy shall be conducted in an independent and transparent manner with a view to achieving, *inter alia*, the following:
- (a) Promotion of international cooperation, especially within the UN family and other international and regional organizations, for the purposes of consolidating universal peace, respect international law and treaty obligations and fostering a just world economic and political order,
 - (b) Enhancement of economic cooperation among countries of the global South,
 - (c) Fulfilment of African and Arab economic integration, each within the ongoing regional plans and forums as well as promoting African and Arab Unity and Afro-Arab cooperation as foreseen in those plans,
 - (d) Non-interference in the affairs of other States, promotion of good-neighbourliness and mutual cooperation with all neighbours and maintaining just and honourable relations with other countries,
 - (e) Combating international and trans-boundary organized crime and terrorism,
 - (f) Enhancement of respect for fundamental rights and basic freedoms in regional and international fora,
 - (g) Promotion of dialogue among civilizations;
- (2) The President of the Republic shall guide and supervise the foreign policy of the State and ratify treaties and international agreements with the approval of the National Legislature;

The 1998 Constitution: 17.

Power Sharing: 2.9.1.1, 2.9.1.2, 2.9.1.3, 2.9.1.4, 2.9.1.5.

Defence of the Country

18. Defending the Country is an honour and a duty; the State shall care for the combatants, afflicted in war and the families of the martyrs;

The 1998 Constitution: 7.

Security Arrangements: 1. (b)

Ceasefire Agreement: 16.2

Public Health

19. The State shall promote public health and provide basic medical services and facilities;

The 1998 Constitution: 13

Fiscal Levies and Tariffs

20. No taxes, fees, tariffs or other fiscal dues, including *Zakat* on Muslims, shall be levied save by law;

The 1998 Constitution: 28 (2), 10.

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;

Power Sharing: 1.7

Protocol on Abyei: Article 9.

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 laws;

The 1998 Constitution: 19

CHAPTER III

DUTIES OF THE CITIZEN

Duties of the Citizen

- 23 .(1) It shall be the duty of every Sudanese citizen to owe allegiance to the Republic of the Sudan, abide by this Constitution and respect the institutions created thereunder, safeguard the territorial integrity of the country, having due regard, in the later case, to the right of the citizens of Southern Sudan provided for in Part Fifteen of this Constitution;
- (2) In particular every citizen shall:
- (a) Defend the country and respond to the call for national defense within the terms of this Constitution,
 - (b) Abjure violence and, instead, promote harmony, fraternity and tolerance among all people of the Sudan transcending religious, regional, linguistic, and sectoral divisions,
 - (c) Preserve public assets and respect legal and financial obligations towards the State and others,
 - (d) Avert and thwart corruption,
 - (e) Participate fully in the development of the country,
 - (f) Take part in the general elections and referenda as stipulated in this Constitution and provided for by the law,
 - (g) Co-operate with the law enforcement agencies in the maintenance of law and order as provided for by law,
 - (h) Preserve the natural environment,
 - (i) Generally be guided and informed in his/her actions by the interests of the nation, and the tenets enshrined in this Constitution;

The 1998 Constitution: Article 35.

CHAPTER IV

THE DECENTRAIZED 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 protect the territorial integrity and the national sovereignty of the Sudan and promote 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 governments throughout the Sudan, which shall exercise authority at the state level and render public services through the level of government close to the people,
 - (d) The level of local government 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 both the sovereignty of the nation, as vested in its people, as well as the autonomy of the Government of Southern Sudan and the states throughout the Sudan,
 - (b) Affirmation of the need for norms and standards of governance and management at national, as well as Southern Sudan and state levels, so as to 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 protect 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, accountability, transparency, democracy, and the rule of law at all levels of government to consolidate lasting peace;

Power Sharing 1.4

Inter-Governmental Linkages

26. 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:
 - (1) respect each others' autonomy,
 - (2) 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:
 - (1) not to encroach on the powers or functions of other levels,
 - (2) not to assume powers or functions conferred upon any other level by this Constitution,
 - (3) to promote co-operation between all levels of government,
 - (4) to promote open communication between all levels of government,
 - (5) to render assistance and support to other levels of government,
 - (6) to advance good co-ordination of governmental functions,

- (7) to adhere to procedures of inter-governmental interaction,
 - (8) to promote amicable settlement of disputes before attempting litigation,
 - (9) 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;

Power Sharing Protocol: 1.5.1.3 and 1.5.1.4

PART TWO

THE BILL OF RIGHTS

Nature of the Bill of Rights

27. This Bill of Rights is a covenant between the Sudanese people and between them and their governments at every level and also a commitment to respect and promote the human rights and fundamental freedoms enshrined in this Constitution; it is the cornerstone of social justice, equality and democracy in the Sudan; the State shall guarantee, protect, and fulfil this Bill; 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;

Power Sharing: 1.6.1

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 be arbitrarily deprived of his/her life;

The 1998 Constitution: 20.

Power Sharing: 1.6.2.1

Personal Liberty

29. Every one has the right to liberty and security of person; no one shall be subjected to arbitrary arrest or detention nor be deprived of his/her liberty except on such grounds and in accordance with such procedures as are established by law;

Power Sharing: 1.6.2.2.

Slavery

30. Slavery and the slave trade in all their forms shall be prohibited; no one shall be held in slavery or servitude. No one shall be required to perform forced or compulsory labour except as a penalty by a court of law for certain crimes as determined by law,

Power Sharing: 1.6.2.3.

Equality before the Law

31. All persons are equal before the law and are entitled without any discrimination, as to race, colour, sex, language, religious creed, political or other opinion, national, social or ethnic origin, property, birth or other status, to the equal protection of the law;

The 1998 Constitution: Article 21.

Protocol on Power Sharing: 1.6.2.12, 1.6.2.13.

Equal Rights of Men and Women

32. The equal rights of men and women to the enjoyment of all civil and political rights and all social, cultural and economic rights, including the right of equal pay for equal work, shall be ensured;

Protocol on Power Sharing: 1.6.2.16.

Torture

33. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment;

Protocol on Power Sharing: 1.6.2.4

Fair Trial

34. (1) anyone 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;
- (2) In the determination of any criminal charges or rights and obligations in a law suit, the accused shall be entitled to a fair and public hearing by a competent, independent and impartial court of law;
- (3) Everyone charged with an offence shall be presumed innocent until proved guilty according to law;
- (4) No one shall be held guilty on account of any act or omission which did not constitute an offence under national, Southern Sudan or state laws, or international law at the time when it was committed;
- (5) In the determination of any criminal charge against anybody, he/she shall be entitled to be tried in his/her presence without any undue delay and to defend himself/herself in person or through legal assistance of his/her own choice and to have legal aid assigned to him/her where the interest of justice so require;

Power Sharing: 1.6.2.5.

Right to Litigation

35. (1) The right to litigate shall be guaranteed for all persons and no one shall be denied the right to sue;
- (2) Everyone has the right to have any dispute, that can be resolved by the application of law, decided in a fair public hearing before a court of law or, where appropriate, before any other independent and impartial tribunal or forum specified by law or agreement;

The 1998 Constitution: 31

Sanctity from Death Penalty

36. No death penalty shall be inflicted save as retribution or punishment for extremely serious offences in accordance with the law;

The 1998 Constitution: 33

Privacy

37. The private life of the citizen shall be inviolable; no one shall be subjected to arbitrary or unlawful interference with his/her privacy, family, home or correspondence; the privacy of citizens shall not be violated save with a judicial warrant or in accordance with the law;

Power Sharing: 1.6.2.6.

Freedom of Creed and Worship

38. Every one shall have the right to the freedom of conscience and religious creed, and shall have the right to declare his/her religion or creed and manifest the same, subject to requirements of law and public order, by way of worship, education, practice or performance of rites or ceremonies; no one shall be coerced to adopt such faith, as he/she does not believe in, nor to practice rites or services to which he/she does not voluntarily consent;

The 1998 Constitution: 24.

Power Sharing: 1.6.2.7.

Freedom of Expression and of the Media

39. (1) Every citizen shall have the right to the freedom of expression, reception of information, publication, and access to the press without prejudice to order, safety and public morals as determined by law;
- (2) The State shall guarantee the freedom of press and other media including the right to information in a competitive environment as shall be regulated by law in a democratic society;

The 1998 Constitution: 25.

Power Sharing: 1.6.2.8.

Freedom of Assembly and Association

40. (1) The right of peaceful assembly shall be guaranteed; every one shall have the right to freedom of association with others, including the right to form and join political parties, associations and trade or professional unions for the protection of his/her interests;
- (2) The right to establish political parties, associations and trade or professional unions shall be guaranteed, the law shall regulate the exercise of this right as is necessary in a democratic society;
- (3) No association shall function as a political party at the national level unless it:
- (a) has its membership open to all Sudanese irrespective of religion, ethnic origin, sex or place of birth,
 - (b) has a programme that upholds the Comprehensive Peace Agreement, and conforms to this Constitution,
 - (c) has a democratically elected leadership and institutions,
 - (d) has disclosed and transparent sources of funding;

The 1998 Constitution: 26.

Power Sharing: 1.6.2.9.

Right to Vote

41. Every citizen shall have the right and the opportunity, without distinctions and unreasonable restrictions, to take part in the conduct of public affairs, through voting and standing for election in genuine periodic elections, which shall be by universal and equal adult suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

Protocol on Power Sharing: 1.6.2.11

Freedom of Movement and Residence

42. (1) Every citizen shall have the right to the 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 and return thereto as shall be regulated by law;

The 1998 Constitution: 23.

Power Sharing: 1.6.2.14.

Right to Property

43. (1) Every person shall have the right to acquire or own property;
- (2) No private property may be expropriated save by law in the public interest and in consideration for prompt and fair compensation;

The 1998 Constitution: 28 (1).

Right to Education

44. (1) Education is a right for every citizen and the State shall provide equal access to education without discrimination as to religion, ethnic origin, gender or physical disability;
- (2) The State shall provide free primary education;

Rights of Persons with Disabilities

45. Persons with disabilities are entitled to enjoy all the rights and freedoms set out in this Constitution; in particular, respect of their human dignity, access to suitable education and employment and full participation in society shall be guaranteed;

Equal Access to Public Health Care

46. All citizens shall have equal access to public health care and basic medical services;

Ethnic and Cultural Communities

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

The 1998 Constitution: 27

Sanctity of Rights

48. No derogation from the rights and freedoms enshrined in this Bill shall be made except in accordance with the provisions of this Constitution and only with the approval of the National Legislature. This Bill of human rights and fundamental freedoms shall be upheld, protected, applied and enforced by the Constitutional Court and other competent courts; the Human Rights Commission shall monitor its application and enforcement;

The 1998 Constitution: 34.

Power Sharing: 1.6.2.16 (b) and (c).

PART THREE

THE NATIONAL EXECUTIVE

CHAPTER I

COMPOSITION AND POWERS OF THE NATIONAL EXECUTIVE

Composition of the National Executive

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

Power Sharing: 2.3.1.

Powers of the National Executive

50. The National Executive shall exercise the executive powers and competencies in respect of the matters in Schedules A and D, read together with Schedules E and F, and as conferred upon it by this Constitution;

Power Sharing: 2.5.2

CHAPTER II

THE PRESIDENCY

The Institution of the Presidency

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

Power Sharing: 2.3.2 and 2.3.4

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 Electoral Commission;

The 1998 Constitution: Article 36.

