

**SOUTHERN SUDAN CIVIL SOCIETY INITIATIVE**

**THE  
CONSTITUTION  
OF  
SOUTHERN SUDAN**

**DRAFT  
CONSTITUTION FRAMEWORK TEXT**

**PROPOSAL  
OF THE  
SOUTHERN SUDAN CIVIL SOCIETY**

**NAIROBI- FEBRUARY 2005**



## INTRODUCTION

Within the framework of the Comprehensive Peace Agreement between the Government of Sudan and the Sudan Peoples Liberation Movement/Army (SPLM/A) signed on January 9<sup>th</sup>, 2005 in Nairobi and the broader debates on the urgency of constitutional formulation in Sudan, the South Sudan Civil Society Initiative to make meaningful contributions to the ongoing constitutional debates came into being.

Motivated and inspired by the many significant headways being made – to the emergence of which it continued to advocate over the years – it is therefore very much fitting and appropriate for South Sudanese civil society groups to make an effort on giving their visions and objective perspectives on governance and the broader interim constitutional arrangements of Sudan.

A consultation process has therefore been set in motion led by Justice Africa, the South Sudan Law Society and the leading networks of civil society groups in South Sudan both inside and outside the country. This consultation process has generated healthy and encouraging debates on how best to go about the realization of such visions to the satisfaction of the parties concerned.

From its very inception the consultation process was set in motion while being engaged informally with leading members of the SPLM/A and Government of Sudan with a view of deepening understanding and participation of the Sudanese Civil society in all stages of the constitutional process. This participation will undoubtedly serve the common good of the people of South Sudan and Sudan as a whole on the basis of the Comprehensive Peace Agreement and popular expectations.

These series of meetings culminated in major consultation attended by **70** participants held in Nairobi from 10-15.02.05 on Southern Sudan Governance between Southern Sudanese lawyers and representatives of South Sudanese civil society groups organized by Justice Africa, funded by DFID. The consultation generated intensive discussions and group work activities took place in a manner that captured the essential elements of how to proceed with this ongoing consultation process on Southern Sudan Governance and interim constitution for Southern Sudan. The consultation reaffirmed the conviction of South Sudan Civil Society that the function of the constitution is not merely to provide a framework for society but to bring into being or consolidate southern society itself. The consultation noted that since Sudan's independence, Southern Sudanese felt alienated from the government and structures of authority. They felt neglected, victimized, persecuted and have no control over their destiny. The Constitution of Southern Sudan must redress these historical injustices.

This first draft framework for South Sudanese civil society visions on governance and interim constitutional development came into being out of these activities. It is now being broadened even further to become inclusive to all South Sudanese civil society groups and stakeholders, in order to ensure the best possible outcomes for the common good of all.

In preparation of this draft, we have analysed the CPA, Sudan Constitution of 1998, the Constitution Framework Text, Joint Preparatory Work (SPLM&GOS) January 2005, past Sudan constitutional developments, constitutional experiences of some African countries and tried to imagine the future in which Southern Sudan Constitution will operate. While cognizant of the fact that the Southern Sudan Constitution should conform to the National Interim Constitution according to the CPA, we tried to travel on journey of self-discovery and envisaged a constitution that will place the people of Southern Sudan in the centre of politics and development. We have tried to place the people at the center of the constitution in firm believe that Southern Sudanese unity and sustainable peace will not come about unless all southern communities are treated justly and feel genuinely so. The constitution must therefore guarantee equality in all spheres of life in Southern Sudan.

Briefly, this draft constitution for southern Sudan aims at triggering constitutional debate and seeks wider consensus among the people of Southern Sudan around goals, values and aspirations by which they wish to govern themselves. The civil society consultation categorically expressed that those goals, values and aspirations include among others respect for human rights, democratic pluralism, gender equity, good governance, accountability and the Rule of Law. Moreover, after such vicious war of liberation struggle in Sudan and intensive militarisation of the Sudanese society, establishment of democratic order, which maximizes people's participation in public affairs, decentralization of power, gender parity and equity, to promote greater participation of women in political, social and economic life of Southern Sudan becomes inevitable and a national mission. The draft constitution articulated therefore the importance of demilitarisation of Sudanese politics and protecting Sudan from unconstitutional changes of government. The draft constitution in this regard aims to make politics responsible, peaceful and civil. However, the draft intentionally left the preamble for Southern Sudanese consensus. The Preamble should capture elements of history of Southern Sudanese struggle and strike the notes of emotional commitment, acknowledgment of the past and aspiration for the future. It is therefore a collective responsibility of all the people of Southern Sudan.

This draft is hereby being offered to the Southern Sudanese public and leaders. We call upon them wherever they are to debate and comment on this draft Constitution for Southern Sudan. The draft is intended to be Southern Sudanese driven and owned. We admit that it is by no means complete and leaves a lot to be desired. All are therefore called upon to meaningfully participate in this process and enrich it further in whichever capacity they may deem appropriate. The consultation further proposed that such on going constitutional process should culminate in the holding of a South Sudanese Civil Society Constitutional Conference. The conference objective is to entrench the values of transparency, legitimacy, representation and inclusiveness; while, at the same time, capturing the essence of the SPLM's and the peoples of South Sudan core values and aspirations in the interest of sustainable peace and development within South Sudan, Sudan and the region as a whole. The conference will also debate, amend and adopt the draft Constitution for Southern Sudan. The adopted final draft will be presented to the SPLM, other southern political parties leaders' and Southern Sudan Constitutional Drafting Committee (SSCDC) as Southern Sudanese Civil Society contribution. Hence,

we call upon friends of Sudan and donor community to avail unconditional funding to enable the Southern Civil Society convene this important conference.

By this appeal, the Southern Civil Society sincerely hope that this *draft Southern Sudan Constitution* will generate debate among Sudanese in general and Southern Sudanese in particular on future constitutions of post-conflict Sudan. We believe that many great ideas will be generated in the wake of this Southern Civil Society Initiative to enrich transparent constitutional debate and consolidate the values of democracy, constitutionalism and the rule of law in Sudan.

Finally, we plead to our leaders to secure the participation of Southern Sudanese Civil Society in the process of constitutional making and on the manner in which they prefer to be governed. We plead to them to listen to the voices of the people and to rise to their expectations for Southern Sudan Constitution that guarantees respect for human rights, democracy, gender equity, good governance, accountability and the Rule of Law.

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## **PREAMBLE**

**We the people of Southern Sudan:**

**DO HEREBY ADOPT THIS CONSTITUTION**

### **PART I The State and The Guiding Principles CHAPTER I The State Nature of the state**

1. The Republic of the Sudan is a sovereign, democratic, multi-cultural, multi-racial, multi-ethnic, multi-religious, multi-party and multi-lingual state founded on human dignity, justice, equality and the advancement of human rights and freedoms. It is an all embracing homeland wherein races and cultures coalesce and religions conciliate;

**The Constitution: Article 1  
Machakos Protocol: State and Religion, 1.1, and Preamble of agreed text of State and Religion.  
Underlined: Proposal from Civil Society Consultation 2005**

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

2. (1) The Government of Southern Sudan shall function in accordance with a Southern Sudan Constitution, which shall be drafted by an inclusive Southern Sudan Constitutional Drafting Committee and adopted by the Transitional Assembly of Southern Sudan by a two-thirds majority of all members. It shall conform with the Interim National Constitution,

(2) The Assembly of Southern Sudan may amend the Constitution of the Southern Sudan by a two-thirds majority vote of all members;

**Protocol on Power Sharing: 3.2 and 3.5.5**

#### **The Guiding Principle**

3. This Southern Sudan Constitution is based upon and guided by the following principles:
- a. The unity of the Sudan, based upon the free will of its people, democratic governance, accountability, equality, respect and justice for all citizens,
  - b. In order to develop and deepen the culture of democracy and political tolerance in the Southern Sudan the constitution recognizes the establishment of multi-party political system which shall be regulated by legislation;
  - c. Religion, beliefs, customs and traditions are a source of moral strength and aspiration for the Sudanese people,

- d. The cultural and social diversity of the Sudanese people shall be a source of national cohesion and shall not be used as a divisive factor;
- e. The powers of government emanate from the sovereign will of the People exercised in free, direct, secret and periodic elections through universal adult suffrage;
- f. The people of the Southern Sudan are united by common struggle, destiny and aspirations. It is the inherent duty of the citizens of the Southern Sudan to promote and support its unity and prosperity.
- g. For the purpose of ensuring equitable distribution of wealth, services, development projects, and adequate participation of citizens in the running of public affairs, the Southern Sudan shall be governed on the basis of Decentralization.

**Machakos: 1.1, and 1.4**

**Underlined: Proposed from Civil Society Consultation 2005**

## **Language**

- 4. (1) All the indigenous languages are national languages which shall be respected, developed and promoted,
  - (2) English shall be the official language in Southern Sudan and the Government of Southern Sudan shall develop indigenous national languages. Each state government may, after considering its peculiar and prevailing circumstances and level of development of its national languages, adopt and use them as official languages and media of instruction in schools and other institutions.
  - (3) 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,
  - (4) There shall be no discrimination against the use of either Arabic or English at any level of government or state of education;

**Power sharing: 2.8**

## **Decentralized Authority of Southern Sudan**

5. The Southern Sudan is a decentralized region, the supreme authority thereof is based on the decentralization system, drawn by the Constitution, as a region and states, and administered at the base by local government in accordance with the law, to ensure popular participation, constitution and mobilization, and to provide justice in the distribution of power and wealth.

**The Constitution Article 2.- Adapted**

## Organs of the Government of Southern Sudan

6. There shall be established Government of Southern Sudan (GOSS), as per the boards of 1/1/56, which shall consist of: -

- a) The Legislature of Southern Sudan;
- b) The Executive of Southern Sudan;
- c) The Judiciary of Southern Sudan;

### Protocol on Power Sharing: 3.1

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

7. The powers of the Government of Southern Sudan shall be as set forth in Schedules **B** and **D**, read together with Schedules **E** and **F** of the Interim National Constitution, this Southern Sudan Constitution, and the Comprehensive Peace Agreement;

### Protocol on Power Sharing: 3.3

#### Primary Responsibility of the Government of Southern Sudan

8. A primary responsibility of the Government of Southern Sudan will be to act as an authority in respect of the States of Southern Sudan, to act as a link with the National Government and to ensure that the rights and interests of the people of Southern Sudan are safeguarded during the Interim Period;

### Protocol on Power Sharing: 3.4

#### Southern Sudan Right to Self-Determination

#### Affirmation of the Right to Self determination to South Sudan

9. The people of South Sudan shall have the right to self-determination through referendum to determine their future status;

### Machakos Protocol: 1.3

#### **Religious Rights**

10. The State and society shall respect the following religious rights:

- a) To worship or assemble in connection with a religion or belief to establish and maintain 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 to an adequate extent the necessary articles and materials related to the rites or customs or a religion or belief;
- d) To write, issue and disseminate relevant publications in these areas;
- 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 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 celebrate holidays and ceremonies in accordance with the precepts of one's religious beliefs;
- i) To establish and maintain communications with individuals and communities in matters of religion and belief and at the national and international levels;

**Machakos Protocols: 6.5**

**Sovereignty**

**11.** (1) Sovereignty of the nation is vested in its people and shall be exercised in accordance with the provisions of the Interim National Constitution and the law, without prejudice to the autonomy of southern Sudan and the states;

(2) Sovereignty in the southern Sudan is derived from the people who shall exercise it through established constitutional institutions.

**Power Sharing: 1.4.1**

**Schedule F**

**Underlined: Proposal from Civil Society Consultation 2005**

**Supremacy of the Interim National Constitution**

**12.** The Interim National Constitution is the Supreme law of the land during the interim period. The Southern Sudan Constitution, state constitutions and all laws must comply with it;

**Machakos Protocol : 3.1.1**

**Protocol on Power Sharing: 2.12.11 and 2.12.12**

**National symbols of Southern Sudan**

**13.** The law shall specify the flag, emblem, anthem, public seal medals and national festivals of Southern Sudan;

**The Constitution Article 5.- Adapted**

**Schedule A: 24**

## **Defence of the Country**

14. (1) Defending the Country is an honour and striving for its cause is a duty. During the interim period the Sudan National Armed Forces (Sudan Armed Forces, Sudan People's Liberation Army and Joint/Integrated Units) shall be charged with the mission of defending the sovereignty and territorial integrity of the Sudan. The State shall care for the combatants afflicted in war and the families of the martyrs;

(2) It shall be the duty of the Government of Southern Sudan and State governments to protect and maintain the unity, security and integrity of the Southern Sudan. The SPLA shall transform to be the army of the Southern Sudan, which shall have the duty to protect it against external enemies, unconstitutional change of government and dangers.

**The Constitution Article 7.**

**Security Arrangements: 1. (b)**

**Ceasefire Agreement: 16.2**

**Comprehensive Ceasefire Agreement: 16.3,16.4, 16.5 and 17.6**

**Underlined: Proposal from Civil Society Consultation 2005;**

## **Southern Sudan Economy**

15. The state shall promote the development of the Southern Sudan economy and guide it by indicative planning on the basis of work, production and the free market, with a view to promote the quality of life, dignity and living conditions of all the citizens without discrimination;

**The Constitution: Article 8-Adapted**

**Wealth sharing: 1.4**

## **Southern Sudan Natural Resources**

16. The best known practices in management and sustainable utilization and control of natural resources shall be followed;

**Wealth sharing: 1.10**

## **Fiscal Levies**

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

**The constitution: Article 28 (2) and Article 10.**



## **Social Justice**

**18.** The Government of Southern Sudan shall give due regard to social justice and distribution of the national income in a just manner to prevent serious disparity in incomes, to provide the highest standards of good living for every citizen, and shall care for the aged and disabled. The Government of Southern Sudan and the society shall also uphold the values of mutual assistance, self-reliance and charity;

**The Constitution: Article 11.**

### **Art, Sciences and culture**

**19.** The state shall mobilize official and popular efforts and capacities to eradicate illiteracy, promote education, encourage art, science, and scientific research and shall recognize and harmonize the cultural and social diversity of the Sudan;

**The Constitution: Article 12**  
**Agreement on The Two areas: Preamble.**

## **Public Health, Sports and Environment**

**20.** The State shall promote health, encourage sports and protect the environment in its pristine and natural balance, in pursuance of safety and sustainable development for the benefit of future generations;

**The Constitution: Article 13.**

## **Children and Youth**

**21.** The state shall care for children and youth protect them, morally and physically, from abuse and shall direct policies of education, moral care and national guidance of future generations;

**The Constitution: Article 14.**

## **Family and Marriage**

**22.** The Family is the natural and fundamental group unit of society and is entitled to protection by society and the State; 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. The state shall emancipate women from injustice and promote gender equality in all aspects and encourage their role in family and public life;

**The Constitution: Article 15**  
**Protocol on Power Sharing: 1.6.2.10**

## **Morals and Values of the Society**

**23.** The State shall, by law, protect society from corruption, crime, delinquency, and promote the society as a whole towards good norms, noble customs, and virtuous values;

**The Constitution: Article 16.**

## **National Reconciliation**

**24.** The State shall initiate a comprehensive process of national reconciliation and healing that shall work for harmony and peaceful co-existence;

**Protocol on Power Sharing: 1.7**

**Protocol on Abyei: Article 9.**

## **Foreign Policy**

**25.** The foreign policy of the Sudan shall be conducted in dignity, independence and openness for the following purposes:

- a) Promotion of international cooperation, especially with the UN and other international and regional organizations for the consolidation of universal peace, respect of international law and treaty obligations and the promotion of a just world economic order;
- b) Enhancement of South-South and international cooperation;
- c) Striving to achieve African and Arab integration, each within the ongoing regional plans and forums as well as promoting African and Arab Unity and Afro-Arab cooperation;
- d) Non-interference in the affairs of other states and promotion of good-neighborliness and mutual cooperation among all Sudan's neighbors;
- e) Combating international and transnational organized crimes and terrorism.
- f) Respecting fundamental rights and basic freedoms and sustaining dialogue of civilizations, and contributing in laying the foundation of the international system on the basis of equality, justice, consultation, mutual interest, and unity of mankind;

**The constitution: Article 17**

**Protocol on Power Sharing: 2.9.1.1, 2.9.1.2, 2.9.1.3, 2.9.1.4, 2.9.1.5.**

## CHAPTER II

### Decentralized System of Governance

#### Levels of Government

26. The Sudan is a decentralized State, with the following levels of government:
- a) The National level of government which shall exercise authority so as to protect and promote the national sovereignty of Sudan and the welfare of its people;
  - b) The Southern Sudan level of Government which shall exercise authority in respect of the people and States in the South;
  - c) The state governments throughout Sudan which shall exercise authority at the state level and render public services through the level of government close to the people; and
  - d) The level of local government throughout the Sudan.

**Power sharing: 1.3.1, 1/3/2, 1/3/3, 1.3.4, 4.1, 1.5.1.1, 1.5.1.2**

#### Devolution of Powers

27. The following principles shall guide the devolution and distribution of powers:
- a) Recognition of both the sovereignty of the nation as vested in its people as well as the need for autonomy of the Government of Southern Sudan and States throughout the Sudan;
  - b) Affirmation of the need for both national as well as state and Southern Sudan norms and standards so as to reflect the unity of the country and the diversity of the Sudanese people;
  - c) Acknowledgement of the need to promote the welfare of the people and protect their human rights and fundamental freedoms;
  - d) Recognition of the need for the involvement and participation of the people of South Sudan at all levels of government and National institutions 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 achieve lasting peace;
  - f) Recognising the need to legitimize the arrangements agreed to herein, fair electoral laws shall be adopted, including the free establishment of political parties. Elections at all levels of government shall be held by universal adult suffrage.

**Protocol on Power Sharing: 1.4**

## **Inter-Governmental linkages**

**28.** In the administration of the country, the following principles shall be respected: -

- 1) The linkage between the National Government and the states in the Southern Sudan shall be through the Government of Southern Sudan;
- 2) In their relationships with each other or with other government organs, all levels of government and particularly National, Southern Sudan, and State Governments shall:
  - a) Respect each others' autonomy;
  - b) Collaborate rather than compete, in the task of governing and assist each other in fulfilling each others' constitutional obligations;
- 3) Government organs at all levels shall perform their functions and exercise their powers so as:
  - a) Not to encroach on another level's powers or functions;
  - b) Not to assume another level's powers or functions conferred upon it by the Constitution;
  - c) To promote co-operation between them;
  - d) To promote open communication between government and other levels of government;
  - e) To strive to render assistance and support to other levels of government;
  - f) To advance the good co-ordination of governmental functions;
  - 7) To adhere to procedures of inter-governmental interaction;
  - h) To promote amicable settlement of disputes before attempting litigation;
  - i) To respect the status and institutions of other levels of government.
- 4) Allow the harmonious and collaborative interaction of the different levels of government within the context of national unity and for the achievement of a better quality of life for all.

**Power Sharing: 1.5.1.3 and 1.5.1.4**

## **PART II**

### **Protection and Promotion of Fundamental Human Rights and Freedoms**

#### **Bill of Rights**

**29.** This Bill of Rights is the cornerstone of democracy, human rights and fundamental freedoms in the Southern Sudan; the State shall guarantee, respect, protect, promote and fulfill the rights in this Bill; all rights enshrined in international human rights treaties, covenants and instruments shall be considered as integral part of this Bill;

**Power Sharing: 1.6.1**

## **Life and Human dignity**

- 30.**(1) Every human being has the inherent right to life and human dignity.  
(2) Human dignity must be respected and protected by law. Life begins at conception.  
(3) No person shall be deprived of his/her life save through the death penalty passed by a competent court.  
(4) No one shall be arbitrarily deprived of his or her life;  
(5) Abortion is prohibited unless, in the opinion of a qualified medical practitioner, the life of the mother is in danger.

**The Constitution: Article 20.**

**Protocol on Power Sharing: 1.6.2.1**

**Underlined: Proposal from Civil Society Consultation 2005**

## **Personal Liberty**

- 31.**(1) Every one has the right to liberty and security of person.  
(2) No one shall be subjected to arbitrary arrest or detention.  
(3) No one shall be deprived of his/her liberty except on such grounds and in accordance with such procedures as are established by law;

**Protocol on Power Sharing: 1.6.2.2.**

## **Slavery**

- 32.** (1) No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.  
(2) No one shall be held in servitude or be required to perform forced or compulsory labour;  
(3) Abduction is a form of slavery.

**Protocol on Power Sharing: 1.6.2.3.**

**Underlined: Proposal from Civil Society Consultation 2005.**

## **Equality before the Law**

- 33.**(1) 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 or social origin, age, disability, ethnicity, birth, marital status, pregnancy or other status, to the equal protection of the law;  
(2) The state has a responsibility to ensure access to justice for all its citizens.

**The Constitution: Article 21.**

**Protocol on Power Sharing: 1.6.2.12, 1.6.2.13.**

*Underlined: Proposal from Civil Society Consultation2005.*

## **Equal Rights for the Men and Women**

34. The equal rights of men and women to the enjoyment of all civil and political rights and all economic, social, and cultural rights shall be ensured;

*Protocol on Power Sharing: 1.6.2.16.*

### **Torture**

35.(1) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment;

(2) Corporal punishment or any punishment with impunity amounts to cruel, inhuman and degrading treatment.

*Protocol on Power Sharing: 1.6.2.4*

*Underlined: Proposal from Civil Society Consultation2005.*

### **Fair Trial**

36. (1) Anyone who is arrested shall be served with warrant of arrest, informed, at the time of arrest, of the reasons for his/her arrest and shall be promptly informed of any charges against him/her within 24 hours;
- (2) In the determination of any criminal charges against him/her, or of his/her rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial court established by law;
- (3) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law;
- (4) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed;
- (5) In the determination of any criminal charge against him/her, everyone shall be entitled, in full equality, to be tried without undue delay, to be tried in his/her presence and to defend himself/herself in person or through legal assistance of his/her own choosing and to have legal assistance assigned to him/her in any case where the interests of justice so require;
- (6) Right to remain silent and not be compelled to make a forced confession

*Protocol on Power Sharing: 1.6.2.5.*

*Underlined: Proposal from Civil Society Consultation2005*

### **Right to Litigation**

- 37.(1) The right to litigate shall be guaranteed for all persons without any discrimination.  
(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 or, where appropriate, in another independent and impartial tribunal or forum;

*The Constitution: Article 31*

### **Sanctity from Death Penalty**

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

*The Constitution: Article 33*

### **Privacy**

39. Private life of the Citizen shall be inviolable and no one shall be subjected to arbitrary or unlawful interference with his/her privacy, family, home or correspondence save in situations where interference is warranted for the welfare of the children or family members.