Power Sharing: 2.3.7.

Eligibility for the Office of the President

53. A Candidate for the office of the President of the Republic shall:
- (a) be a Sudanese,
 - (b) be of a sound mind,
 - (c) be at least forty years of age,
 - (d) not have been convicted, during the previous seven years, of an offence connected with honesty or moral turpitude;

The 1998 Constitution: Article 37.

Nomination and Election of the President

54. (1) Any eligible voter may nominate whomever 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 shall be 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 achieved, there shall be a run off election between the two presidential candidates who have obtained the highest number of votes;

The 1998 Constitution: Article 38.

Postponement of Presidential Elections

55. (1) When election of the President of the Republic is not possible for any reason, as shall be decided by the National Electoral Commission according to the electoral law, the National Electoral Commission shall fix a new date for the elections as soon as practicable, but not later than sixty (60) days from the scheduled election date;

- (2) Pending the conduct of the postponed elections, the incumbent President of the Republic shall continue as a caretaker President; and his/her tenure shall be extended until the President elect takes the oath of office;

The 1998 Constitution: Article 39.

Oath of the President

56. To assume office, the President of the Republic elect shall take the following oath before a meeting of the National legislature :

“I swear by God the Almighty, 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 promote 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, consolidate the democratic decentralized system of government and preserve the integrity and dignity of the people of the Sudan; as God is my witness”;

The 1998 Constitution: Article 40.

Tenure of the President

57. The tenure 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 only one more term;

The 1998 Constitution: Article 41.

Functions of the President

58. (1) The President of the Republic is the Head of the State and Government and represents the will of the people; he/she shall exercise the powers vested in him/her by this Constitution and the Comprehensive Peace Agreement and shall, *inter alia*, perform the following functions:
- (a) preservation of the security of the country and protection of its integrity,
 - (b) supervision of the executive constitutional institutions and provision leadership in public affairs,
 - (c) appointment of holders of constitutional and judicial posts in accordance with the provisions of this Constitution and the law,
 - (d) presiding over the National Council of Ministers,
 - (e) summoning, adjourning or proroguing the National Legislature,
 - (f) declaration of war in accordance with the provisions of this Constitution and the law,

- (g) declaration state of emergency in accordance with the provisions of this Constitution and the law,
 - (h) may initiate draft constitutional amendments and legislations and assent to laws,
 - (i) approving of death sentences, granting pardon, and remitting conviction or penalty according to this Constitution and the national law,
 - (j) representation of the State in its foreign relations, appointment of ambassadors of the State, and accreditation of foreign ambassadors,
 - (k) generally representing the authority of the State and the will of the people,
 - (l) any other function 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 is required to make according to the Comprehensive Peace Agreement,
 - (d) summoning, adjourning or proroguing the National Legislature;

The 1998 Constitution: Article 43.

Power Sharing: 2.36

Vacation of the President's Office

59. The office of the President of the Republic shall fall vacant in any of the following cases:
- (a) expiry of his/her tenure,
 - (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) presenting his/her written resignation to the National Legislature;

The 1998 Constitution: Article 42.

Immunity and Impeachment of the President

60. (1) The President of the Republic shall be immune from any legal proceedings and shall not be charged or sued in any court of law during his/her tenure;
- (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 may be charged before the Constitutional Court upon a resolution passed by two-thirds of all members of the National Legislature;

- (3) In the event of conviction of the President of the Republic, pursuant to sub-Article (2) above, the National Legislature may, by a motion approved by three-quarters majority of all members, remove the President from his/her office;

The 1998 Constitution: Article 45.

Contesting Acts of the President

61. Any person aggrieved by an act of the President of the Republic or of the Institution of 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 the competent court of law if the allegation is on other legal grounds;

The 1998 Constitution: Article 46.

Vice Presidents and Advisors

62. (1) The elected President shall have two Vice Presidents, 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 the 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, he/she shall appoint the First Vice President from the north. All the other provisions in this Constitution relating to the Presidency shall continue to apply;
- (2) The First Vice President and the Vice President shall fulfil the conditions of eligibility for the office of the President;
- (3) The President of the Republic may appoint advisors, and define their functions and seniorities;
- (4) To assume their respective offices, the two Vice Presidents and the advisors shall take, before the President of the Republic, the same oath taken by the President;

Power Sharing: 2.3.7

The 1998 Constitution: Article: 37 and 44

Functions of the Vice Presidents

63. (1) The First Vice President shall have the following functions:
- (a) act in the absence of the President,
 - (b) be a member of the National Council of Ministers,
 - (c) be a member of the National Security Council,
 - (d) be a member of the Presidential Council in the pre-election period and Chairman of the said Council in the post election period in the event of the office of the President falling vacant,
 - (e) any other function or duty that may be assigned to him/her by the President;
- (2) The Vice President shall have the following functions:
- (a) act in the absence of the President and the First Vice President,
 - (b) be a member of the National Council of Ministers,
 - (c) be a member of the Presidential Council and Commander-in-Chief of Sudan Armed Forces (SAF) in case of a vacancy in the office of the President according to Article 65 and 66 herein,
 - (d) be a member 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 Institution of the Presidency;

Power Sharing: 2.3.3

Vacation of the Office of the First Vice President

64. If the office of the First Vice President fall vacant, the President of the Republic shall, subject to Article 68 below, appoint a new First Vice President in accordance with this Constitution;

Power Sharing: 2.3.11.

CHAPTER III

INTERIM PROVISIONS FOR THE PRESIDENCY

The Incumbent President and the First Vice President

65. Prior to the elections that shall be held during the Interim Period pursuant to Article 216 of this Constitution:

- (a) the current incumbent President, or his successor, shall be the President of the Republic and Commander-in-Chief of the Sudan Armed Forces (SAF),
- (b) the current 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 (GOSS) and Commander-in-Chief of the Sudan People's Liberation Army (SPLA);

Power Sharing: 2.3.5.

Vacation of the President's Office before Elections

66. Should the office of the President of the Republic fall vacant before the elections:
- (a) the functions of the President shall be assumed by a Presidential Council comprising the Speaker of the National Assembly, the First Vice President and the Vice President,
 - (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) the Office of the President, notwithstanding Article 52 above or any other provision of this Constitution, shall be filled by the nominee of the National Congress Party within two weeks of the date of the occurrence of such vacancy;

Power Sharing: 2.3.8.1 and 2.3.9.

Vacation of the President's Office after Elections

67. Should the office of the President of the Republic fall vacant after the elections:
- (a) the functions of the President 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 Vice President shall be Commander-in Chief of the Sudan Armed Forces,
 - (e) the post of the President shall be filled through presidential elections that shall be conducted within sixty days in accordance with Article 52 of this Constitution;

Power Sharing: 2.3.8.1 and 2.3.9

Vacation of the First Vice President's Office

68. (1) Should the office of the First Vice President fall vacant prior to elections, notwithstanding Article 64 above, it shall be filled by the nominee of the SPLM within two weeks of the occurrence of that vacancy;
- (2) Should the vacancy mentioned above happened after the elections the President shall appoint the First Vice President in accordance with this Constitution;

Power Sharing: 2.3.11.1 and 2.3.11.2

Interim Provisions for Tenure of the President and First Vice President

69. (1) If the outcome of the referendum on self-determination confirms unity, the President of the Republic and the First Vice President shall complete the tenure of their offices in accordance with the provisions of Article 57 herein;
- (2) In the event of a vote for secession by the people of Southern Sudan, the President of the Republic or the First Vice President, whoever is from the north, shall continue; and whoever of the two is from the south shall be deemed to have resigned, while the other shall continue as President to complete the tenure to the next elections;

CHAPTER IV

THE NATIONAL COUNCIL OF MINISTERS

Composition and Authority of the National Council of Ministers

70. (1) the President of the Republic in consultation within the Institution of the Presidency shall appoint the National Council of Ministers;
- (2) The President of the Republic, the First Vice President and the Vice President shall be members of the National Council of Ministers;
- (3) The National Council of Ministers shall be the highest national executive authority in the State in accordance with the provisions of this Constitution and the law; the decision thereof shall be adopted by consensus, or in case of voting, by simple majority;
- (4) Without prejudice to the powers reserved to the President of the Republic and the Institution of the Presidency by this Constitution, decisions of the National Council of Ministers shall prevail over all other executive decisions;
- (5) There shall be National State Ministers appointed by the President of the Republic, in consultation within the Institution of the Presidency, who shall assist National Ministers and may act in their absence; they shall take the same oath of office of the National Minister;

The 1998 Constitution: Article 47.
Power Sharing: 2.3.13 and 2.3.15.
Global Matrix: Appendix B: B2 (2)

Oath of the National Minister

71. The National Minister shall, upon his/her appointment, assume the functions of his/her office upon taking the following oath before the President of the Republic:

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

The 1998 Constitution: Article 48.

Functions of the National Council of Ministers

72. The National Council of Ministers shall have the following functions:

- (a) policy planning for, and management of, the State,
- (b) implementation of the Comprehensive Peace Agreement,
- (c) initiation of national legislative bills, provisional decrees, public budget, international treaties and bilateral or multilateral agreements,
- (d) receiving reports about national executive performance for review and action,
- (e) receiving reports on the executive performance of states for information and coordination, provided that in the case of states of Southern Sudan, reports shall be received through the Government of Southern Sudan,
- (f) receiving reports for supervision and decision on matters that are concurrent, or residual as provided for in Schedules E and F herein or delegated,
- (g) working out its internal regulations,
- (h) any other function conferred thereupon by the President of the Republic or the law;

The 1998 Constitution: Article 49.
Power Sharing, Schedule F

Functions of the National Minister

73. (1) The national minister shall be the head of his/her ministry, his/her decisions shall prevail therein. However, the National Council of Ministers may review such decisions,

- (2) The President of the Republic may suspend the decision of a national minister pending review by the National Council of Ministers,
- (3) The national minister and corresponding ministers of Government of Southern Sudan and the states shall collaborate, in the task of governing and assist each other in fulfilling their respective constitutional obligations,
- (4) Perform any public or political role and provide leadership in public affairs to achieve the objectives of national policy,
- (5) Any other function or power to be assigned by law or delegation,

The 1998 Constitution: Article 50.

Power Sharing: 1.5.1.4 (b)

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 minister shall be collectively and individually responsible before the National Assembly for the performance of the National Council of Ministers;
- (3) National Ministers shall be bound by the decisions of the National Council of Ministers;

The 1998 Constitution: Article 61.

Power Sharing: 2.3.12

Prohibition of Commercial Business

75. (1) All executive and legislative constitutional office holders, all Justices, and all senior civil service officials shall, upon assumption of their duties, make a confidential declaration of their assets and liabilities including those of their spouses and children;
- (2) The President of the Republic, the Vice Presidents, the Presidential Advisors, the President of Government of Southern Sudan, national, Southern Sudan and state ministers and governors shall, during their tenure, 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;

The 1998 Constitution: Article 52.