*Protocol on Power Sharing: 1.6.2.6.*

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

40. Every one shall have the right to freedom of conscience, thought, belief, opinion and religious creed, and shall have the right to declare his/her religion or creed, and manifest the same by way of worship, education, practice or performance of rites or ceremonies and no one shall be coerced to adopt such faith, as he/she does not believe in, nor to practice rites or services he/she does not voluntarily consent to; and that is without prejudice to the right of choice of religion, injury to the feelings of others, or to public order , all as may be regulated by law;

*The Constitution: Article 24.*

*Protocol on Power Sharing: 1.6.2.7.*

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

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

*The Constitution: Article 25.*

*Protocol on Power Sharing: 1.6.2.8.*

## Freedom of Assembly and Association

- 42.(1) The right of peaceful assembly shall be recognized.
- (2) Every one shall have the right to freedom of association with others, including the right to form and join political parties/ associations and trade/ professional unions for the protection of his/her rights;
- (3) The establishment and operation of political parties/ associations and trade/ professional unions shall be governed by law as necessary in a democratic society;
- (4) No association shall function as a political party unless it, *inter alia* :
- (a) has its membership open to all Sudanese irrespective of religion, ethnic origin, gender or place of birth,
  - (b) has a programme that upholds the Comprehensive Peace Agreement, conforms to this Constitution, and
  - (c) has democratically elected leadership and institutions;  
has programmes that uphold the participation of women and are gender sensitive.

*The Constitution: Article 26.*

*Protocol on Power Sharing: 1.6.2.9.*

## Right to Vote

43. Every citizen shall have the right and the opportunity, without distinctions to sex, age, geographical and unreasonable restrictions, to vote and to be elected at genuine periodic elections, which shall be by universal 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

44. Every citizen shall have the right to liberty of movement and freedom to choose his/her residence except for reasons of public health and **security**;

*The Constitution: Article 23.*

*Protocol on Power Sharing: 1.6.2.14.*

## Right to Property

45. (1) Every person shall have the right to acquire or own property without any distinctions as regards to gender;

(2) Land belongs to the community and individual;

(3) No private property may be expropriated save by law and in consideration for prompt and fair compensation;

*The Constitution: Article 28 (1).*



## **Right to Education**

- 46.**(1) Education is the right for every person and the Government of Southern Sudan shall strive to provide free and compulsory primary education;
- (2) Girl child education shall be given special consideration by the state.
  - (3) Cultural practices that affect/hinder the education of children are prohibited.
  - (4) State shall provide special education for children with special needs;
  - (5) Female children shall have the right to benefit from scholarships and other special assistance.

## **Rights of Persons with Disabilities**

**47.**Persons with disabilities are entitled to enjoy all the rights and freedoms set out in the Bill of Rights, particularly in respect to their human dignity, access to suitable education and employment; and to be full participants in society;

## **Equal Access to Public Health Care**

- 48.**(1) All persons shall have the right to adequate health.
- (2) All persons shall have equal access to public health care;
  - (3) Persons with HIV/AIDS Shall be given special consideration;
  - (4) Women shall have the right to access reproduction health care.

### **Proposal from Civil Society Consultation 2005**

## **Ethnic and Cultural Communities**

**49.** Ethnic and cultural communities shall have the right to enjoy and develop their peculiar cultures and to practice their beliefs and freely use their languages, observe their religion and bring up their children within the framework of their particular cultures;

### **Constitution: Article 27**

## **Sanctity of Rights**

**50** No derogation from these rights and freedoms shall be made except in accordance with the provisions of this Interim National Constitution and only with the approval of the Presidency and the National Legislature. These human rights and fundamental freedoms shall be upheld by the Constitutional Court and monitored by the Human Rights Commission;

### **The Constitution: Article 34; .**

### **Protocol on Power Sharing: 1.6.2.16 (b) and (c).**

## **Right to Food**

51. Everyone has the right to have adequate food of acceptance quality.

*Proposed from Civil Society Consultation 2005*

## **Right to Clean and Safe Water**

52. Everyone has the right to have adequate water of acceptable quality clean and safe.

*Proposed from Civil Society Consultation 2005*

## **Right to Housing**

53. Everyone has the right to have accessible and adequate housing.

*Proposal from Civil Society Consultation 2005*

## **Affirmative Action in Favour of Marginalized Groups**

54.(1) Notwithstanding anything in this Constitution, the state shall take affirmative action in favour of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances, which exist against them.

(2) Parliament shall make relevant laws, including laws for the establishment of an equal opportunities commission, for the purpose of giving full effect to clause (1) of this article.

(3) The state shall strive to provide for, protect and promote the realization of 25% quota reserved for women at all levels of Government.

*Constitution of the Republic of Uganda 1995: Article 32;*  
*Underline: Proposal from Civil Society Consultation 2005*

## **Rights of women**

55. (1) Women shall be accorded full and equal dignity of the person with men.

(2) The state shall provide facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement.

(3) The state shall protect women and their rights, taking into account their unique status and natural maternal functions in society.

(4) Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.

(5) Without prejudice to *Article* \_\_\_\_\_ of this Constitution, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.

(6) Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution.

(7) Single mothers and widows shall be protected by the law.

(8) Perpetuators of rape shall be severely punished.

- (9) The minimum age for marriage shall be 18 years.
- (10) Women shall have the right to be protected from early and forced marriage.
- (11) Women shall have the right to make free choices on reproductive health.
- (12) Women shall have the right to work under favourable working conditions.
- (13) Women shall have equal with their spouses over their children.
- (14) Women shall have equal rights with their husbands over custody, ownership of children, matrimonial property and at its dissolution.

**Constitution of the Republic of Uganda 1995: Article 33;**  
**Underlined: Proposal from Civil Society Consultation 2005;**

## **Rights of children**

- 56** (1) Subject to laws enacted in their best interests, children shall have right to know and be cared for by their parents or those entitled by law to bring them up.
- (2) A child is entitled to basic education, which shall be the responsibility of the State and the parents of the child.
  - (3) No child shall be deprived by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs.
  - (4) Children are entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to the health or physical, mental, spiritual, moral or social development.
  - (5) For the purpose of clause (4) of this article, children shall be persons under the age of sixteen years.
  - (6) A child offender who is kept in lawful custody or detention shall be kept separately from adult offenders.
  - (7) The law shall accord special protection to orphans and other vulnerable children.
  - (8) Childhood is entitled to special care and protection by the state.
  - (9) No child shall be discriminated against by virtue of birth, status of illegitimacy, marital status of their parents or on any other grounds.
  - (10) All children are equal and shall be entitled to the equal protection of the law.
  - (11) The state shall undertake all appropriate legislative, administrative and other measures for full realization of the human rights of the child.
  - (12) Children shall be protected from sexual abuse and exploitation.
  - (13) Children are entitled to be protected from abduction and trafficking.
  - (14) Arrest, detention and imprisonment of a child shall be only as a measure of last resort.
  - (15) Children under the age of 18 years shall not be recruited into armed forces.

**Constitution of the Republic of Uganda 1995: Article 34;Adapted**  
**Underlined: Proposal from Civil Society Consultation 2005;**

## **Rights of persons with disabilities**

**57.**(1) Persons with disabilities have a right to respect and human dignity and the State and society shall take appropriate measures to ensure that they realize the full mental and physical potential.

(2) Parliament shall enact laws appropriate for the protection of persons with disabilities.

**Constitution of the Republic of Uganda 1995: Article 35;**

## **Protection of Rights of Minorities**

**58.**(1) Minorities have a right to participate in decision-making processes and their views and interests shall be taken into account in the making of national plans and programmes.

(2) Refugees, asylum seekers and IDPS shall be entitled to protection by the state and their rights upheld.

**Constitution of the Republic of Uganda 1995: Article 36;**

## **Rights to culture and similar rights**

**59.**(1) Every person has a right as applicable, to belong to, enjoy, practice, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others.

(2) Cultures repugnant to Justice and people's welfare shall be discouraged.

**Constitution of the Republic of Uganda 1995: Article 37;**

## **Civic rights and activities**

**60** (1) Every citizen of Southern Sudan has the right to participate in the affairs of government, individually or through his or her representatives in accordance with law.

(2) Every citizen of Southern Sudan has a right to participate in peaceful activities to influence the policies of government through civic organizations;

**Constitution of the Republic of Uganda 1995: Article 38- Adapted**

## **Right to clean environment**

**61.**Every person has a right to a clean and healthy environment.

**Constitution of the Republic of Uganda 1995: Article 41**

## **Right to just and fair treatment in administrative decisions.**

**62.** Any person appearing before any administrative official or body has a right to be treated justly and fairly, expeditiously and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her;

### **Constitution of the Republic of Uganda 1995: Article 42**

## **General limitation on fundamental and other human rights and freedoms**

**63.** (1) In the enjoyment of rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.

(2) Public interest under this article shall not permit.

- a) Political persecution;
- b) Detention without trial;
- c) Any limitation on the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in his Constitution.

### **Constitution of the Republic of Uganda 1995: Article 43**

## **Prohibition of derogation from particular human rights and freedoms**

**64.** Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms –

- a) Freedom from torture, cruel, inhuman or degrading treatment or punishment;
- b) Freedom from slavery or servitude;
- c) The right to fair hearing;
- d) The right to an order or habeas corpus.
- e) Right to adequate water and food.
- f) Right to life

### **Constitution of the Republic of Uganda 1995: Article 44**

## **Human rights and freedoms additional to other rights**

**65.** The rights, duties, declaration and guarantees relating to the fundamental and other rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned.

### **Constitution of the Republic of Uganda 1995: Article 45**

## **Rule of Law**

**66. (1)** Separation of powers between the Legislature, the Executive and the Judiciary and the Supremacy of the rule of law shall be the basis of governance. Judges, and the executive

authorities shall be guided by law and constitution in the discharge of their duties, and Legislators shall be guided by the Constitution.

- (2) All citizens are entitled to the right of litigation before the courts of law. Right of a citizen to legal aid or to be defended by an advocate of his own choice shall be guaranteed by law.
- (3) Every accused person has a right to be released on bail except in particular cases where the general law of procedure imposes limitations.
- (4) Subject to cases, which the law may provide, no person shall be arrested or detained or searched without a warrant signed by a magistrate. Where the person has been arrested, he/she shall fully be informed of the reasons for his/her arrest so that he/she may be able to prepare his/her defense before the court. No person shall be detained without trial. Arrest of citizens shall be carried out only by the police and persons they invite to assist them.
- (5) An accused person is presumed to be innocent till he/she has been proved guilty beyond reasonable doubt.
- (6) (a) No person shall be charged or punished for doing an act, which was not an offence at the time of its commission.  
(b) Any enacted law, which purports to punish people for acts, which were not offenses at the time of their commission, shall be unconstitutional.
- (7) Where a specific provision of law conflicts with a constitutional rule, the latter shall prevail to the extent of the conflict.
- (8) No citizen shall be subjected to any force or preventive detention without approval of the magistrate. Any request for approval of preventive detention shall state a definite period of such detention. The request for approval shall be in writing.  
  
(b) No special courts or extra-ordinary courts shall be convened to try accused persons and no court shall at any time follow a special procedure other than the general procedure prescribed by the general law.
- (9) No person shall be punished for an offence committed by someone else (collective punishment).

### **USAP Proposal- P.10**

## **Citizenship**

- 67.** 1. Citizenship shall be the basis for equal rights and duties for all Sudanese as shall be regulated by law,
2. Every person born to a Sudanese mother or father shall have a non-alienable right to enjoy Sudanese citizenship;

3. A Sudanese citizen shall not lose his/her citizenship by reason only of acquiring a citizenship of another country;

**Protocol on the Two Areas: Preamble**  
**The Constitution: Article 22**

**Duties of the Citizens**

**68.** Every citizen shall:

- a. Owe allegiance and loyalty to the Republic of the Sudan;
- b. Defend the country and respond to the call for national defence and national service;
- c. Respect the Interim National Constitution, Southern Sudan Interim Constitution and the law, revere and obey legitimate institutions and abide by legal, financial and practical obligations;
- d. Pay all taxes lawfully due;
- e. Preserve property and utilities and avert corruption and sabotage;
- f. Support general development and national production;
- g. Participate in the elections and referenda conducted by the authorized institutions of the state.
- h. Care for the sanctities and interests of the society, protect and preserve the environment, and observe good morality and fairness;
- i. Exercise his/her rights and freedoms to the best interest of the State and society;
- j. Cooperate with law enforcement agencies for maintenance of law and order.

**The Constitution: Article 35.**

**PART III**

**Southern Sudan Right to Self-Determination**

**CHAPTER I**

**Affirmation of the Right to Self determination to South Sudan**

**69.** The people of South Sudan shall have the right to self-determination through referendum to determine their future status;

**Machakos Protocol: 1.3**

**CHAPTER II**

**Southern Sudan Referendum Commission**

**70.** (1)The Southern Sudan Referendum Act shall be promulgated by the National Legislature at the beginning of the third year of the Interim Period,

- (2) Before the Southern Sudan Referendum Bill is tabled to the National legislature it should first be passed by Southern Sudan Assembly;
- (3) The Presidency shall, as soon as the Southern Sudan Referendum Act is issued, establish the Southern Sudan Referendum Commission;

**Global Matrix: Part I (1) (a) and (b)**  
**Underlined: Proposal from Civil Society Consultation 2005;**

## CHAPTER III

### The Assessment and Evaluation Commission

71. (1) An independent Assessment and Evaluation Commission shall be established during the Pre-Interim Period to monitor the implementation of the Peace Agreement during the Interim Period. This commission shall conduct a mid-term evaluation of the unity arrangements established under the 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 unity of the Sudan attractive to the people of South Sudan;

**Machakos Protocol: 2.4**

## PART IV

### The Executive of Southern Sudan

#### CHAPTER I

#### The President of Government of Southern Sudan

72. (1) The President and Vice President of the Government of Southern Sudan shall be elected directly by the people of Southern Sudan, according to the Constitution of Southern Sudan. Such elections shall be in accordance with the provisions set forth by the Legislative Assembly of Southern Sudan and implemented by the Southern Sudan Electoral Commission that remain independent and transparent,
- (2) The tenure of office of the President of the Government of Southern Sudan shall be five years commencing from the date of assuming office, and the same President of Government may be re-elected for one more tenure only,
- (3) Should the post of the President of Government of Southern Sudan fall vacant, the Vice President of the Government of Southern Sudan should assume the powers of the President of the Government of Southern Sudan for (60) days, and in case he is



contesting the Speaker of the Legislative Assembly of Southern Sudan shall assume the powers of the President of the Government of Southern Sudan until the elections taking place at a time not exceeding (60) days;

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

### Southern Sudan Executive Council of Ministers

**73.** There shall be established a Southern Sudan Executive Council of Ministers to be nominated by the President of the Government of Southern Sudan, and approved by the Legislative Assembly of Southern Sudan. The Government of Southern Sudan shall be established with due regard to the need for inclusiveness;

**Protocol on Power Sharing: 3.6.1 and 3.6.3.**

### Eligibility for the President of Southern Sudan

**74.** A Candidate for the office of the President of Southern Sudan Government shall:

- a) be a Southern Sudanese;
- b) be of a sound mind;
- c) be at least (35) years of age and not above (65) years old;
- d) not have been convicted, during the previous seven years, of an offence connected with honesty or moral turpitude;

**The Constitution: Article 37.**

### Nomination and Election of the President and the Vice President of Southern Sudan

**75.** (1) Any eligible Southern Sudanese political party or voter may nominate whomever he/she deem fit for the office of the President of Southern Sudan; however, the Presidential candidate shall be seconded according to law,

(2) The Presidential candidate who wins more than fifty percent of the total votes of the polling electorate, shall be the President and Vice President elect,

(3) Where the percentage mentioned in sub-article (2) above is not achieved, there shall be a re-run of election between the two presidential candidates who have obtained the highest number of votes;

**The Constitution: Article 38.**

### Postponement of the Presidential Election

**77.** (1) Where election of the President and Vice President of Southern Sudan Government is not possible for extreme emergencies as shall be decided by the Southern Sudan Legislative

Assembly according to the electoral law, the National Electoral Commission shall fix a new date for the elections within a maximum of 60 days,

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

**The Constitution: Article 39.**

Oath of the President and Vice President of Southern Sudan

**78.** Before assuming office, the President and Vice President of Southern Sudan elect shall take the following oath before Southern Sudan Legislative Assembly:

“I swear by God the Almighty, that as President / Vice President of Southern Sudan, I shall be faithful and bear true allegiance to Southern Sudan and shall diligently 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 other laws of the Republic; and shall protect the integrity and dignity of the people of Southern Sudan; to what I say God is my witness”;

**The Constitution: Article 40.-Adapted to southern Sudan**

Tenure of the President and Vice President of Southern Sudan

**79.** The tenure of the President and Vice President of Southern Sudan shall be five years, commencing from the date of assumption of office, and the same President may be re-elected for another term only;

**The Constitution: Article 41 .**

Functions of the President of Southern Sudan

**80.** The President of Southern Sudan is the Head of the Government of Southern Sudan and represents the will of the people, he/she shall exercise the powers vested in him/her by this Constitution and shall, *inter alia*, perform the following functions:

- a) preserve the security of Southern Sudan and its peoples and protect their integrity, dignity and interests
- b) Supervise constitutional institutions and mobilize the enhancement of public life,
- c) appoint holders of constitutional posts upon approval of the Southern Sudan Legislative Assembly in accordance with the provisions of the Southern Sudan Interim Constitution and the law;
- d) initiate draft constitutional amendments, and legislations and sign the same;
- e) approve death sentences, grant pardon, and remit conviction or penalty according to the Southern Sudan Interim Constitution and the national law;
- f) generally, represent the authority of Southern Sudan and the people's will;
- g) any other functions as may be prescribed by the Southern Sudan Interim Constitution or the law,

**The Constitution: Article 43.**

**Protocol on Power Sharing: 2.36**

### Vacancy of the President's Office

**82.** The office of the President of the Government of Southern Sudan 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 Medical Commission and resolved by the Southern Sudan Legislative Assembly;
- d) Impeachment in accordance with the provisions of the Southern Sudan Interim Constitution;
- e) Acceptance of his/her resignation by the Southern Sudan Legislative Assembly;

**The Constitution: Article 42.**

### Immunity and Impeachment of the President of Southern Sudan

**83.** (1) The President of Southern Sudan is immune from any legal proceedings and shall not be charged or sued in any court of law during his/her tenure;

(2) Notwithstanding the provisions in sub-Article 1 above, the President, in case of high treason, gross violation of a provision of this Constitution and gross misconduct in relation to State affairs, may be charged and prosecuted before the Constitutional Court upon a motion passed by two-thirds of members of the Southern Sudan Legislative Assembly;

(3) The Southern Sudan Legislative Assembly may, by a motion approved by simple-majority of its members present, remove the President from his/her office.

**The Constitution: Article 45.**

## Contesting Acts of the President of Southern Sudan

**84.** Any person aggrieved by the acts of the President of the Government of Southern Sudan, may contest such acts, either,

a) Before the Constitutional Court, if the alleged act involves a violation of the Interim National Constitution and Southern Sudan Interim Constitution, decentralized system, human rights and fundamental freedoms, or the Peace Agreement,

b) Before the appropriate court of law if the alleged act involves a violation of law;

**The Constitution: Article 46.**

## Functions of the Vice President

**85.** The Vice President of Government of Southern Sudan shall have the following functions:

- a. Acts in the absence of the President,
- b. Member of the Council of Ministers,
- c. Member of the National Security Council
- d. Member of the Presidential Council in the Pre-election Period and Chairman of the Council in the Post Election Period in the event of the post of President falling vacant,
- e. Any other functions and duties that may be assigned to him/her by the President;

**Protocol on Power Sharing: 2.3.3**

## CHAPTER II

### The Government of Southern Sudan Council of Ministers

#### Composition and Authority of the Government of Southern Sudan Council of Ministers

**86.** (1) Subject to **Article -----**, there shall be established a Council of Ministers to be nominated by the President of the Government of Southern Sudan.

2) The President and Vice President of the Government of Southern Sudan shall be members of the Council of Ministers,

3) The Council of Ministers shall have the supreme national executive authority in the Southern Sudan in accordance with the provisions of this Southern Sudan Interim Constitution and the law, the decision thereof shall be adopted by consensus or in case of voting by simple majority present. The decisions of the Council of Ministers shall prevail over any other executive decisions,

4) Any Executive orders or other legal acts by the President of the Government of Southern Sudan shall be discussed with, and adopted by the Council of Ministers;

**The Constitution: Article 47. Adapted**  
**Protocol on Power Sharing: 2.3.13 and 2.3.15.**  
**Global Matrix: Appendix B: B2 (2)**

### Oath of the Southern Sudan Executive Council of Ministers

**87.** The Minister shall upon his/her appointment and before assuming the functions of his/her office take the following oath before the President of the Government of Southern Sudan:

“ I .... having been appointed as minister in the Southern Sudan Executive Council of Ministers, do hereby solemnly swear by the Almighty God that I will at all times be faithful to the Southern Sudan; that I will obey, respect, and uphold the Constitution of the Republic of the Sudan, the Constitution of Southern Sudan and all other laws of the country; to loyally defend the independence of the country, its unity and the democratic system of government established by the Constitution and to faithfully serve the people and the country with honour and dignity to the best of my ability; and God is my witness.”;

**The Constitution: Article 48.**

### **Functions and Powers of the Southern Sudan Executive Council of Ministers**

**88.** The Southern Sudan Executive Council of Ministers shall have the following functions and powers:

- a) general planning and administration of the Southern Sudan and implementation of the Peace Agreement;
- b) approval of the higher policies of Southern Sudan Executive ministerial clusters;
- c) assuming the executive and administrative business of ministries or ministerial clusters as may be provided by law or the decision of the cabinet;
- d) initiation of bilateral/multilateral agreements, legislative bills, provisional decrees, public budget and any such measures as may be submitted to Southern Sudan Legislative Assembly;
- e) requiring reports about ministerial executive performance and questioning ministers on the basis thereof or pursuant to policies of the Council of Ministers;
- f) requiring reports on Southern Sudan states' executive performance for information and coordination with respect to any state;

- g) requiring reports for supervision and decision on matters that are concurrent, residual or delegated as provided in Schedules E and F herein;
- h) working out its internal regulations;
- i) performing any public political role by mobilizing the public to achieve the objectives of policy and promote public life;
- j) any other functions or powers conferred thereupon by law;

**The Constitution: Article 49.**  
**Power Sharing: Schedule F.**

### Functions and Powers of a Minister

- 89.** (1) The Government of Southern Sudan Minister shall have functions and powers by law or delegation,
- (2) The Government of Southern Sudan minister shall be the head of his/her ministry, his/her decisions shall prevail therein. However, the Southern Sudan Executive Council of Ministers may amend or cancel such decisions.
- (3) The President of the Government of Southern Sudan may suspend the decision of a Government of Southern Sudan minister pending any appropriate decision of the Council of Ministers, except in matters of fundamental rights and freedoms;
- (4) The national minister and corresponding ministers of Government of Southern Sudan and states shall collaborate rather than compete, in the task of governing and assist each other in fulfilling each other's constitutional obligations;
- (5) Any other functions as shall be assigned by the President of the Government of Southern Sudan

**The Constitution: Article 50.**  
**Protocol on Power Sharing: 1.5.1.4 (b)**

### Several and Joint Responsibility of Ministers

- 90.** (1) The Government of Southern Sudan minister shall be answerable to the President of the Government of Southern Sudan, Government of Southern Sudan Council of Ministers and the Southern Sudan Legislative Assembly,
- (2) Ministers shall be collectively and individually responsible before the Southern Sudan Assembly for the performance of the Government of Southern Sudan executive;
- (3) Ministers of the Government of Southern Sudan shall be bound by the collective decisions of the Council of Ministers;

**The Constitution: Article 51.**  
**Protocol on Power Sharing: 2.3.12**

## Prohibition of Commercial Business

**91.** The President of the Government of Southern Sudan, the Vice President of the Government of Southern Sudan and the ministers of GOSS shall not during their tenure practice any private profession or transact commercial business with the State;

### **The Constitution: Article 52.**

## Accountability of Southern Sudan Executive Council of Ministers

**92.** The Southern Sudan Executive Council of Ministers shall be accountable to the President of the Government of Southern Sudan and the Southern Sudan Legislative 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;

### **Protocol on Power Sharing: 3.6.1**

## Special Obligations of the Government of Southern Sudan

**93.** The Government of Southern Sudan shall discharge its obligations and exercise such powers in regard to administration, security, financial, and development issues as is set forth in the Southern Sudan Constitution, the National Interim Constitution, the Comprehensive Peace Agreement and any other agreement relating to the reconstruction and development of the Southern Sudan;

### **Protocol on Power Sharing: 3.6.5**

## Southern Sudan Independent Institutions and Commissions

**94.** The Executive Authority of Southern Sudan shall establish such independent institutions as the Comprehensive Peace Agreement, the Interim National Constitution and the Southern Sudan Constitution 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;

### **Protocol on Power Sharing: 3.6.2.**

## PART V

### THE LEGISLATURE OF SOUTHERN SUDAN

#### CHAPTER I GENERAL PRINCIPLES

##### Sources of Legislation

95. Sources of legislation in the Southern Sudan consist of:

1. Southern Sudan Interim Constitution;
2. Traditional law, religious beliefs, values, and the customary practices of the people of Southern Sudan and it shall be the duty of the Government of Southern Sudan to develop the indigenous customary laws of its various communities.
3. International treaties and conventions
4. General principles of morality and natural justice
- 5.