Vacation of the Office of National Minister

76. The office of 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 Institution of the Presidency,
 - (c) death;

The 1998 Constitution: Article 53

Confidentiality of Deliberations of the National Council of Ministers

77. Deliberations of the National Council of Ministers shall be confidential; and no proceedings of the Council or any information brought under consideration, concerning a minister shall be disclosed, communicated or revealed to any person except as may be required for the purposes of public information or due discharge of his/her ministerial functions save with permission of the Council;

The 1998 Constitution: Article 54

Contesting Ministerial Acts

78. An aggrieved person may contest an act of the National Council of Ministers or a National Minister:
- (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 on other legal grounds;

The 1998 Constitution: Article 55.

CHAPTER V

THE GOVERNMENT OF NATIONAL UNITY

Objectives of The Government of National Unity

79. Notwithstanding Article 70 (1) of this Constitution, and prior to the elections, there shall be formed by the President of the Republic after consultation with the First Vice President, a Government of National Unity reflecting the need for inclusiveness, the

promotion of national unity, the protection of national sovereignty, respect and implementation of the Comprehensive Peace Agreement;

Power Sharing: 2.5.1

Allocation of Seats of Government of National Unity

80. Representation in the Government of National Unity shall be, according to the seventy per cent (70%) thirty per cent (30%) north and south ratio, as follows:
- (a) The National Congress Party shall be represented by fifty two per cent (52%) (49% northerners and 3% southerners),
 - (b) Sudan People's Liberation Movement (SPLM) shall be represented by twenty eight per cent (28%) (21% southerners and 7% northerners)
 - (c) Other northern political forces shall be represented by fourteen per cent (14%),
 - (d) Other southern political forces shall be represented by six per cent (6%);

Power Sharing: 2.5.3, 2.5.5

Global Matrix Annexure II Power Sharing (26)

Sharing of National Ministerial Portfolios

81. Portfolios in the National Council of Ministers, as clustered in schedule (G) herein, which shall be applicable only for the purposes of the Government of National Unity, shall be shared equitably and qualitatively in accordance with the provisions of Article 80 above;

Power Sharing: 2.5.3 and 2.5.4.

Duties of the Government of National Unity

82. The Government of National Unity shall undertake, *inter alia*, the following national duties:
- (a) the administration and functioning of the State and the formulation and implementation of national policies in accordance with this Constitution,
 - (b) establishing a decentralize democratic system of governance taking account of cultural, ethnic, racial, religious, and linguistic diversity and gender equality,
 - (c) implementing the Comprehensive Peace Agreement so as to make 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 Fifteen of this Constitution ,
 - (d) implementing an information campaign throughout the Sudan in all national languages to popularize the Comprehensive Peace Agreement and this Constitution and to foster national unity, reconciliation and mutual understanding,

- (e) taking all necessary measures to ensure that peace and stability are prevailing throughout the country,
- (f) finding a comprehensive solution that addresses economic and social problems, replaces conflict not just with peace, but also with social political and economic justice and respects the fundamental freedoms and rights of the people of the Sudan,
- (g) formulating a repatriation, resettlement, rehabilitation, reconstruction and development plan to address the needs of the areas affected by war and redress the imbalances in development and resource allocation,

Power Sharing: 2.5.6, 2.5.8 and 2.5.9

Machakos Protocol: 1.6, 1.7, 1.9 and 1.10.

PART FOUR

THE NATIONAL LEGISLATURE

CHAPTER I

COMPOSITION AND FUNCTIONING OF THE NATIONAL LEGISLATURE

Composition of the National Legislature

83. (1) There shall be a bicameral National Legislature composed of two chambers as follows:
- (a) a National Assembly,
 - (b) a Council of States;
- (2) The National Legislature shall conduct its business as prescribed in this Constitution in joint sittings of the two Chambers; which shall be chaired by the Speaker of the National Assembly, who shall be deputized by the Speaker of the Council of States; where the vote count will be separate and governed by the quorum specified in this Constitution;
- (3) Each Chamber shall sit separately to conduct its other business as prescribed in this Constitution;
- (4) The National Legislature, as well as each of its Chambers, shall have its own internal regulations;

Power sharing: 2.2

Composition of the National Assembly

84. (1) The National Assembly shall be composed of members elected in free and fair elections;
- (2) The National Electoral law shall prescribe the number and composition of the National Assembly;

Protocol on Power Sharing: 1.8.8 and 2.2.3.1

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 national electoral laws, rules and the procedures set forth by the National Electoral Commission;

- (2) Abyei Area shall have two observers in the Council of States elected by Abyei Area Council;

Protocol on Power Sharing: 2.2.3.2.

Global Matrix: Part 2 (11)

Eligibility for Membership of the National Legislature

86. (1) The candidate for membership of the National Legislature, shall:
- (a) be a Sudanese,
 - (b) be at least twenty one years of age,
 - (c) be of a sound mind,
 - (d) be literate,
 - (e) not have been convicted, during the previous seven years, of an offence connected with 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 state councils of ministers, shall not be eligible for membership of the National Legislature while occupying any of the aforementioned positions;
- (4) Representatives of the Council of States shall not be eligible for membership of the National Council of Ministers;

The 1998 Constitution: Article 68.

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 connected with honesty or moral turpitude,
 - (c) absence from one full session of the appropriate Chamber without permission or acceptable excuse,
 - (d) written resignation announced in the appropriate Chamber,
 - (e) change of political affiliation, identity or party on which he/she was elected to the National Assembly,
 - (f) recall by the appropriate state legislature, by decision supported by two-thirds of members, for representatives of the Council of States,
 - (g) 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 sixty days;

The 1998 Constitution: Article 69.

Seats of the National Legislature

88. (1) The National Legislature shall convene at the seat of the National Assembly specified hereunder. However, the two Speakers may agree, for exceptional reasons, to convene sitting for the National Legislature elsewhere;
- (2) The National Assembly shall convene at its seat in Omdurman; its Speaker, however, may call the Assembly to, exceptionally, convene elsewhere;
- (3) The seat of the Council of States shall be in Khartoum; however, it may also hold meetings in the capital city of Southern Sudan or of any state, as may be decided by its Speaker or the majority of the representatives;
- (4) Any meeting for the National Legislature not convened in the manner prescribed in sub-sections (1), (2) and (3) above shall be deemed irregular;

The 1998 Constitution: Article 70.

Oath of Member of the National Legislature

89. Every member of the National Legislature shall, to assume his/her functions, take the following oath before the appropriate Chamber:

“I.(name) having been elected as Member/Representative of the National Assembly/ Council of States, do hereby swear by God the Almighty that I will bear faith and allegiance to the people and the Republic of the Sudan; that I will obey, and respect, the Constitution of the country and abide by all laws; 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; as God is my witness”;

The 1998 Constitution: Article 71.

Term of the National Legislature

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

The 1998 Constitution: Article 72.

Functions of the National Legislature

91. (1) The National Legislature represents the popular will 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:
- (a) to amend this Constitution and sanction amendments to the Comprehensive Peace Agreement that are presented by its signatories,
 - (b) to receive and discuss addresses by the President of the Republic,
 - (c) to authorize annual allocations of resources and revenues, in accordance with Article 110 in this Constitution,
 - (d) to consider a bill which was rejected by the President of the Republic under Article 108 (2) herein,
 - (e) to promulgate the Southern Sudan referendum Act provided for in Article 220 (1) herein,
 - (f) to approve declaration of war or termination thereof,
 - (g) to confirm declaration of state of emergency or termination thereof,
 - (h) to impeach the President of the Republic and the First Vice President; however, if the First Vice President is from Southern Sudan, Southern Sudan Assembly shall take part in the sitting,
 - (i) any other purpose determined by this Constitution, the law or the internal regulations of the National Legislature;
- (3) The National Assembly shall be competent to:
- (a) assume legislation in all national competencies, subject to sub-Article (5) (b) below,
 - (b) approve plans, programmes, and policies relating to the State and the society,
 - (c) approve the Annual National Budget,
 - (d) approve any bill passed, by the Council of States,
 - (e) ratify international treaties, conventions and agreements,
 - (f) oversee the performance of the National Executive,
 - (g) adopt resolutions on matters of public concern,
 - (h) summon the national ministers to present reports on the executive performance of the government in general or of specified ministries or activities in particular,
 - (i) may interrogate 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 legislation on the decentralized system of government and devolution of powers,
 - (b) approve any business transacted, or bill passed, by the National Assembly,
 - (c) 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,
 - (d) approve by two-thirds majority of all its members, the appointment of the Justices of the Constitutional Court,
 - (e) approve, by two-thirds majority, national legislation referred under 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,
 - (f) exercise oversight over the National Reconstruction and Development Fund,
 - (g) decide on objections by states referred to it by the National Petroleum Commission under Article 191 (4) (d) of this Constitution,
 - (h) request from governors and concerned national ministers statements on the 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 that falls within the competence of either Chamber, as specified below, shall first be discussed by that Chamber,
 - (b) any bill approved in either Chamber shall be immediately referred to the other Chamber for information and action as appropriate. That Chamber may request an officer of the Chamber which approved the bill to make to it a presentation of that bill,
 - (c) a bill which is approved by either Chamber, shall not be re-opened for debate in the other Chamber, but shall, after clarifications and brief discussions, be approved or disapproved as it is,
 - (d) If a bill is disapproved by either Chamber, it shall be referred to the other Chamber with explanations; where it shall be re-opened for discussion in the light of such explanations and finally decided upon by that Chamber,
 - (e) no Chamber shall discuss any business of which the other Chamber is seized, until it is finally referred to it by that Chamber;

The 1998 Constitution: Article 73. and 85.

Power Sharing: 2.3.14, 2.2.6. 1.5.1.4 (c) and (d) , and 2.11.4.6 (i)

Protocol on Wealth Sharing: 15.4

Immunity of Members of the National Legislature

92. (1) Save where he/she is caught in the act of crime, no criminal proceedings shall be initiated against a member of the National Legislature, nor 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 by two-thirds majority, waive the immunity of the accused member or representative;

The 1998 Constitution: Article 74.

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 or representatives present;
- (2) 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;

The 1998 Constitution: Article 75.

Officers of The National Legislature

94. (1) Each Chamber shall have a Speaker, Deputy Speakers and other officers 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 of the Chamber. He/she shall represent the Chamber inside and outside the Sudan;
- (3) The National Assembly shall elect leaders and members of specialised committees and any other committees as may be determined by the internal regulations;
- (4) The Council of States shall elect officers to lead specialized committees and any other committees as may be determined by the internal regulations;
- (5) The Speaker shall, upon approval of his/her Chamber, appoint a Secretary General for the Chamber who shall not be a member or representative. The Secretary General shall be responsible for servicing the sessions of the Chamber and running its administrative affairs under the supervision of the Speaker;
- (6) The National Assembly may observe broad inclusivity in the apportionment of its leadership positions;

The 1998 Constitution: Article 76.

Committees of the National Legislature

95. (1) Each Chamber, in accordance with its internal regulations, shall have specialized permanent committees and ad hoc committees;
- (2) The two Chambers may form inter-chamber standing or ad hoc committees for specific matters that fall mutually within the competencies of 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 internal regulations of the National Legislature shall be initiated by the Speakers of the two Chambers;

The 1998 Constitution: Article 78.