**Machakos Protocol : 3.2.2 and 3.2.3**

##### The Referendum on Self-Determination

96. (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 Sudan by voting to adopt the system of government established under the Comprehensive Peace Agreement, or  
b) vote for secession;

(3) More than half the number of votes cast (simple majority) shall determine the result and the winning option in the Referendum

**Machakos Protocol: 2.5**

**Global Matrix: Part I (1)(e)**

**Underlined: Proposal from Civil Society Consultation 2005: Constitution 1998:Article 66**

##### Establishment of Southern Sudan Assembly

97. The Southern Sudan Constitution shall provide for the establishment of the Southern Sudan Assembly to be re-constituted through elections;

**Protocol on Power Sharing: 3.5.4**



## Assignment of Powers by the Southern Sudan constituent Assembly

**98.** When enacting the Constitution of Southern Sudan, the Southern Sudan Assembly shall assign to the Government of Southern Sudan such powers as set **forth in Schedules B and D, read together with Schedules E and F;**

### **Protocol on Power Sharing: 3.5.3**

#### Powers of Southern Sudan Assembly

- 99.** (1) Apart from applicable national legislation, legislative authority in Southern Sudan shall be vested in the Assembly of Southern Sudan,
- (2) The Southern Sudan Assembly shall establish its own offices, committees and rules of procedure. It shall elect a Speaker, a Deputy Speaker and other officers at its first sitting, as provided for in the Interim Constitution of Southern Sudan;

### **Protocol on Power Sharing: 3.5.6 and 3.5.2**

## Composition and Functioning of the Southern Sudan Legislature

### The Southern Sudan Legislature

- 100.** (1) There shall be a Southern Sudan Legislature known as ‘Southern Sudan Assembly’.
- 2) The Southern Sudan Assembly shall transact its business as prescribed in this Southern Sudan Constitution and the internal regulations of each chamber;

### **Protocol on Power sharing: 2.2**

#### Composition of the Southern Sudan Assembly

**101.** The Southern Sudan Assembly shall be composed of (\_\_\_) members elected in free and fair elections in accordance with the procedures set forth by the National Electoral Commission and fair electoral laws;

### **Protocol on Power Sharing: 1.8.8 and 2.2.3.1**

#### Eligibility for Membership of the Southern Sudan Legislature

- 102.** (1) The candidate for membership of the Southern Sudan Legislature, shall
- a. be a Southern 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 Southern Sudan Assembly cannot be combined with representation at the Council of States;

(3) Governors, members of Southern Sudan Legislature or Executive, and members of state legislatures or state cabinets, shall not be eligible, or continue to be eligible, for membership of the Council of States;

**The Constitution: Article 68.**

### Lapse of Membership of the Southern Sudan Legislature

**103.** (1) Membership of the Southern Sudan Legislature shall lapse by a resolution passed by the Assembly in any of the following cases:

- a) mental infirmity or physical incapacity;
- b) conviction of an offence connected with honesty or moral turpitude;
- c) absence from attending one full session of the sittings of the Assembly without permission or acceptable excuse;
- d) written resignation announced in the Assembly;
- e) change of affiliation or political party for member of the Assembly;
- f) death,

(2) Upon vacancy of the seat of a member/representative his/her successor shall be elected, as the case may be, within a period of sixty days as may be possible;

**The Constitution: Article 69.**

### Seat of the Southern Sudan Assembly

**104.** The Southern Sudan Assembly shall convene at its seat in Juba and the Speaker may call the Assembly to convene exceptionally in any other place in Southern Sudan;

**The Constitution: Article 70.**

### Oath of Member of Southern Sudan Assembly

**105.** Every member of the Southern Sudan Assembly shall, before exercising his/her functions take the following oath before the Assembly:

““ I .... having been elected as Member of the Southern Sudan Assembly, do hereby solemnly swear by the Almighty God that I will bear true faith and allegiance to the people of *Southern Sudan* and the Republic of the Sudan; that I will obey, respect, uphold, preserve and defend the Constitution of the country, the Constitution of Southern Sudan and all other laws; and that I will faithfully and conscientiously discharge the duties of a member of the Southern Sudan Legislature and serve the people to the best of my ability; and God is my witness.”;

**The Constitution: Article 71.**

**Term of the Southern Sudan Legislature**

**106.** The term of the Southern Sudan Legislature shall be **four** years commencing from the day of its first sitting;

**The Constitution: Article 72.**

**Functions of the Southern Sudan Legislature**

**107.** (1) The Southern Sudan Legislature represents the popular will in fostering Southern Sudanese Unity, legislation, overseeing the Government of Southern Sudan Executive, planning, control and questioning of the Executive, promoting the decentralized system of government and in general and political mobilization.

(2) The Southern Sudan Assembly shall be competent to:

- a. approve plans, programmes, and policies relating to the State and the society;
- b. approve the Annual Southern Sudan Budget of revenues and expenditures,
- c. pass the draft constitutional amendments and pass legislative bills and provisional decrees;
- d. oversee the performance of the Southern Sudan Executive;
- e. issue resolutions on public affairs;
- f. summon the Government of Southern Sudan ministers to present reports on the executive performance of the government in general or of specified ministries or activities in particular;
- g. .may interrogate the President of the Government of Southern Sudan or ministers about their performance or the performance of their ministries, and may recommend to the President of Government of Southern Sudan, in a subsequent sitting, the removal of a minister, if he/she is deemed to have lost the confidence of the Southern Sudan Assembly.
- h. exercise oversight over the Southern Sudan Reconstruction and Development Fund,
- i. request and listen to reports from the President of the Government of Southern Sudan, concerned ministers, and governors on the effective implementation of the decentralized system and devolution of powers;

**The Constitution: Article 73. and 85.**

**Protocol on 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 Southern Sudan Legislature

**108.** Save where he/she is caught in the act of crime, no criminal proceedings shall be initiated against a member of the Southern Sudan Legislature, nor shall any measures be taken against his/her person or belongings without permission from the Speaker of the Assembly,

**The Constitution: Article 74.**

## Convening and Sessions of the Southern Sudan Legislature

**109.** (1) The Southern Sudan Assembly shall hold its first sitting upon convocation by the President of the Government of Southern Sudan 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 present,

(2) The Southern Sudan Assembly shall determine the beginning and end of every session of sittings,

(3) The Southern Sudan Assembly may convene an emergency or extraordinary session on the request of half of its members/ representatives or upon call from the President of the of the Government of Southern Sudan;

**The Constitution: Article 75.**

## Leaders of the Southern Sudan Legislature

**110.** (1) The Southern Sudan Assembly shall have a Speaker and deputies to be elected from among its members at the first sitting,

(2) The Speaker of Southern Sudan Assembly shall preside over sittings, control the order, and supervise the administrative affairs of the Assembly. He/she shall represent the Assembly inside and outside the Sudan,

(3) The Southern Sudan Assembly shall elect, in accordance with its regulations, other officers to lead the Government/Majority and Opposition/ Minority members, or to chair committees of the Assembly,

(4) The Speaker shall, upon approval of the Assembly, appoint a Secretary General for the Assembly who shall not be a member. The Secretary General shall assume the preparatory and administrative affairs of the Assembly under the supervision of the Speaker;

**The Constitution: Article 76.**

## Committees of the Southern Sudan Legislature

**111.** The Southern Sudan Assembly shall have specialized permanent committees within its competencies and ad hoc committees for the performance of its functions in accordance with its regulations.

**The Constitution: Article 77.**

## Regulations of the Southern Sudan Legislature

**112.** The Southern Sudan Assembly shall, on the initiative of its Speaker, make regulations for the conduct of its business;

**The Constitution: Article 78.**

### Quorum of convening of the Southern Sudan Assembly

**113.** The ordinary quorum for the sittings of the Southern Sudan 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 half of the members,

**The Constitution: Article 79.**

### Publicity of Sittings of the Southern Sudan Legislature

**114.** The sittings of the Southern Sudan Legislature shall be open, the deliberations are public, shall be published, and may also be broadcasted. However, the Southern Sudan Legislature may decide according to its internal regulations that certain deliberations shall take place in camera;

**The Constitution: Article 80.**

### Passing Legislative Resolutions

**115.** Resolutions of the Southern Sudan Legislature shall be, when possible, by unanimity or consensus. Otherwise resolutions shall be passed by simple majority of those present, save in cases where this Southern Sudan Interim Constitution provides otherwise;

**The Constitution: Article 81**

### Prerogative of Members of the Southern Sudan Legislature

**116.** Members of the of the Southern Sudan Legislature are entitled to freely and responsibly express their opinions, subject only to the provisions of the regulations of the Assembly; no legal proceedings shall be initiated against any of them, nor shall he/she be accountable before any court of law by reason of views or opinions that he/she may have expressed in the course of performing his/her duties;

**The Constitution: Article 82.**

### Statement of the President of the Government of southern Sudan

**117.** The President of the Government of southern Sudan may address the Southern Sudan Legislature personally or by a message. He/she may also request the opinion of the Southern

Sudan Legislature on any subject; the Southern Sudan Legislature shall accord the response to such request priority over any other business;

**The Constitution: Article 83 (1).**

Address by Vice President, Ministers and Governors

**118.** The Vice President of the Government of Southern Sudan, the ministers of the Government of Southern Sudan, or a national minister may request to address the Assembly and the Assembly shall provide an opportunity for such address as urgently as possible;

**The Constitution: Article 83(2)**

Addressing Questions – requesting statements by Members of the Southern Sudan Legislature

**119.** Members of the of the Southern Sudan Legislature may within the competence of the Assembly, and subject to its regulations, address questions to a minister on any subject relating to his/her duties; the said minister shall provide the Assembly with a reply;

**The Constitution: Article 84 (1).**

Requesting Statements

**120.** Subject to the regulations of the Assembly, the Southern Sudan Legislature or any of its committees may request, the President of the Government of Southern Sudan, the Vice President of the Government of Southern Sudan, a minister, to deliver a statement on any specific matter of concern;

**The Constitution: Article 84 (2)**

General Summons

**121.** The Southern Sudan Assembly or any of its committees, may summon any public official or any other person to address the Assembly or committee, present any testimony or consultancy. Inquiry on any matter that falls within the direct responsibility of the Southern Sudan Executive may only be made after notifying the President of the Republic;

**The Constitution: Article 86.**

Tabling of Bills

**122.** (1) The President of Government of Southern Sudan, the Southern Sudan Government Council of Ministers, a minister, a committee of the Southern Sudan Assembly, or any member of the of the Southern Sudan Assembly, by private initiative, may table a bill to the Southern Sudan Assembly.

- (2) Where the bill is by the private initiative of a member, it shall not be tabled Assembly before being cleared by the concerned committee in that involving an issue of important public concern;

**The Constitution: Article 87.**

**Procedures of Presenting and Considering Bills**

**123.** (1) The bill presented to Southern Sudan Legislature shall be submitted for first reading by being cited by title and thereby deemed to be tabled before the Assembly, the bill shall then be submitted on second reading by being deliberated generally and approved in principle. If the bill has been so passed, there shall be a third reading for deliberation in detail and introducing or deciding upon any amendment. The bill shall then be submitted in its final form for the final reading, at this 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 concerned committee which shall present a general evaluation report for the purpose of the second reading for deliberation and passing the bill on point of principle. The committee shall also present a report on the amendment that the committee may or may not have endorsed in presentation for the third reading. The Speaker may also refer the bill once again to the concerned committee to prepare a report on the final drafting in preparation for the final reading where it shall be passed section by section and then passed as a whole,

(3) The Speaker or the concerned committee, may seek expert opinion on the viability and rationale of the bill; an interested body may be invited to present views on the impact and propriety of the same,

(4) The Assembly may by a special resolution, decide on any bill as a general committee or by summary proceedings;

**The Constitution: Article 88.**

**Signing a bill into Law**

**124.** (1) Any bill duly approved by the Southern Sudan Legislature, shall be signed into law by the President of the Government of Southern Sudan within thirty days, failing which it shall be deemed to have been so signed,

(2) When the President of the Government of Southern Sudan withholds his / her signature, he/she must present reasons for his/her refusal to so sign when reintroducing the bill to the Southern Sudan Legislature within the thirty days period stated herein,

(3) The bill shall become law if the Southern Sudan Legislature again passes the bill by a two – thirds majority of all the members and the assent of the President of the Government of Southern Sudan shall not be required for that bill to come into force as law;

**Protocol on Power Sharing: 2.2.8**

## Provisional Orders

**125.** (1) The President of the Government of Southern Sudan while Southern Sudan Legislature is not in session, and upon a decision of the Southern Sudan Government Council of Ministers or as he may decide, on an urgent matter, issue a provisional order having the force of law; however, such provisional order shall be submitted to the Assembly as soon as it is convened **in a period not later than two weeks.** Where the Southern Sudan Legislature ratifies the provisional order as is, it shall be promulgated as law, but where the same is rejected by the Assembly or where the parliamentary session ends without it being ratified, the provisional order shall lapse with no retrospective effect,

(2) The President of the Government of Southern Sudan shall not make any provisional order on matters affecting the Peace Agreement, the Bill of Rights, the decentralized system of government, general elections, or financial regulations, or international conventions or agreements affecting the borders of Southern Sudan;

(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,

### **The Constitution: Article 90.**

#### Allocation of Resources and Revenues Bill

**126.** The Southern Sudan Council of Ministers shall present to the Southern Sudan Legislature, before the beginning of the financial year, the bill of the allocation of resources and revenues in accordance with the provisions of this Southern Sudan Interim Constitution.

### **Protocol on Power Sharing: 2.2.6**

#### Southern Sudan Budget

**127.** (1) The Southern Sudan Council of Ministers shall present to the Southern Sudan Assembly before the beginning of the financial year the bill of the general budget of Southern Sudan, including a general evaluation of the economic and financial situation of Southern Sudan, detailed estimates of the proposed revenues and expenditure for the coming year compared with the practice of the previous year, a statement of the general balance of the budget, any reserve funds, transfers thereto or allocations therefrom, and explanations of any special budgets or financial statements, policies or measures to be taken by Southern Sudan in the financial and economic affairs relating to the general budget,

(2) There shall be submitted to the Southern Sudan Assembly by the Southern Sudan Council of Ministers proposals of total expenditure entered into the budget as an



appropriation bill; there shall also be submitted the proposed taxes, fees and other levies as financial bills, and there shall also be submitted any proposals for borrowing, investment or saving bonds by the State as financial bills,

- (3) The Southern Sudan Assembly shall pass the bill of general budget, chapter by chapter including the schedules, and it shall pass 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 Constitution: Article 91.**

### Private Financial Bills

**128.** No member of the Southern Sudan Assembly shall by a private initiative, outside the context of the deliberations of the draft general budget, present any private financial bill which requires imposition or rescinding of any tax, fee, or public revenue; or necessitates an appropriation or levy upon public funds other than service fees or pecuniary penalties.

**The Constitution: Article 92.**

### Provisional and Supplementary Financial Measures

- 129.** (1) Notwithstanding the provisions of **Article ...**, the President of the Government of Southern Sudan may, upon the decision of the Council of Ministers, wherever he deems that public interests so require, make a provisional decree having the force of law, providing that the imposition of any tax, or fees or the amendment thereof shall come into force, pending submission of the bill requiring the same to Southern Sudan Assembly. When the financial bill is adopted or rejected, the force of the provisional decree shall cease without the rejection or amendment of the bill having retrospective effect,
- (2) Where the procedure of passing the general budget, and the appropriation law have been delayed beyond the beginning of the financial year, expenditure shall continue pending passing the general budget in accordance with the estimates thereof for the year which has elapsed as if the same has been appropriated by law for the new year,
  - (3) The Council of Ministers may during the financial year, whenever new circumstances occur or a matter of public concern proved not to be satisfactorily addressed by the general budget and the laws thereof, present 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 and its related bills;

**The Constitution: Article 93.**

## Final Accounts

**130.** The Southern Sudan Council of Ministers shall present to the Southern Sudan 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; and the Auditor General shall present his report on such accounts to the Southern Sudan Assembly;

**The Constitution: Article 94.**

### Delegation of the Power of Subsidiary Legislation

**131.** The Southern Sudan Legislature may by law delegate to the President of the Government of Southern Sudan, the Government of Southern Sudan 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 is subject to annulment or amendment by a resolution of that **Assembly** in accordance with the provisions of its regulations;

**The Constitution: Article 95.**

### Authority of the Business of the Southern Sudan Legislature

**132.** No court or other authority shall interfere with the business of the Southern Sudan Legislature, nor shall the same review any law or resolution passed thereby on the allegation that it was issued contrary to the regulations or rules of procedure. Issuance of a certificate duly signed, shall be deemed an authority of the business of the Southern Sudan National Legislature;

**The Constitution: Article 96.**

## CHAPTER II

### Interim Provisions for the Southern Sudan Legislature

**133.** (1) Pending the elections, the seats of the Southern Sudan Assembly shall be allocated as to promote inclusiveness and stability. The First Southern Sudan Assembly shall be an inclusive, constituent legislature composed of:-

- 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%).
2. Prior to the elections the representatives of Southern Sudan Assembly shall be appointed by the President of the Government of Southern Sudan after consultation receiving nominations from the SPLM, NCP and other Southern Political forces in accordance with their percentages in (1) above.

**Protocol on Power Sharing: 2.2.4 and 2.2.5**

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

**PART VI**

**THE JUSTICE SYSTEM**

**CHAPTER I**

**The Judicial Authority of Southern Sudan**

**GENERAL PRINCIPLES**

**134.** (1) The Law that shall govern the Judiciary shall provide that the president of the Southern Sudan Supreme Court be elected by the Judges of the Supreme Court of Southern Sudan.

(2) The law shall provide for the requirements and conditions, which should be fulfilled by Southern Sudanese seeking appointment in the Southern Sudan and Southern states judiciary. These shall include but not limited to recognized law and bar certificates.

(3) The Law shall establish the Southern Sudan Judicial Council, which shall be responsible for recommending the appointment, promotion, transfers and dismissal of southern Sudan and state judges to the President of Southern Sudan.

(4) The Southern Sudan Judicial Council shall approve the nominations for the training of the judges in Southern Sudan and states Judges.

(5) The budget and salaries of Southern Sudan and southern states judges shall be determined by the Southern Sudan Judicial Council within the framework of the Southern Sudan economic policies.

(6) The Law that shall govern the Judiciary shall provide that the president of the Southern Sudan Supreme Court be elected by the Judges of the Supreme Court of Southern Sudan.

(7) The law shall provide for the requirements and conditions, which should be fulfilled by Southern Sudanese seeking appointment in the Southern Sudan and Southern states judiciary. These shall include but not limited to recognized law and bar certificates.

- (8) The Law shall establish the Southern Sudan Judicial Council, which shall be responsible for recommending the appointment, promotion, transfers and dismissal of southern Sudan and state judges to the President of Southern Sudan.
- (9) The Southern Sudan Judicial Council shall approve the nominations for the training of the judges in Southern Sudan and states Judges.
- (10) The budget and salaries of Southern Sudan and southern states judges shall be determined by the Southern Sudan Judicial Council within the framework of the Southern Sudan economic policies.

## **CHAPTER II**

### **The Judiciary of Southern Sudan**

**135.** Judicial competence in Southern Sudan shall vest in an independent authority to be known as the “Judiciary of Southern Sudan” to assume judicial power in adjudication of disputes and judgments on the same in accordance with the this Constitution and the law.

**The Constitution: Article 99- Adapted**

#### **Responsibility of the Judiciary**

**136.** The Judiciary shall be responsible *administratively* for the performance of its work before the President of the President of the Republic.

**Sudan Draft Constitution 1968: Article 154- Adapted**

**The Constitution: Article 100**

#### **Independence Judges**

**137.** (1) Judges are independent in the performance of their duties and have full judicial competence with respect to their functions; and they shall not be influence in their judgments.

(2) A judge shall be guided by the principle of the supremacy of the Constitution and the law and he/she shall protect this principle, giving due regard to the establishment of justice in thoroughness and impartiality without fear or favour.

(3) The State organs shall execute judicial judgments

**The Constitution: Article 101**

## **Administration of the judiciary**

**138.** (1) Judiciary shall have a President to be known as the, "Chief Justice", who shall ex-officio be the president of the supreme Court and the Supreme Council of the judiciary, and shall be responsible for the administration of the judiciary to the Supreme Council of the judiciary.

(2) The judiciary shall have a council to be known as "Supreme Council of the Judiciary" its composition and functions shall be prescribed by law. There shall be among its functions the planning and general supervision over the judiciary, and the presenting of recommendations to the President of the Republic for the appointment, promotion and termination of service of judges, as well as the preparation of the budget of the judiciary and expressing opinion on legislative bills relating to the judiciary.

### **The Constitution: Article 102**

#### **Appointments and terms of service of Judges**

**139.** (1) The President of the Republic shall appoint the Chief Justice and his deputies according to law.

(2) The President of the Republic shall appoint all the other judges upon the recommendation of the Supreme Council for the judiciary.

(3) The law shall determine the term of the service, discipline and immunities of judges.

(4) No judge shall be removed save under disciplinary measures and upon a recommendation from the Supreme council of the Judiciary.