Quorum

97. (1) The ordinary quorum for the sittings of the National Assembly shall be one-third of the members; however, for the final presentation of a bill, or when the Speaker decides that an item of the agenda is of paramount importance, there shall be a special quorum of at least more than half of the members;
- (2) The quorum for the sittings of the Council of States shall be half of the representatives;

The 1998 Constitution: Article 79.

Publicity of Sittings of the National Legislature

98. The sittings of the National Legislature and its two Chambers shall be open to the public; its 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 closed sittings;

The 1998 Constitution: Article 80.

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;

The 1998 Constitution: Article 81

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 by reason of views or opinions that he/she might have expressed in the course of performing his/her duties inside or outside the Chamber;

The 1998 Constitution: Article 82.

Address by the President

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

The 1998 Constitution: Article 83 (1).

Addresses by Vice Presidents and Statements by National Ministers and Governors

102. (1) The First Vice President, the Vice President 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) The national minister may request to deliver a statement before either Chamber of the National Legislature, whereas the governor may request to make a statement before the Council of States;

The 1998 Constitution: Article 83(2)

Addressing Questions by Members of the National Legislature

103. Pursuant to Article 91 (3) of this Constitution, 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 prompt reply;

The 1998 Constitution: Article 84 (1).

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 in person a statement on any matter of concern;

The 1998 Constitution: Article 84 (2)

General Summons

105. The National Assembly or any of its committees, may summon any public official, save for the President of the Republic and the Vice Presidents, or any other person to make a testimony before, or give opinion, to the Assembly or any of its committees. 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;

The 1998 Constitution: Article 86.

Tabling of Bills

106. (1) The President of the Republic, the Institution of 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;
- (2) A member of the National Legislature may, through private initiative, table a bill before either Chamber of the National Legislature on a matter that falls within the competence of that Chamber;
- (3) When a bill is initiated by a member, it shall not be tabled with the appropriate Chamber before being cleared by the concerned committee in that Chamber as involving an issue of public concern;

The 1998 Constitution: Article 87.

Procedures for Presentation and Consideration of Bills

107. (1) The bills presented to either Chamber of the National Legislature shall be submitted for 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 to be generally deliberated and approved in principle. If the bill has been passed in the second reading, there shall be a third reading for deliberation in detail and introduction of, and decisions 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;

The 1998 Constitution: Article 88.

Assent of the President

108. (1) Any bill duly 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) If the President withholds assent to the bill and gives reasons, within the aforementioned thirty days, the bill shall be reintroduced to the National Legislature to consider the observations of the President;
- (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 each of the two Chambers; in this case the assent of the President of the Republic shall not be required for that bill to come into force;

Protocol on Power Sharing: 2.2.8

Provisional Orders

109. (1) If the National Legislature is not in session, the President of the Republic, on an urgent matter, may 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 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, the annual allocation of revenue and resources, financial regulations, international conventions or agreements affecting 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;
- (4) The National Legislature may, as determined by the internal regulations, delegate to the President of the Republic the power to ratify international treaties and agreements while the National Legislature is not in session; however, such ratified treaties or agreements shall be deposited before the concerned Chamber of the National Legislature as soon as it is convened; except that international treaties or agreements that impinge on the country's territorial integrity or impose on it any economic or financial liabilities shall only be valid after ratification by the National Legislature;

The 1998 Constitution: Article 90.

Allocation of Resources and Revenues Bill

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

Protocol on Power Sharing: 2.2.6

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 a 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 year, a statement on the general balance of the budget, any reserve funds, transfers thereto or allocations therefrom, and explanations of any special budgets or financial estimates, policies or measures to be taken by the State in the financial and economic affairs of the country within the framework of the general budget;

- (2) The President shall also cause to be submitted to the National Assembly proposals of the 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 also not be spent save by a supplementary appropriation law;

The 1998 Constitution: Article 91.

Private 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 imposition, abolition, remitting or altering any tax, fee, or public revenue source or appropriation or levy upon public funds other than service fees or pecuniary penalties;

The 1998 Constitution: Article 92.

Provisional and Supplementary Financial Measures

113. (1) Notwithstanding the provisions of Article 111 above, the President of the Republic may wherever he/she deems it appropriate for public interest, make a provisional 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 provisional 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 prove not to have been satisfactorily addressed by the general budget, the President may during the financial year cause to be presented a financial bill, a supplementary appropriation or an allocation out of the reserve funds; to which shall apply the same provisions set out with respect to the general budget bill;

The 1998 Constitution: Article 93.

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;

The 1998 Constitution: Article 94.

Delegation of Powers of Subsidiary Legislation

115. The National Legislature 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;

The 1998 Constitution: Article 95.

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. A certificate signed by the appropriate Speaker shall be deemed to be evidence of the validity of the said proceedings;

The 1998 Constitution: Article 96.

CHAPTER II

INTERIM PROVISIONS FOR THE NATIONAL LEGISLATURE

117. (1) Pending the elections, the National Assembly shall be composed of 450 members who shall be appointed by the President of the Republic in consultation with the First Vice President, according to the seventy per cent and thirty per cent (70%/30%) north and south ratio, as follows:
- (a) National Congress Party (NCP) shall be represented by fifty two per cent (52%); (49% northerners and 3% southerners),
 - (b) The Sudan People's Liberation Movement (SPLM) shall be represented by twenty eight per cent (28%); (21% southerners and 7% northerners),
 - (c) Other northern political forces shall be represented by fourteen per cent (14%),

- (d) Other southern political forces shall be represented by six per cent (6%);
- (2) Prior to the elections, the representatives of states in the Council of States 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;

Power Sharing: 2.2.4 and 2.2.5

Global Matrix: Part II (11) and (12)

Interim Provisions for Tenure of the National Legislature

118. (1) If the outcome of the referendum on self-determination confirm unity, the National Legislature shall complete its tenure of office in accordance with the provisions of Article 90 herein;
- (2) In the event of a vote for secession by the people of Southern Sudan, the members and representatives of Southern Sudan in the National Legislature shall be deemed to have resigned and their constituencies or representation of their states cease to exist; the National Legislature, being so reconstituted, shall complete its tenure to the next elections;

PART FIVE

THE NATIONAL INSTITUTIONS OF JUSTICE

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 competent, independent and non-partisan Justices;
- (2) The Constitutional Court shall be independent and separate from the National Judiciary and all other courts in the country;
- (3) Subject to Article 121 herein, the President and Justices of the Constitutional Court shall be appointed for a ten (10) years period and their tenure may be extended. The law shall determine emoluments of the President and Justices of the Constitutional Court and shall determine its procedure;
- (4) The Justices of the Constitutional Court shall perform their functions, and apply law without political interference, fear or favour;

The 1998 Constitution: Article 105.

Protocol on Power Sharing: 2.11.3.1 and 2. 11.3.2 (i).

Appointment and Removal of the President of the Constitutional Court

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 herein, and shall be answerable to the Institution of the Presidency;
- (2) 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 an order by the President of the Republic approved by two-thirds majority of the Council of States;

Power Sharing: 2.11.3.2 (i).

Justices of the Constitutional Court

121. (1) All Justices of the Constitutional Court shall be appointed by the President of the Republic in consultation within the Institution of the Presidency and upon the recommendation of the National Judicial Service Commission, subject to approval by a two-thirds majority of all the representatives of the Council of States;
- (2) Nobody shall be qualified to be a Justice of the Constitutional Court unless he/she is of proven competence, integrity, and credibility;
- (3) Southern Sudan shall be adequately represented in the Constitutional Court;
- (4) A Justice of the Constitutional Court may only be removed upon an order of the President of the Republic on the advice of the President of the Constitutional Court that shall be approved by a two-thirds majority of the representatives of the Council of States;

The 1998 Constitution: Article 105 (3).

Power Sharing: 2.11.4.6 (i and iii).

Competencies of the Constitutional Court

122. (1) The Constitutional Court shall uphold, apply and enforce this Constitution, the constitutions of Southern Sudan and the states and its decisions shall be final and binding; it shall:
- (a) interpret constitutional or legal provisions at the instance of the President of the Republic, the National Government, the Government of Southern Sudan, a 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) have appellate jurisdiction 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;
- (2) To the exclusion of all other national courts, the Constitutional Court shall:
- (a) adjudicate on the constitutionality of laws and set aside or strike down laws or provisions of laws that do not comply with this Constitution, the Interim Constitution of Southern Sudan, or the relevant state constitution,

- (b) adjudge on constitutional disputes between organs and levels of government, with respect to areas of exclusive, concurrent or residual competencies;
- (3) Without prejudice to Article 60 (1) of this Constitution, the Constitutional Court shall have criminal jurisdiction over the President of the Republic, the two Vice Presidents, the two Speakers of the National Legislature, and the Justices of the National and Southern Sudan Supreme Courts;
- (4) The President of the Republic may seek the opinion of the Constitutional Court on any question that may have arisen on a constitutional matter and the Court shall provide its opinion thereon;

The 1998 Constitution: Article 105 (2) (a).
Power Sharing: 2.11.3.2., 2.11.3.3

CHAPTER II

THE NATIONAL JUDICIARY

The National Judicial Authority

123. (1) The National judicial competence in the Republic of the Sudan shall vest in an independent authority to be known as the “National Judiciary”;
- (2) The National Judiciary shall assume judicial powers in adjudicating on disputes and issuing judgments on those disputes in accordance with this Constitution and the law;
- (3) The National Judiciary shall be independent of the Legislature and the Executive;

The 1998 Constitution: Article 99.
Power Sharing: 2.11.1.

The Structures of the National Judiciary

124. The National Judiciary shall be structured as follows:
- (a) A National Supreme Court,
 - (b) National Courts of Appeal,
 - (c) Other national courts or tribunals as deemed necessary to be established by law;

Power Sharing: 2.11.2

The National Supreme Court

125. (1) The National Supreme Court shall:
- (a) be a court of review and cassation in respect of any criminal or civil matter arising out of, or under, national laws,
 - (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 National Supreme Court may establish panels for the purposes of considering and deciding appeals on matters requiring special expertise, inter alia, commercial, personal, or labour matters;

Protocol on Power Sharing: 2.11.4.1

National Courts of Appeal

126. The number, competencies, and procedures of National Courts of Appeal shall be determined by law;

Other National Courts

127. Other national courts or tribunals shall be established by law as deemed necessary;

Power Sharing: 2.11.2

Independence of Justices and Judges

128. (1) The Justices of the National Supreme Court and all Judges of other national courts shall be independent and shall perform their functions without political interference;
- (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 Justices and Judges shall not be affected by their judicial decisions;

The 1998 Constitution: Article 101 (2).
Power Sharing: 2.11.4.3. and 2.11.4.7.

The National Judicial Service Commission

129. (1) There shall be established by the President of the Republic, after consultation within the Institution of the Presidency, a commission to be known as the National Judicial Service Commission to undertake the overall management of the National Judiciary; its functions and composition shall be prescribed by law;
- (2) The head of the National Judiciary shall be known as the “Chief Justice of the Republic of the Sudan” who shall also be the President of the National Supreme Court and the Chair of the National Judicial Service Commission;
- (3) The National Judicial Service Commission shall regulate the relations between the National, Southern Sudan and state judiciaries; however, in the case of Southern Sudan, the regulation shall be made in consultation with the President of the Supreme Court of Southern Sudan;

The 1998 Constitution: Article 102 (2).

Power Sharing: 2.11.4.4., 2.11.4.5, and 2.11.4.6.

Appointment of Justices, Judges and their Terms of Service

130. (1) Having regard to competence, integrity and credibility, the Chief Justice of the Republic of the Sudan, Justices of the National Supreme Court, and all Judges of the Republic shall be appointed by the President of the Republic, after consultation within the Institution of the Presidency and upon the recommendation of the National Judicial Service Commission;
- (2) The law shall determine the terms of service, discipline and immunities of the 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;

The 1998 Constitution: Article 104 (4).

Power Sharing: 2.11.4.4, 2.11.4.6 (ii), 2.11.4.6 (iii) and 2.11.4.7

Discipline of Justices and Judges:

- 131 (1) The National Judiciary shall be answerable to the President of the Republic, through the National Judicial Service Commission; however disciplinary oversight on Justices and Judges shall be exercised by the Chief Justice in consultation with the National Judicial Service Commission;
- (2) Justices and Judges may only be removed under disciplinary measures for gross misconduct, incompetence and incapacity, or otherwise in accordance with the law and only with the approval of the National Judicial Service Commission;

The 1998 Constitution: Article 100.

Appointment of Justices and Judges in Southern Sudan

132. Notwithstanding Article 130(1) herein, and within one week from the adoption of Interim Constitution of Southern Sudan, the President of Government of Southern Sudan shall appoint the President and Justices of Southern Sudan Supreme Court, Courts of Appeal and Judges of other courts as shall be determined by that Constitution and the law;

Global Matrix: Part III (53)

CHAPTER III

PUBLIC ATTORNEYS AND ADVOCACY

Public Attorney

133. (1) The powers of the Attorney General shall be vested in the National Minister of Justice; in that capacity he/she shall give advice to the national government upon legal matters, perform such other duties of legal character and any other function prescribed by law;
- (2) There shall be public attorneys and legal counsels under the Attorney General to advise the State, represent it in public prosecution, litigation and adjudication, recommend law reform, protect public and private rights, advise citizens on legal matters and render legal aid;
- (3) The public attorneys and legal counsels shall perform their duties faithfully and impartially according to this Constitution and the law;
- (4) Functions, immunities and emoluments of this service shall be prescribed by law;

The 1998 Constitution: Article 106.

Advocacy

134. (1) The profession of advocacy shall promote, protect and advance the fundamental rights of citizens. Advocates shall serve to fend off injustice, defend the legal rights and interests of their clients, seek conciliation between adversaries and render legal aid for the needy according to law;
- (2) The law shall regulate the profession of advocacy;

The 1998 Constitution: Article 107.

PART SIX

THE NATIONAL CIVIL SERVICE

The National Civil Service Employees

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 of service, duties and rights of employees of the National Civil Service;

The 1998 Constitution: Article 126

Principles and Guidelines for the National Civil Service

136. The National Civil Service shall be representative of the people of the Sudan notably at the senior and middle-levels; to ensure this, the following principles and guidelines shall be recognized:
- (a) imbalances and disadvantages in recruitment shall be redressed,
 - (b) merit is important and training is necessary,
 - (c) fair competition for jobs,
 - (d) all levels of government shall not discriminate against any qualified Sudanese citizen on the basis of religion, ethnicity, region, gender, or political beliefs,
 - (e) application of affirmative action and job training to achieve equitable targets for representation within a specified time frame,
 - (f) creation of additional training opportunities for war- affected people;

Power Sharing: 2.6.1

The National Civil Service Commission

137. A National Civil Service Commission shall be established to assist and advice the government in the formulation and execution of policies related to public service employment and employees. The Commission shall address imbalances in the National Civil Service in order to create a sense of national belonging;

Power Sharing: 2.6.2

Employees Justice Chamber

138. There shall be established by law a National Employees Justice Chamber with competency to consider and determine the grievances by national public service employees. The supervision over the Chamber and appointment of its chairperson shall be made by the President of the Republic;

The 1998 Constitution: Article 127.

Interim Tasks of the National Civil Service Commission

139. The National Civil Service Commission shall have the following tasks:
- (a) formulation of policies for training and recruitment into the civil service, targeting between twenty – thirty per cent (20% - 30%) of the positions, 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 (20%) of the middle and upper level positions in the national civil service, including the positions of under secretaries, are filled with qualified persons from Southern Sudan within the first three years of the Interim Period and achieving twenty five percent (25%) in five years and the final target figure referred to in sub-paragraph (a) above, within six years,
 - (c) reviewing, after the first three years of the Interim Period, the progress made of the formulated policies and setting new goals and targets as necessary, taking into account the census results;

Power Sharing: 2.6.2.1, 2.6.2.2 and 2.6.2.3

PART SEVEN

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 Institution of the Presidency may review the composition and functions of the National Constitutional Review Commission in the course of the Interim Period;

Protocol on Power Sharing: 2.12.4.3, 2.12.9, 2.12.10 and 2.12.11

National Electoral Commission

141. (1) There shall be established, within one month after the adoption of the electoral law, a National Electoral Commission composed of seven to nine independent, competent, non-partisan, impartial and representative national personalities to be selected and appointed by the President of the Republic after consultation within the Institution of the Presidency;
- (2) The National Electoral Commission shall be the only body to assume the following functions:
- (a) prepare the general electoral roll and pursue its annual revision,
 - (b) supervise 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) supervise any general referendum in accordance with this Constitution without prejudice to Articles 183 (4) and 222 herein,
 - (d) perform any other relevant electoral functions as the law may prescribe;
- (3) The Electoral Law shall specify general rules and measures to govern elections as well as the rules, powers, procedures and terms of service of the National Electoral Commission;

The 1998 Constitution: Article 128 (2)

Global Matrix: Part I (9) (b)

Human Rights Commission

142. (1) A Human Rights Commission Act shall be promulgated; it shall, among other things, specify the powers, procedures and terms of service of the Commission;
- (2) The President of the Republic shall, in consultation within the Institution of the Presidency establish in accordance with the Human Rights Commission Act, a Human Rights Commission from fifteen independent, competent, non-partisan, impartial and representative members;

Global Matrix: Part I 36 (b)

Public Grievances Board

143. (1) There shall be established an independent body, to be known as the Public Grievances Board. Its chairman and members shall be nominated by the President of the Republic with the approval of the National Assembly from persons of competence and propriety. The Board shall be responsible to the President of the Republic and the National Assembly;
- (2) Without prejudice to the jurisdiction of law courts, the Board shall investigate complaints relating to injustice sustained by citizens in consequence of maladministration in national institutions. The Board shall not investigate matters where the complainant or the aggrieved person has the right of recourse or appeal to a court of law or tribunal or to a remedy by the same;
- (3) The Board shall make its recommendation on the remedy proposed to the Presidency for further action. However, the Board on its own volition may recommend to the Institution of the Presidency or the National Assembly any measures it deems fit to assure efficiency, justice or probity in the performance of national government institutions in coordination with the various organs of the State and submit its recommendations to the President of the Republic, the National Assembly or any public institution;
- (4) The law shall regulate the functions, procedure and terms of service of the members and employees of the Board;

The 1998 Constitution: Article 130.

PART EIGHT

ARMED FORCES, LAW ENFORCEMENT AGENCIES AND NATIONAL SECURITY

CHAPTER I

THE NATIONAL ARMED FORCES

Status of Forces

144. (1) The Sudan National Armed Forces are regular military forces whose mission is to defend the sovereignty and secure the territorial integrity of the country and participate in its reconstruction and assist in addressing national disasters within the terms of this Constitution. The law shall stipulate the conditions in which the civil authority may resort to the engagement of armed Forces in missions of non-military nature;
- (2) The Sudan National Armed Forces, which comprise of Sudan Armed Forces, Sudan People's Liberation Army and Joint/Integrated Units shall be regular, professional, and non-partisan armed forces. They shall respect the rule of law and civilian government, democracy, basic human rights, and the will of the people;
- (3) The Sudan National Armed Forces shall undertake the responsibility of the defence of the country against internal and external threats in their areas of deployment and shall be involved in addressing constitutionally specified emergencies;

Security Arrangements: Article 1 b.

Comprehensive Ceasefire Agreement: 16.3,16.4, 16.5 and 17.6

Joint Integrated Units

145. (1) There shall be formed Joint/ Integrated Units consisting of equal numbers, from the Sudan Armed Forces (SAF) and the Sudan People's Liberation Army (SPLA). 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;

Security Arrangements: Article 4.

Command and Control of the Armed Forces

146. (1) Command and control of the Armed Forces shall be as agreed in the Comprehensive Peace Agreement;
- (2) Coordination between the two forces and command of the Joint Integrated Units established according to Article (145) above, shall be the function of a Joint Defence Board (JDB) that shall be established under the Institution of the Presidency; the JDB shall be composed and operate according to the Comprehensive Peace Agreement;

Security Arrangements: Article 5 and 6.

The Permanent Ceasefire

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

Security Arrangements: Article 2.

CHAPTER II

THE LAW ENFORCEMENT AGENCIES

The Police

148. (1) The Police shall be a decentralized service, whose mission is to maintain law and order in accordance with the law, and in compliance with national and internationally accepted standards;
- (2) The Police at the national level shall be responsible for nationality and naturalization, passports and visas, immigration and aliens, criminal investigation, coordination of international, regional and bilateral criminal matters, issuance of national identity documents, setting standards and regulations including the standards for training the Police in the National Capital and any other relevant matters prescribed by law and in accordance with the Comprehensive Peace Agreement;
- (3) The services and functions of Police in Southern Sudan and the states shall be as prescribed by the constitutions of Southern Sudan, the respective state and the law;

Schedule A (8 and 38), Schedule B (2) and Schedule C (2).