### **The Constitution: Article 104**

#### **Structure of Southern Sudan Judiciary**

**140.** There shall be at the Southern Sudan Level:-

- a) A Supreme Court of Southern Sudan;
- b) Courts of Appeal; and
- c) Any such other courts or tribunals as deemed necessary to be established in accordance with the Southern Sudan Interim Constitution and the law;

### **Protocol on Power Sharing: 3.7.1**

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

**141.** The Constitution of Southern Sudan shall provide for the establishment of the Supreme Court for Southern Sudan which shall be the highest court in the South and to which appeals may lie from southern Sudan state courts or other courts of southern Sudan on matters brought under or relating to Southern states, southern Sudan or national law, as may be determined by the Constitution of Southern Sudan;

### **Protocol on Power Sharing: 3.7.2.**

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

**142.** The Southern Sudan Supreme Court shall: -

- a) Be the court of final judicial instance in respect of any litigation or prosecution under Southern Sudan state law or Southern Sudan 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 Legislature;
- 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 determined by Southern Sudan Constitution, the Peace Agreement and the law;

### **Protocol on Power Sharing: 3.7.3**

#### **Judges of the Courts of Southern Sudan**

- 143.** (1) Judges of the courts 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 Southern Sudan Constitution and the law shall protect their independence,
- (2) Without prejudice to **Article**\_\_\_\_\_ of this Constitution, the Legislature of Southern Sudan shall provide for appointments, terms of service and dismissal of Southern Sudan appointed Judges and Southern Sudan state appointed judges;

### **Protocol on Power Sharing: 3.7.4, 3.7.5 and 4.6.2.1**

## **CHAPTER II OTHER JUSTICE SYSTEMS Public legal counsels and attorneys**

**144.** Legal Counsels working in the public services and attorneys shall strive to express the values of justice, truth, legality, protection of public and private rights, tender advice and render legal services to the state and citizens, and shall perform their functions truthfully and impartially in accordance with the Constitution and the law.

### **The Constitution: Article 106**

## Advocacy

**145.** (1) The profession of advocacy shall be established to express the values of justice, righteousness and legality, fend off injustice and seek conciliation between adversaries, observe neutrality in the just proof of right, impartiality in pursuit of the truth and facilitate legal aid for the needy in accordance with the provisions of the law.

(2) The law shall regulate the conditions for the practice of the profession.

**The Constitution: Article 107**

## PART VII

### The States and Abyei Area of Sudan

**146.** The Republic of the Sudan shall be decentralized into states:

The national law shall determine, among other things, state names, number, capitals and boundaries. However, the January 1<sup>st</sup>, 1956 line between north and south shall be inviolate subject to **Article** \_\_\_ --- of the Interim National Constitution;

**The Constitution: Article 108 and 109.**

## CHAPTER I

### State Institutions

**147.** (1) There shall be legislative, executive, and judicial institutions at state level which shall function in accordance with the Constitution of Southern Sudan, state constitutions, and the Comprehensive Peace Agreement,

(2) Local Government is an important level of Government and its election, organization and proper functioning shall be the responsibility of the states, in accordance with the relevant state constitution;

**Protocol on Power Sharing: 4.2 and 4.3.**

## CHAPTER II

### State Executive

**148.** (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 in accordance with the Constitution of Southern Sudan where applicable, the 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 the Southern Sudan Constitution, the state constitution, and the Comprehensive Peace Agreement;

*The Constitution: Article 56 (1)*  
*Protocol on Power Sharing: 4.5.3 and 4.5.4.*

## CHAPTER III

### State Legislature

- 149.** (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 constitutions provided that it shall be in conformity with, the Interim Constitution of Southern Sudan 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) Members of the state legislature and the state cabinet, including the governor, 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.*

## CHAPTER IV

### State Judiciary

- 150.** (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 Southern Sudan Constitution, National Interim Constitution where applicable, and the Comprehensive Peace Agreement, however, the National Legislature shall determine



the civil and criminal procedures to be followed in respect of litigation or prosecution under National laws in accordance with the Interim National Constitution,

(3) State legislation shall provide for:-

- a) The appointment and dismissal of state-appointed judges (lay magistrates); and
- b) Guarantees of the independence and impartiality of the 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 the Comprehensive Peace Agreement and this Interim Constitution of Southern Sudan;

**Protocol on Power Sharing: 4.6.1, 4.6.3, 4.6.4, 4.6.2 and 4.6.5**

## CHAPTER V The Abyei Area

**151.** (1) Without prejudice to any of the provisions of the Interim National Constitution, this Southern Sudan Interim 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 have a separate ballot. The proposition voted on in the separate ballot shall present the residents of Abyei Area with the following choices, irrespective of the results of the Southern Sudan Referendum:

- (a) that Abyei retain its special administrative status in the north;
- (b) That Abyei be part of Bahr el Ghazal,

4) the January 1, 1956 line between north and south will be inviolate, except as agreed in sub-section (3) above;

**Protocol on Abyei Area: 1.2, 1.3 and 1.4**

## CHAPTER VI State Interim Provisions

**152.** (1) Pending the elections referred to in *Article -----* of the Interim National Constitution:

- (a) State governors in case of Southern Sudan shall be appointed by the President of GOSS in consultation with Vice President of GOSS;
- (b) The Governor of one Southern State shall be a nominee of the National Congress Party, and one Deputy Governor in a different Southern State shall also be a nominee

of the National Congress Party, such nominations shall be part of the Ten Percent (10%) share of the National Congress Party in Southern states referred to in this Article sub-section (2) below,

- (2) Subject to the Agreement on the Resolution of the Conflict in Southern Kordofan and Blue Nile States, the state legislature and executives shall be allocated as follows:-
- a) The National Congress Party is to hold Seventy Percent (70%) of the seats in the Northern states, and the SPLM Seventy Percent (70%) of the seats in the Southern states;
  - b) The remaining Thirty Percent (30%) of the seats in the Northern and the Southern states shall be allocated as follows:-
    - i. Ten Percent (10%) of the seats in the Southern states to be filled by the NCP;
    - ii. Ten Percent (10%) of the seats in the Northern states to be filled by the SPLM; and
    - iii. Twenty Percent (20%) of the seats in the Northern and Southern states to be filled by representatives of other Northern and Southern political forces, respectively;

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

## PART VIII **Finance and Economic Matters**

### CHAPTER I **Finance and Economic Matters**

- 153.** (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 also fulfill its obligation to provide transfers to the Government of Southern Sudan,
- (3) The sharing and allocation of wealth emanating from the resources of the Sudan shall 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. The sharing and allocation of this wealth shall be based on the premise that all parts of the Sudan are entitled to development,
- (4) Southern Sudan faces serious needs to: (i) be able to perform basic government functions, (ii) build up the civil administration, and (iii) rehabilitate and reconstruct/construct the social and physical infrastructure in a post-conflict Sudan,

- (5) Southern Kordofan, Blue Nile, Abyei and other war affected areas face serious needs to: (i) be able to perform basic government functions, (ii) establish and build civil administration and (iii) rehabilitate and reconstruct/construct the social and physical infrastructure in a post-conflict Sudan,
- (6) That, without prejudice to the provisions of paragraph \_\_\_\_\_ of **Article \_\_\_\_\_** of the Interim National Constitution, 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 will take time and effort to build up local institutional, human, and economic capacity. For this purpose, two special funds shall be established as provided herein,
- (7) That revenue sharing should reflect a commitment to devolution of power and decentralization of decision-making in regard to development, service delivery and governance,
- (8) (1) 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 government,
- (2) That the best known practices in the sustainable utilization and control of natural resources shall be followed,
- (3) The Interim National Constitution sets out the respective types of income, revenue, taxes and other sources of wealth to which the various levels of government are entitled,
- (4) The National Government shall not withhold an allocation due to a state or the Government of Southern Sudan. Any level of Government may initiate proceedings in the Constitutional Court should any other organ or level withhold monies due to it. The National Government shall make transfers to the Government of Southern Sudan based on the principles established,
- (5) The National Government shall assist the Government of Southern Sudan, during the pre-Interim Period, to develop and implement a program for capacity enhancement in the South;

**Protocol on Wealth Sharing: 1.2-----1.16.**

## CHAPTER II

### **Sharing Oil Revenue**

**154.** (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 percent (**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 percent (**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 Agreement and future accounts shall be on-budget operations;

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

## CHAPTER III

### Non-oil Revenues Southern Sudan Non-oil Revenue

- 155.** The Government of Southern Sudan shall raise 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**\_\_\_\_of the Interim National Constitution;

- b) Revenue from any of the sources listed as state revenue sources referred to **Article** \_\_\_\_\_ of the Interim National Constitution;
- c) The Southern Sudan Reconstruction and Development Fund (SSRDF);
- d) Oil revenues as set out **Article** \_\_\_\_\_ of the Interim National 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 Aid;
- i) Taxes and levies on small and medium businesses;
- j) Excise taxes on goods within the region deemed to be luxury consumables;
- k) Southern Sudan Personal Income Tax;
- l) Loans and Borrowing in accordance with the Banking and Foreign Funding **Article** \_\_\_\_\_ of the National Interim Constitution;
- m) Any other taxes as may be determined by law;

**Protocol on Wealth Sharing: 6.2**

## CHAPTER IV

### State Non-oil Revenue

**156.** Subject to the Protocol on the Resolution of the Conflict in Southern Kordofan and Blue Nile States and the Protocol on the Abyei Area, where applicable, the states shall raise revenue 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 Revenues as is set out in sub-**Article** \_\_\_\_\_ of the National Interim 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 the Banking and Foreign Funding **Article** \_\_\_\_\_ of the National Interim Constitution; and
- o) Any other tax as may be determined by law;

**Protocol on Wealth sharing: 6.3.**

CHAPTER V  
Southern Sudan Non-oil Revenue Allocation

157. (1) Notwithstanding the provisions of **Articles** \_\_\_\_\_, \_\_\_\_\_ **and** \_\_\_\_\_ of the National Interim Constitution, the National Government shall allocate fifty percent (50%) of the national non-oil revenue collected in Southern Sudan, as provided for under **Article** \_\_\_\_\_ of the National Interim Constitution, 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 states and the Government of Southern Sudan shall retain and dispose of such other income raised and collected under their own taxing powers;

**Wealth Sharing: 7.3**

CHAPTER VI  
Southern Sudan Reconstruction and Development Fund

158. (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 the South, 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 Legislative 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 VII

### Banking The Dual Banking System

**159.** (1) A dual banking system shall be established during the Interim Period, an Islamic banking system shall operate in Northern Sudan and a conventional banking system shall operate in Southern Sudan,

(2) There shall be established during the pre-Interim period, the Bank of Southern Sudan (BOSS) as a branch of Central Bank of Sudan (CBOS), to start conventional banking facilities that are urgently needed in Southern Sudan;

#### Wealth Sharing: 14.1 and 14.2.

### Restructuring of the Central Bank of Sudan

**160.** (1) The Central Bank of Sudan (CBOS) shall be restructured so as to reflect the duality of the banking system in Sudan. The CBOS shall therefore 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 CBOS shall be responsible for the conduct of monetary policy. All banking institutions shall be subject to the rules and regulations set by the CBOS,

(3) 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 be carried out accordingly relying primarily on market-based instruments instead of administrative allocation of credit,

(4) The CBOS shall be fully independent in its pursuit of monetary policy,

(5) The Governor of CBOS and his/her two deputies shall be appointed by the Presidency. The Governor of CBOS shall appoint in consultation with his/her two deputies other senior officers within the Central Bank;

(6) There shall be established an independent Board of Directors (BOD) for the CBOS. Decisions of BOD on matters that may affect adversely the interests of the clientele of either banking window shall be by consensus. The BOD shall be responsible to the Presidency on the accountability of the CBOS and shall consist 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 Presidency taking into account the agreed formula in the Comprehensive Peace Agreement for the institutions of the National Government,

(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**

**161.** (1) The Government of Southern Sudan and the states may borrow money based on their respective credit worthiness. 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 sub-national levels of government foreign borrowing transactions shall conform to the CBOS specifications;

### **Wealth Sharing: 14.13, 14.14, 14.15, and 14.16**



## CHAPTER VIII

### Accounting Standards

#### Accounting standards and Procedures and Fiscal Accountability

**162.** (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,

(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

**163.** (1) To ensure effective operation of government institutions and compliance with Article 203 of this Constitution, there shall be independent National and Southern Sudan Audit Chambers. The National Audit Chamber shall set auditing standards. Appointments to the National Audit Chamber shall be made by the Presidency and confirmed by the National Assembly;