Prisons and Wildlife Services

149. (1) (a) There shall be established at the National, Southern Sudan and state levels, prisons services whose functions and terms of service shall be prescribed by law;
- (b) Prisons are penal and correctional institutions; consequently all acts degrading of prisoners dignity, or that may expose their health to danger shall not be permissible.
- (2) There shall be established at the National, Southern Sudan and state levels, wildlife protection services whose functions and terms 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 the National Security Act referred to in sub-Article (3) below;
- (2) The National Security Council shall define the national security strategy based on the analysis of any and 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;

Power Sharing: 2.7.1

The National Security Service

151. (1) There shall be established a National Security Service that shall be charged with the internal and external security of the country; its mission, mandate, functions and terms 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 advising the appropriate authorities;
- (4) There shall be established National Security Service offices at the Government of Southern Sudan and state levels;
- (5) The National Security Service shall be under the supervision of the Institution of the Presidency;
- (6) All the assets of the previous security organs shall accrue to the National Security Service;

Power Sharing: 2.7.2

PART NINE

THE NATIONAL CAPITAL

Capital of the Sudan

152. Khartoum shall be the Capital of the Republic of the Sudan. The National Capital shall be a symbol of national unity that reflects the diversity of the Sudan;

Protocol on Power Sharing: 2.4.1

Representative Administration of the National Capital

153. (1) The administration of the National Capital shall be representative; and the parties signatory to the Comprehensive Peace Agreement, shall be adequately represented therein;

(2) The adequate representation shall be determined by the Institution of the Presidency in consultation with the Governor of Khartoum State;

Power Sharing: 2.4.2

Global Matrix: Part I (21)

Respect of 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 symbolize national unity, shall be guaranteed and enforced in the National Capital;

Power Sharing: 2.4.3

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 of all Sudanese;

Power Sharing: 2.4.4

Dispensing Justice in The National Capital

156. Without prejudice to the competency of any national institution to promulgate laws, judges and law enforcement agents shall, in dispensing justice and enforcing laws 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 flagrant disregard 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 be inadmissible in a 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,
 - (e) leniency and granting the accused the benefit of doubt are legal principles of universal application, especially in the circumstances of a poor society like the Sudan, which is just emerging from protracted conflict, characterized by prevalent poverty and subject to massive displacement of people;

Power Sharing: 2.4.5

The Non-Muslims Rights Commission in the National Capital

157. A special commission shall be established by the Presidency to ensure that the rights of non-muslims are protected and respected in accordance with the guidelines mentioned in Articles 154 and 156 above and not adversely affected by the application of *Sharia* law in the National Capital. The said commission shall make its observations and recommendations to the Institution of the Presidency;

Power Sharing: 2.4.6

Mechanisms for Guarantees

158. A system shall be established to implement the provisions of Article 156 above, which include:-
- (a) Judicial circulars to guide the courts as to how to observe the foregoing principles,
 - (b) Establishment of specialized courts,
 - (c) Establishment of specialized Attorney General offices to conduct investigations and pre-trial proceedings in accordance with the principles referred to above;

Power Sharing: 2.4.7

PART TEN

THE GOVERNMENT OF SOUTHERN SUDAN

CHAPTER I

Establishment of Government of Southern Sudan

Organs of Government of Southern Sudan

159. There shall be established in Southern Sudan a government to be known as the Government of Southern Sudan (GOSS), as per the north/south boundaries of 1st of January, 1956, which shall consist of:-
- a) The Legislature of Southern Sudan,
 - b) The Executive of Southern Sudan,
 - c) The Judiciary of Southern Sudan;

Power Sharing: 3.1

Interim Constitution of Southern Sudan

160. (1) The Government of Southern Sudan shall function in accordance with an Interim Constitution of Southern Sudan, which shall be drafted by an inclusive Interim Constitution of Southern Sudan 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;

Power Sharing: 3.2 and 3.5.5

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 D, read together with Schedules E and F of this Constitution, Interim Constitution of Southern Sudan, and the Comprehensive Peace Agreement;

Power Sharing: 3.3

Primary Responsibility of the Government of Southern Sudan

162. The primary responsibility of the Government of Southern Sudan shall be to exercise authority in respect of Southern Sudan, the states of Southern Sudan, and to act as a link with the National Government for the states of Southern Sudan, and to ensure that the rights and interests of the people of Southern Sudan are safeguarded;

Power Sharing: 3.4

CHAPTER II

THE EXECUTIVE OF SOUTHERN SUDAN

The President of Government of Southern Sudan

163. (1) The President of 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 Electoral Commission;
- (2) The term of office of the President of 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;
- (3) Should the post of the President of Government of Southern Sudan fall vacant, and pending, the elections within sixty (60) days, and swearing in of the new President of Government, the functions of the President of Government shall be assumed by the Vice President of Government of Southern Sudan;

Power Sharing: 3.5.4, 2.3.7, 3.6.6 (a) and (c).

The Vice President of Government of Southern Sudan

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

Power Sharing: 3.5.4.

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 based on respect for ethnic and religious diversity and gender;
- (2) The President and Vice President of Government of Southern Sudan shall be members of Southern Sudan Council of Ministers;

Power Sharing: 3.6.1 and 3.6.3.

Accountability of Southern Sudan Council of Ministers

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

Power Sharing: 3.6.1

Special Obligations of the Government of Southern Sudan

167. The Government of Southern Sudan shall discharge its obligations and exercise its powers as is 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;

Power Sharing: 3.6.5

Southern Sudan Independent Institutions and Commissions

168. (1) The Government of Southern Sudan shall establish such independent institutions as the Comprehensive Peace Agreement, this Constitution and the Interim Constitution of Southern Sudan contemplate. It shall be empowered to establish such further 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, Southern Sudan Civil Service Commission, Public Grievances Board and Employees Justice Chamber; their functions and terms of service shall be regulated by the laws of Southern Sudan;

Power Sharing: 3.6.2

CHAPTER III

THE LEGISLATURE OF SOUTHERN SUDAN

Establishment of Southern Sudan Assembly

169. The Interim Constitution of Southern Sudan shall provide for the establishment of the Southern Sudan Assembly which shall be re-constituted through elections;

Power Sharing: 3.5.4

Assignment of Powers to the Government of Southern Sudan

170. When enacting the Interim Constitution of Southern Sudan, the transitional Assembly of Southern Sudan 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;

Power Sharing: 3.5.3

Powers of Southern Sudan Assembly

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

Power Sharing: 3.5.6 and 3.5.2

CHAPTER IV

THE JUDICIARY OF SOUTHERN SUDAN

Structure of the Judiciary of Southern Sudan

172. (1) The 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 from 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 Interim Constitution of Southern Sudan and the law;

Power Sharing: 3.7.1

The Supreme Court of Southern Sudan

173. The Interim Constitution of Southern Sudan shall provide for the establishment of the Supreme Court for Southern Sudan which shall be the highest court in Southern Sudan and to which appeals may be directed from Southern Sudan courts, state courts or other courts 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;

Power Sharing: 3.7.2.

Competence 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 of 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 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 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 and the law;

Power Sharing: 3.7.3

Justices and Judges of Southern Sudan

175. (1) Justices and Judges of Southern Sudan shall perform their functions without political interference, shall be independent, and shall 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 Assembly shall provide for appointments, terms of service and dismissal of Southern Sudan appointed Justices and Judges;

Power Sharing: 3.7.4, 3.7.5 and 4.6.2.1

CHAPTER V

INTERIM PROVISIONS FOR SOUTHERN SUDAN

176. Prior to elections:

- (1) The current 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) herein, the office shall be filled by the nominee of the SPLM within two weeks;
- (3) Representation in the Government of Southern Sudan shall be as follows:-
 - (a) the SPLM shall be represented by seventy percent (70%),
 - (b) the NCP shall be represented by fifteen percent (15%),
 - (c) the other Southern political forces shall be represented by fifteen percent (15%);
- (4) The transitional Southern Sudan Assembly shall be an inclusive, constituent legislature composed of 170 appointed members as follows:-
 - (a) seventy percent (70%) representing the SPLM,
 - (b) fifteen percent (15%) representing the NCP,
 - (c) fifteen percent (15%) representing the other Southern Sudan political forces;

Power Sharing: 2.3.5, 3.6.4, 2.3.11.1 and 3.5.1

PART ELEVEN

THE STATES AND ABYEI AREA

States of the Sudan

177. (1) The Republic of the Sudan shall be decentralized and composed of states;
- (2) National legislation shall determine, *inter alia*, the number of states as well as their names, capital and geographical boundaries. However, the January 1st, 1956 line between north and south shall be inviolate subject to Article 183 (4) of this Constitution;

The 1998 Constitution: Article 108 and 109.

State Institutions

178. (1) There shall be legislative, executive, and judicial institutions 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; election, organization and proper functioning of local government shall be in accordance with the relevant state constitution;

Protocol on Power Sharing: 4.2 and 4.3.

State Executive

179. (1) There shall be a governor for each state, elected by the people in the state, in compliance with the procedure prescribed by the National Electoral Commission and in accordance with this Constitution, the Interim Constitution of Southern Sudan where applicable, the relevant state constitution and the law;
- (2) The state council of ministers shall be appointed by the governor in accordance with the state constitution;
- (3) The state ministers shall be accountable to the governor and the state legislature in the performance of their functions and may be removed by the governor on a motion supported by two-thirds of all the members of the state legislature;

- (4) The governor shall, together with the state's council of ministers appointed by him/her, exercise the executive powers of the state which shall be in respect of the functional areas listed in Schedules C and D, read together with Schedules E and F, and such other executive competencies as are conferred upon the state by this Constitution, the Interim Constitution of Southern Sudan, in the case of Southern Sudan states, the state constitution, and the Comprehensive Peace Agreement;

The 1998 Constitution: Article 56 (1)
Power Sharing: 4.5.3 and 4.5.4

State Legislature

180. (1) The state shall have a state legislature composed of members elected in accordance with the state constitution and the electoral provisions herein and as set forth by the National Electoral 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 competency in respect of the functional areas listed in Schedules C and D, read together with Schedules E and F;
- (4) The state legislature shall decide its own rules, procedures, and committees, and elect its speaker and other officers;
- (5) Governors, members of state legislatures and the state councils of ministers shall have such immunities as are provided by law;

Protocol on Power sharing: 4.4.1, 4.4.4, 4.4.5, and 4.4.7.

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 and the Interim Constitution of Southern Sudan whenever applicable; however, the National Legislature shall determine the civil and criminal procedures in respect of litigation or prosecution under National laws in accordance with this Constitution;
- (3) State legislation shall provide for:-
 - (a) the appointment and dismissal of lay magistrates,

- (b) guarantees of the independence and impartiality of state judiciary and ensure that judges shall not be subject to political or other 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;

Power Sharing: 4.6.1, 4.6.3, 4.6.4, 4.6.2 and 4.6.5

Southern Kordofan and Blue Nile States

- 182. (1) Without prejudice to any of the provisions of this Constitution and the Comprehensive Peace Agreement, 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;

Two Areas: 3.2

The 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 the Abyei Area shall apply with respect to the Abyei Area;
- (2) Abyei Area shall be accorded special administrative status under the institution of the Presidency, in which residents of Abyei 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 Southern Sudan Referendum, with the following choices:
 - (a) that Abyei retain its special administrative status in the north;
 - (b) that Abyei be part of Bahr el Ghazal;
- (4) The January 1st, 1956 line between north and south will be inviolate, except as agreed in sub-Article (3) above;

Abyei Area: 1.2, 1.3 and 1.4

State Interim Provisions

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, and in the case of governors of Southern Sudan states by the President of GOSS in consultation with the Vice President of GOSS;
 - (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) Seats in the legislatures and representation in the executive of the states, other than in Southern Kordofan and Blue Nile States, shall be allocated as follows:-
- a) the National Congress Party is to hold seventy percent (70%) of the seats in the Northern Sudan states, and the SPLM seventy per cent (70%) of the seats in Southern Sudan states;
 - (b) the remaining thirty per cent (30%) of the seats in Northern and Southern Sudan states shall be allocated as follows:-
 - (1) ten per cent (10%) of the seats in Southern Sudan states to be filled by the NCP,
 - (2) ten per cent (10%) of the seats in the Northern Sudan states to be filled by the SPLM,
 - (3) twenty per cent (20%) 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 in the legislatures and representation in the 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;

Power Sharing: 4.5.2, 4.5.1, and 4.4.2
Global Matrix: Part IV (54)

PART TWELVE

FINANCE AND ECONOMIC MATTERS

CHAPTER I

Guiding Principles in Respect of Equitable Sharing of Common Wealth

185. (1) The wealth of the Sudan shall be shared equitably so as to enable each level of government to discharge its legal and constitutional responsibilities and duties;
- (2) The National Government shall fulfil its obligation to provide transfers to the Government of Southern Sudan, and shall, except as otherwise provided herein, apportion revenues equitably among all states;
- (3) The sharing and allocation of the wealth of the Sudan shall be based on the premise that all parts of the country are entitled to development. Accordingly, wealth emanating from the resources of the Sudan shall be allocated in a manner 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;
- (4) The State recognizes that Southern Sudan, Southern Kordofan, Blue Nile, Abyei Area and other conflict affected areas face serious needs to: (i) be able to perform basic government functions, (ii) establish or build up the civil administration, and (iii) rehabilitate and reconstruct/construct the social and physical infrastructure in a post-conflict Sudan;
- (5) Southern Sudan and those areas in need of construction/reconstruction, shall be brought up to the same average level of socio-economic and public services standard as the northern states. To achieve these objectives the State shall endeavour to build up local institutional, human and economic capacity. For this purpose, there shall be established a National Reconstruction and Development Fund and a Southern Sudan Reconstruction and Development Fund;
- (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 development 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 control of natural resources shall be followed by the State;

- (9) This Constitution sets out the respective types of income, revenue, taxes and other sources of wealth to which the various levels of government are entitled;
- (10) no level of government shall withhold an allocation due to any other level of government. Any level of Government, after attempting amicable solution, may initiate proceedings in the Constitutional Court, and in case of state of Southern Sudan before the Southern Sudan Supreme Court, should it believe that any organ or level of government is withholding funds due to it;

Wealth Sharing: 1.2-1.16.

CHAPTER II

LAND RESOURCES

Land regulation

186. (1) The regulation of land tenure, usage and exercise of rights in land shall be a concurrent competency 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 and practices, local heritage and international trends and practices;

Wealth sharing: 2.3

Global Matrix: Wealth Sharing Part A1

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, and sort out such claims;
 - (b) Entertain claims, at its discretion, in respect of land be they against the relevant government and/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, and make recommendations to the appropriate level of government concerning:
 - (i) land reform policies,
 - (ii) recognition of customary land rights or law,
 - (e) Assess appropriate land compensation, which need not be 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 co-ordinate policies on national projects affecting land or land rights;
 - (g) Study and record land use practices in areas where natural resource exploitation occurs;
 - (h) Conduct hearings and formulate its own rules of procedure;
- (2) The National Land Commission shall be representative and independent. The composition of the membership and terms of appointment of the National Land Commission shall be set by the legislation constituting it. The Chairperson of the National Land Commission shall be appointed by the President of the Republic after consultation within the Institution of the Presidency;
- (3) The National Land Commission shall be accountable to the Institution of the Presidency for the due performance of its functions which shall approve the budget of the Commission;

Wealth Sharing: 2.6

Southern Sudan Land Commission

188. In accordance with this Constitution and without prejudice to the jurisdiction of 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;

Wealth Sharing: 2.7

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. Without limiting cooperation to matters of coordination, the National Land Commission and the Southern Sudan Land Commission may agree:
- (a) to exchange information and decisions of each other,
 - (b) that certain functions of the National Land Commission, including collection of data and research, may be carried out through Southern Sudan Land Commission,
 - (c) on the way in which any conflict between the findings or recommendations of each Commission may be resolved;
- (2) 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 (1) (c) above, the matter shall be referred to the Constitutional Court;

Wealth Sharing: 2.8 and 2.9

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:
 - (1) the national interest and the public good,
 - (2) the interest of the affected states,
 - (3) the interest of the local population in affected areas,
 - (4) 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 dully be taken into account in respect of decisions to develop subterranean natural resources from the area in which they have rights, and shall share in the benefits of that development;
 - (e) persons enjoying rights in land are entitled to 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;

Wealth Sharing: 3.1

National Petroleum Commission

191. (1) An independent National Petroleum Commission (NPC) shall be established and its decision shall be by consensus;
- (2) Subject to other relevant provisions of this Constitution and the Comprehensive Peace Agreement, 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 (4) permanent members representing the National Government,
 - (c) four (4) permanent members representing the GOSS,
 - (d) not more than three (3) non-permanent members representing an oil producing state 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 those policies 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 the National Petroleum Commission's principles, policies and guidelines,
 - e) develop its internal regulations and procedures;
- (4) In performing the functions referred to in sub-Article (3) above, the NPC 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 NPC 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 NPC representing the oil producing state collectively disagree with the decision of the NPC to approve the contract related to their state, the National Minister 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 of Petroleum shall sign the contract. If the Council of States does not reject the objection by two-thirds majority within 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 NPC approves the contract, the National Minister 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 NPC shall include only its permanent members,
 - (g) in performing function (d) of sub-Article (3) above, the NPC shall include, in addition to its permanent members, representatives of an oil producing state in which contracts for the exploration and development of the petroleum are being negotiated and considered for approval;

Wealth Sharing: 3.4. and 3.5

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 (i) from exports of government oil and (ii) from deliveries of government oil to the refineries. Exports shall be valued at the actual Free on Board (FOB) export prices less the charges to deliver the oil to any export destination including pipeline and management charges. Oil delivered to the refinery shall be valued at the average FOB 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;
- (3) 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 reflecting changing economic circumstances;
- (4) At least two per cent (2%) 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;
- (5) After the payment to the Oil Revenue Stabilization Account and to the oil producing states, fifty per cent (50%) of net oil revenue derived from oil producing wells in Southern Sudan shall be allocated to the Government of Southern Sudan (GOSS) as of the beginning of the pre-interim period and the remaining fifty percent (50%) to the National Government and states in Northern Sudan;
- (6) A Future Generations Fund shall be established once national oil production reaches two (2) million barrels per day. This production criterion may, as part of the National Government's normal budget process, be reduced down to one (1) million barrels per day;
- (7) All funds/special accounts referred to in this Constitution and future accounts shall be on-budget operations in accordance with the national budget;

Wealth Sharing: 5.1.1,5.3., 5.4, 5.5, 5.6, 5.7 and 5.8

CHAPTER IV

Sources of REVENUE

Sources of National Revenue

193. The National Government may raise revenue, legislate for and collect taxes listed taxes from these 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) value added tax or general sales tax or other retail taxes on goods and services;
- (i) excise tax;
- (j) loans, including borrowing from the Central Bank of the Sudan and the public;
- (k) any other tax as determined by law;

Wealth Sharing: 6.1.

Sources of Southern Sudan Revenue

194. The Government of Southern Sudan may raise revenue, legislate for and collect 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) Southern Sudan Reconstruction and Development Fund (SSRDF);
- (d) oil revenues as set out in Article 192 of this Constitution,
- (e) Southern Sudan Government taxes, which do not encroach on the exclusive National Government taxing powers;
- (f) Service charges of Government of Southern Sudan;
- (g) Government of Southern Sudan enterprises and projects,
- (h) grants-in-aid and foreign financial flows,
- (i) taxes and levies on small and medium businesses;
- (j) excise taxes on goods within Southern Sudan deemed to be luxury consumables;
- (k) Southern Sudan personal income tax;

- (l) Loans and borrowing in accordance with Article 203 of this Constitution;
- (m) Any other taxes as may be determined by law;

Wealth Sharing: 6.2

Sources of State Revenue

195. The states may raise revenue, legislate for and collect taxes as set out below :
- (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 taxes;
 - (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;

Wealth sharing: 6.3.

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 (50%) of the national non-oil revenue collected in Southern Sudan, as provided for under Article 193 above, to the GOSS to partially meet the development costs during the interim period. This arrangement shall be reviewed, during the mid-term review, with the view of the 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;

Wealth Sharing: 7.3

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 (NRF) 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;

Wealth sharing: 7.1 and 7.2

Fiscal and Financial Allocation and Monitoring Commission

198. (1) A Fiscal and Financial Allocation and Monitoring Commission (FFAMC) 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 states;
- (2) The FFAMC 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 resources allocated to conflict affected areas are transferred in accordance with agreed upon formulae,
 - (d) safeguard transparency and fairness in the allocation of funds to the GOSS and states according to established ratios or percentages stipulated in this Constitution;
- (3) The FFAMC shall be composed of representatives from the National Government and the Government of Southern Sudan and 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 Sudan;
- (4) The Chairperson of the FFAMC shall be appointed by the Presidency;

- (5) The FFAMC shall work out its rules and procedures, which shall be approved by the Institution of the Presidency;
- (6) The FFAMC shall quarterly report to the Presidency of 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 Institution of 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;

Wealth sharing: 8.1, 8.2 and 8.3.

National Reconstruction and Development Fund

199. There shall be established by the Treasury, a National Reconstruction and Development Fund (NRDF) having the mission of developing the conflict affected areas and the least developed areas outside Southern Sudan. It shall be managed by a steering committee with appropriate representation from such areas; a member of Southern Sudan Ministry of Finance shall be a member of the Steering Committee. A report on the income, expenditure and the projects supported by the Fund shall be tabled before the National Assembly and the Council of States, which shall exercise oversight over the Fund according to Article 91 (5) (g) herein;

Wealth Sharing: 15.4

Southern Sudan Reconstruction and Development Fund

200. (1) There shall be established a Southern Sudan Reconstruction and Development Fund (SSRDF) to solicit, raise and collect funds from domestic and international donors and disburse such funds for the reconstruction and rehabilitation 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;

Wealth Sharing: 15.1, 15.2, and 15.3

CHAPTER VI

BANKING

The Dual Banking System

201. (1) The Central Bank of the Sudan (CBOS) 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 the 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 (BOSS) as a branch of Central Bank of Sudan (CBOS) to provide, *inter alia*, conventional banking facilities;

Wealth Sharing: 14.1 and 14.2.

Restructuring and Management of the Central Bank of the Sudan

202. (1) The Central Bank of the Sudan (CBOS) shall be restructured so as to reflect the duality of the banking system in the Sudan. The CBOS 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: (i) an Islamic financing window in Northern Sudan under a Deputy Governor of CBOS using Islamic financing instruments to implement the national monetary policy in Northern Sudan; and (ii) the Bank of Southern Sudan (BOSS), headed by a Deputy Governor of CBOS, 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 CBOS 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 CBOS shall be fully independent in its pursuit of monetary policy;
- (4) There shall be established an independent Board of Directors (BOD) for the Central Bank of the Sudan, which shall be responsible to the Institution of the Presidency. It shall consist of of nine (9) members as follows:
 - (a) Governor of CBOS (Chairperson) and his/her two Deputies and,
 - (b) six highly qualified Sudanese to be appointed by the President of the Republic after consultation within the Institution of the Presidency;
- (5) Decisions of BOD on matters that may affect adversely the interests of the clientele of either banking window shall be by consensus;
- (6) The Governor of CBOS and his/her two Deputies shall be appointed by the President of the Republic, after consultation within the Institution of the Presidency. The Governor of CBOS shall appoint, in consultation with BOD and his/her two Deputies, other senior officers within the Central Bank;
- (7) The BOSS 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 CBOS;
- (9) All financial institutions shall be bound to implement monetary policies set by the CBOS;

Wealth Sharing: 14.3-14.11

Government Borrowing

203. (1) The Government of Southern Sudan and the states may borrow money . Neither the National Government nor the CBOS shall be required or expected to guarantee borrowing by sub-national levels of government;
- (2) The GOSS 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 be consistent with the objective of maintaining external financial viability. All foreign borrowing transactions of sub-national levels of government shall conform to the CBOS specifications;

Wealth Sharing: 14.13, 14.14, 14.15, and 14.16

CHAPTER VII

ACCOUNTING STANDARDS

Accounting standard,s Procedures and Fiscal Accountability

204. (1) All levels of government shall comply with generally accepted accounting standards and procedures 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;

Wealth Sharing: 12.1 and 12.3

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 performances of the national government, including revenue collection and expenditure, in accordance with the budgets approved by the national, 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, who shall head the National Audit Chamber and shall take oath before the President. 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 organs, the National Legislature, and the National Judiciary as well as the accounts of northern states, public institutions corporations and 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 Auditor General shall be prohibited from engaging in all businesses in which constitutional office holders are disallowed to engage pursuant to Article 75 of this Constitution;
- (7) The law shall organize the National and Southern Sudan Audit Chambers and shall specify the functions and terms of service of their employees;

The 1998 Constitution: Article 129.

CHAPTER VIII

INTERSTATE COMMERCE

Interstate Commerce

206. (1) There shall be no legalisation to impede interstate commerce or the flow of goods and services, capital, or labour between the states;
- (2) There shall be no levies or fees on interstate trade;

Wealth Sharing: 9.1

The 1998 Constitution: Article 118

CHAPTER IX

TRANSITIONAL PROVISIONS FOR FINANCE AND BANKING

New Currency

207. The CBOS shall issue a new currency, the design of which shall reflect the cultural diversity of the Sudan, as soon as practicable. Until a new currency is issued on the recommendations of the CBOS, the circulating currencies in Southern Sudan shall be recognised;

Wealth Sharing: 14.9

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" mean contracts signed before the date of signature of the final Comprehensive Peace Agreement;
- (3) The contracts shall not be subject to re-negotiation;
- (4) If the contracts are deemed to have fundamental social and environmental problems the National Government shall implement necessary remedial measures;
- (5) Persons whose rights have been violated by oil contracts shall be entitled to compensation. On the 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;

Wealth Sharing: 4.1, 4.2, 4.3, 4.4 and 4.5

Government Liabilities and Assets

209. (1) Any debt/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;

Wealth sharing: 10.1 and 11.1

PART THIRTEEN

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 or imminence of any 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 meeting shall be convoked;
- (3) When the National Legislature approves the declaration of a state of emergency, there shall continue the effect of any laws, exceptional orders or measures that may have been issued or taken by the President of the Republic pursuant to the state of emergency;

The 1998 Constitution: Article 131

Power Sharing: 2.3.6.1

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, or all, of the Bill of Rights of this Constitution. However, there shall not be infringement on the right to life, freedom from slavery, torture, the right of non-discrimination on basis of race, sex or religious creed, the right in litigation or the presumption of innocence and legal representation;
- (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 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 issue any such measures as deemed necessary to the state of emergency, which shall have the force of law;

The 1998 Constitution: Article 132

Power Sharing: 2.3.14

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 of the 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) declaration by the President of the Republic with the consent of the First Vice President lifting the state of emergency;

The 1998 Constitution: Article 134.

Declaration of War

213. The President, 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 of the National Legislature;

The 1998 Constitution: Article 135.

Power Sharing: 2.3.6.2

PART FOURTEEN

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 Institution of 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 for Statistics,
 - (c) follow-up on the preparations leading to the population census and oversee the actual census operation,
 - (d) report to the Institution of the Presidency regarding the Population Census;

Global Matrix: Part I (8)

Population Census

215. A population census throughout the Sudan shall be conducted and completed by the end of the second year of the Interim Period; the Census shall be conducted by the Central Bureau of Statistics and the GOSS Centre for Statistics and Evaluation;

Power Sharing: 1.8.1, 1.8.2 and 1.8.9.

Global Matrix: Part I (8)

CHAPTER II

ELECTIONS

Time of Elections

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

Global Matrix: Part I (9) (d)

Referendum

217. (1) The President of the Republic or the National Assembly, by resolution of half the members, may refer to referendum any matter of national or public interest;
- (2) The National Electoral Commission shall conduct the referendum of all the electorate; and 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 legislation; thus, it shall not be annulled save by another referendum;

The 1998 Constitution: Article 66.

Condition for Standing for Election

218. Whoever runs in any elections shall declare that he/she abides by this Constitution and the Comprehensive Peace Agreement;

Power Sharing: 1.8.6

PART FIFTEEN

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;

Machakos Protocol: 1.3

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 Institution of the Presidency shall, as soon as Southern Sudan Referendum Act is issued, establish Southern Sudan Referendum Commission;

Global Matrix: Part I (1) (a) and (b)

The Assessment and Evaluation Commission

221. (1) An independent Assessment and Evaluation Commission shall be established by the President of the Republic, after consultation within the Institution of the Presidency, during the Pre-Interim Period to monitor the implementation of the Comprehensive Peace Agreement during the Interim Period. This Commission shall conduct a mid-term evaluation of the unity arrangements established under the Comprehensive Peace Agreement;
- (2) 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 making the permanent unity of the Sudan attractive to the people of Southern Sudan;

Machakos Protocol: 2.4

The Referendum on Self-Determination

222. (1) Six months before the end of the six (6) 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;

Machakos Protocol: 2.5

Global Matrix: Part I (1) (e)

PART SIXTEEN

COMING INTO EFFECT OF THIS CONSTITUTION AND MISCELLANEOUS PROVISIONS

Coming into Force

223. Upon adoption by the National Assembly and the SPLM National Liberation Council, this Constitution shall come into force as the Interim National Constitution, 2005;

Power Sharing: 2.12.7

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;

Power Sharing: 2.2.7

Incorporation of the Comprehensive Peace Agreement in this Constitution

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

Machakos Protocol: 3.1.2

Transitional, Miscellaneous and Special Provisions

226. (1) This Constitution is based on the Comprehensive Peace Agreement and the Constitution of the Republic of the Sudan 1998;

- (2) The provisions of the Comprehensive Peace Agreement are all incorporated into this Constitution as stipulated in Article 225 above; the provisions of the Constitution of the Republic of the Sudan 1998, save those incorporated in this Constitution, are hereby repealed;
- (3) 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;
- (4) Pending the reconstitution of the executive and legislative bodies contemplated in this Constitution, the President of the Republic and the First Vice President shall authorize the continuation of the current administration as care-taker administration. The President of the GOSS shall also take necessary measures for the creation of a care-taker administration in Southern Sudan, pending the adoption of the Interim Constitution of Southern Sudan;
- (5) The law shall determine the salaries, emoluments, privileges and remunerations of the President of the Republic, the Vice Presidents, the President of Government of Southern Sudan, the Speakers and members/representatives of the National Legislature and all holders of constitutional posts at the National, Southern Sudan and state levels;
- (6) For the purposes of this Constitution and the Comprehensive Peace Agreement, the Interim Period shall commence on 9th July 2005; any actions taken or institutions created jointly by the two signatories of the Comprehensive Peace Agreement, pursuant thereto, before the adoption of this Constitution shall be deemed to have been taken under this Constitution;
- (7) This Constitution shall continue in force subject to any amendment or review that may be agreed. 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 or obligations shall be deemed to have been duly repealed;

227. Schedules

- Schedule A : National Powers
- Schedule B : Powers of GOSS
- Schedule C : Powers of the states
- Schedule D : Concurrent Powers
- Schedule E : Residual Powers
- Schedule F : Resolution of Conflict in respect of concurrent powers
- Schedule G : Clustering of National Ministries

SCHEDULE A: National Powers

Exclusive competencies (Legislative and Executive Powers) of the National Government.

1. National Defense and 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 such National Courts responsible for enforcing or applying National laws;
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 the Interim National 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 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, transboundary 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 Electoral Commission;
38. Issuance of National ID Card.

SCHEDULE B: Powers of the Government of Southern Sudan

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

1. The adoption and amendment of the Constitution of the Government of Southern Sudan (subject to compliance with the Interim National Constitution);
2. Police, Prisons and Wildlife Services;
3. Security and military forces during the Interim Period (subject to Agreement on Security Arrangements);
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 as is specified in the Schedules, 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, animal control 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 as a whole within the competencies of Southern Sudan Government;
12. Taxation and revenue raising in Southern Sudan as a whole;
13. Southern Sudan Budget, subject to the agreement on Wealth Sharing;

14. GOSS Public utilities;
15. GOSS flag, emblem;
16. Reconstruction and development of the Southern Sudan as a whole, subject to the provisions of the Wealth Sharing Agreement;
17. GOSS 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 GOSS legislation or intervention including, but not limited to the following:-
 - 19.1. Matters relating to businesses, trade licenses and conditions of operation;
 - 19.2. Natural resources and forestry;
 - 19.3. Town and rural planning;
 - 19.4. Disputes arising from the management of interstate waters strictly within Southern Sudan;
 - 19.5. Fire fighting and ambulance services;
 - 19.6. GOSS reformatory institutions;
 - 19.7. Firearm licenses within Southern Sudan; and
 - 19.8. GOSS recreation and sports.
20. Such matters relating to taxation, royalties and economic planning as is specified in the Agreement on Wealth Sharing as a matter or matters in regard to which the Government of Southern Sudan is accorded exclusive authority;
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 other appropriate documentation.

SCHEDULE C: Powers of States

Exclusive executive and legislative competencies of the individual States of Sudan shall be as set out hereunder:-

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 subject to the National Constitution and the Peace Agreement;
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, (subject to the Agreement on Wealth Sharing);
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.

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 during the Interim Period:-

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 GOSS 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 Southern Sudan Government, 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. Animal and livestock control, animal diseases, pastures and veterinary services;
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 as specified in the Agreement on Wealth Sharing;
29. Southern Sudan and State Courts responsible for enforcing or applying National laws;
30. Such matters relating to taxation, royalties and economic planning as is specified in the Agreement on Wealth Sharing 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.

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.

SCHEDULE G:

CLUSTERS OF NATIONAL MINISTRIES

	MINISTRIES OF SOVEREIGNTY	MINISTRIES OF THE ECONOMIC SECTOR	MINISTRIES OF THE SERVICES SECTOR
1.	Ministry of Presidency	Ministry of Finance and National Economy	Ministry of Health
2.	Ministry of Council of Ministers HQs	Ministry of Energy and Mining	Ministry of Humanitarian Affairs
3.	Ministry of Foreign Affairs	Ministry of Irrigation and Water Resources	Ministry of Labour, Public Service and Human Resources Development
4.	Ministry of Interior	Ministry of Agriculture and Forestry	Ministry of Environment and Urban Development (Physical Planning)
5.	Ministry of Justice	Ministry of Industry	Ministry of Education
6.	Ministry of Information and Telecommunications	Ministry of External Commerce	Ministry of Higher Education
7.	Ministry of Parliamentary Affairs	Ministry of Investment	Ministry of Culture, Youth and Sports
8.	Ministry of Defence	Ministry of wildlife Conservation and Tourism	Ministry of Science and Technology
9.	Ministry of Federal Governance	Ministry of Animal Resources and Fisheries	Ministry of Social Welfare, Gender and Child Affairs
10.		Ministry of Transportation, Roads and Bridges	Ministry of Guidance and Endowment
11.		Ministry of International Co-operation	