(2) 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 northern states, public institutions corporations and companies;

(3) The law shall organize the National and Southern Sudan Audit Chambers and specify the functions and terms of service of their employees;

*The Constitution: Article 129.*

*Wealth Sharing: 12.2*

#### Interstate Commerce

**164.** (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 Constitution: Article 118*

## **CHAPTER IX**

### **Transitional Provisions for Finance, and Banking**

#### **New Currency**

**165.** The CBOS shall issue a new currency, the design of which shall reflect the cultural diversity of the Sudan, as soon as is practical during the Interim Period. Until a new currency has been issued on the recommendations of the CBOS, the circulating currencies in Southern Sudan shall be recognised;

#### **Wealth Sharing: 14.9**

#### **Existing Oil Contracts**

**166.** (1) The President of Government of Southern Sudan shall appoint a limited number of representatives to have access to all existing oil contracts. The representatives shall have the right to engage technical experts. All those who have access to the contracts shall sign confidentiality agreements,

(2) 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**

**167.** (1) Any debts/liabilities 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;

#### **Wealth sharing: 10.1 and 11.1**

## **PART IX**

### **Census and Elections**

#### **CHAPTER I**

##### **Census**

##### **The Population Census Council**

**168.** (1) There shall be established 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 Presidency regarding the Population Census;

**Global Matrix: Part I (8)**

### **Population Census**

**169.** 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;

**Protocol on Power Sharing: 1.8.1, 1.8.2 and 1.8.9.**

**Global Matrix: Part I (8)**

#### **CHAPTER II**

##### **Elections**

##### **Time of Elections**

**170.** 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)**

##### **Condition for Standing for Election**

**171.** Whoever runs in any election must respect, abide by, and enforce the Comprehensive Peace Agreement;

**Protocol on Power Sharing: 1.8.6**

## PART X

### Land Resources

#### CHAPTER I Land Regulation

- 172.** (1) The regulation of land tenure, usage and exercise of rights in land is to 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;

**Protocol on Wealth sharing: 2.3**  
**Global Matrix: Wealth Sharing Part A1**

#### Southern Sudan Land Commission

- 173.** In accordance with this Agreement and without prejudice to the jurisdiction of courts, there shall be established a Southern Sudan Land Commission which shall have the following functions:
- (1) Arbitrate between willing contending parties on claims over land, and sort out such claims.
- (2) The party or group making claims in respect of land may make a claim against the relevant government and/or other parties interested in the land.
- (3) The Southern Sudan Land Commission may entertain such claims at its discretion.
- (4) The parties to the arbitration shall be bound by the Southern Sudan Land Commission's decision on mutual consent and upon registration of the award in a court of law.
- (5) The Southern Sudan Land Commission shall apply the law applicable in the locality where the land is situated or such other law as the Parties to the arbitration agree, including principles of equity.
- (6) Accept references on request from the relevant government, or in the process of resolving claims, and make recommendations to the appropriate levels of government concerning:
- (a) Land reform policies;
- (b) Recognition of customary land rights and/or law

- (7) 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.
- (8) Advise different levels of government on how to co-ordinate policies on national projects.
- (9) Study and record land use practices in areas where natural resource exploitation occurs.
- (10) The Southern Sudan Land Commission shall be representative and independent. The composition of the membership and terms of appointment of the Southern Sudan Land Commission shall be set by the legislation constituting it. The Chairperson of the Southern Sudan Land Commission shall be appointed by the President of the Government of Southern Sudan.
- (10) The Southern Sudan Land Commission may conduct hearings and formulate its own rules of procedure.
- (12) The Southern Sudan Land Commission shall have its budget approved by the Government of Southern Sudan and shall be accountable to the President of the Government of Southern Sudan for the due performance of its functions;

**Protocol on Wealth Sharing: 2.7**

## **CHAPTER II**

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

- 174.** (1) The National Land Commission and the 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 the 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 the Southern Sudan Land Commission, which cannot be resolved or reconciled by agreement pursuant to this Article sub-section (1) (c) above, the matter shall be referred to the Constitutional Court;

**Protocol on Wealth Sharing: 2.8 and 2.9**

## **PART XI**

### **Defence and National Security**

#### **CHAPTER I The Armed Forces**

##### **Status of the Two Armed Forces**

**175.** (1) 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 construction and assist in addressing national disasters,

(2) The Sudan National Armed Forces ( 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**

**176.** (1) There shall be formed Joint/ Integrated Units consisting of equal numbers from the Sudanese Armed Forces (SAF) and the Sudan People’s Liberation Army (SPLA) during the Interim Period. The Joint/ Integrated Units shall constitute a nucleus of a post referendum army of 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, function, size and deployment of the Joint Integrated Units shall be governed by the Security Arrangements Agreement and the Comprehensive Ceasefire Agreement;

**Security Arrangements: Article 4.**

##### **Command and Control of the Armed Forces**

**177.** (1) Command and control of the Armed Forces shall be as agreed in the Agreement on Security Arrangements and detailed in the Comprehensive Ceasefire Agreement,

(2) Coordination between the two forces and command of the Joint Integrated Units established according to Article 151 above, shall be the function of a Joint Defence

Board (JDB) that shall be established under the Presidency, the JDB shall be composed and operate according to the Agreement on Security Arrangements and the Comprehensive Ceasefire Agreement;

**Security Arrangements: Article 5 and 6.**

### Funding of the SPLA Forces

**178.** (1) During the Interim Period, SAF forces and JIUS shall be funded by the National Government, whereas the SPLA forces shall be funded by the Government of Southern Sudan, subject to the principle of proportional downsizing as per Security Arrangements Protocol and the approval of Southern Sudan Legislature.

2) To meet the obligation above of funding the SPLA, the Government of Southern Sudan shall raise financial resources from both local and foreign sources and seek international assistance,

3) Financial resources raise under paragraph (2) above shall be channeled through the Bank of Southern Sudan and managed according to the principles of wealth sharing Protocol.

**Security Arrangements: Article 21.**

### Comprehensive Ceasefire

**179.** (1) The internationally monitored ceasefire as per the Agreement on the Comprehensive Ceasefire shall be fully enforced,

(2) The Comprehensive Ceasefire Agreement shall be fully respected by all Sudanese;

**Security Arrangements: Article 2.**

## CHAPTER II

### The Law Enforcement Agencies

#### The Police

**180.** (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 law in accordance with the Comprehensive Peace Agreement;

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

Prisons and Wildlife Services

**181.** There shall be at the National, Southern Sudan and state levels, prisons and wildlife protection services whose functions shall be prescribed by law;

CHAPTER III

The National Security

The National Security Service

**182.** (1). There shall be one National Security Service;

(2). The National Security Service shall be representative of the people of the Sudan;

(3). The South shall be equitably represented in the National Security Service;

(4). The National Security Service shall be professional and its mandate shall focus on information gathering, its analysis and advising the appropriate authorities;

(5). There shall be established security committees at the Government of Southern Sudan and State levels, their composition and functions shall be determined by the law;

(6). The National Security Service shall be under the Presidency;

(7). There shall be a National Security Act that shall reflect the mandate of the National Security Service and the provisions of the Peace Agreement relating to the national security;

(8). All the assets of the previous security organs shall accrue to the National Security Service;

**Protocol on Power Sharing: 2.7.2**

The National Security Council

**183.** (1) There shall be at the national level a National Security Council, the composition and functions of which shall be determined by the law;

(2) The National Security Council shall define a national security strategy based on the analysis of the new security threats;

**Protocol on Power Sharing: 2.7.1**

**Protocol on Power Sharing: 3.1**



## PART XII

### Coming Into Effect, Amendment of the Southern Sudan Constitution and Defence of the Constitution

#### Coming into Force

**184.** Upon adoption by the Transitional Assembly of Southern Sudan, the Constitutional Text shall become the Southern Sudan Constitution for the Southern Sudan during the Interim period.

#### Protocol on Power Sharing: 2.12.7

##### Amendment of the Constitution

**185.** Amendments to this Constitution shall require:

- i. The approval of two-thirds majority vote of all the members of the Assembly of Southern Sudan and only after introduction of the draft amendment at least two months prior to deliberation,
- ii. One third of the members of the Assembly of Southern Sudan may propose an amendment of the Constitution. Such proposal shall be referred to an Assembly select committee to study and submit a report to the Assembly. The proposed amendment shall come into force where it is passed by the two-thirds majority of the Assembly members and signed by the President of the Government of Southern Sudan.
- iii. Where there is disagreement between the President and the Southern Sudan Assembly, the matter shall be referred to the people of Southern Sudan through referendum.
- iv. Amendments of this Constitution affecting the provisions of the Peace Agreement may be introduced only with the approval of both Parties signatory to the Comprehensive Peace Agreement;

#### Protocol on Power Sharing: 2.2.7

#### Underlined: Proposal from Civil Society Consultation 2005

##### Incorporation of the Comprehensive Peace Agreement in the Southern Sudan Constitution

**186.** (1) The Comprehensive Peace Agreement except areas dealing specifically with Northern Sudan, Southern Kodofan and Southern Blue Nile 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 and the National Interim Constitution;

**Machakos Protocol: 3.1.2**

**Unconstitutional Change of Government during the Interim Period**

**Defence of the Constitution**

187. (1) It is prohibited for any person or group of persons to take or retain control of the Government of Southern Sudan, except in accordance with the provisions of this Constitution.

(2) Any person who, singly or in concert with others, by any violent or other unlawful means, suspends, overthrows, abrogates or amends this Constitution or any part of it or attempts to do any such act, commits the offence of treason and shall be punished according to law.

(3) The constitution shall not lose its force and effect even where its observance is interrupted by a government established by the force of arms; and in any case, as soon as the people recover their liberty, its observance shall be re-established and all persons who have taken part in any rebellion or other activity which resulted in the interruption of the observance, shall be tried in accordance with this Constitution and other laws consistent with it.

(4) All citizens of Southern Sudan shall have the right and duty at all time:

(1) To defend this Constitution, and in particular, to resist any person or group of persons seeking to overthrow the established constitutional order; and

(2) To do all in their power to restore this Constitution after it has been suspended, overthrown, abrogated or amended contrary to its provisions.

(5) Any person or group of persons who, as required by clause (4) of this article, resists the suspension, overthrow, abrogation or unconstitutional amendment of this Constitution commits no offence.

(6) Where a person referred to in clause (5) of this article is punished for any act done under that clause, the punishment shall, on the restoration of this Constitution, be considered void from the time it was imposed and that person shall be taken to be absolved from all liabilities arising out of the punishment.

(7) Any unconstitutional change of government in the national capital Khartoum during the interim period amounts to violation and abrogation of the Comprehensive Peace Agreement. Such unconstitutional change of government shall permit the Southern Sudan Assembly to resolve in extraordinary sitting Unilateral Declaration of Independence for Southern Sudan without referendum on self-determination being exercised.

**Underlined: Proposal from Civil Society Consultation 2005;**  
**Constitution of the Republic of Uganda 1995**

## Promotion of public awareness of Constitution

**188.** The state shall promote public awareness of this Constitution by: -

- (1) Translating it into Southern Sudanese languages and disseminating it as widely as possible; and
- (2) Providing for the teaching of the Constitution in all educational institutions and armed forces training institutions and regularly transmitting and publishing programmes through the media generally.

### **Proposal from Civil Society Consultation 2005;**

## **Laws Applicable**

**189.** The constitution recognizes the application of the 1994 laws of Penal Code and Criminal Code of Procedure provided that the Southern Sudan Assembly may repeal or amend any law when it deems it fit.

## **Interim Provisions for Southern Sudan**

**190.** Prior to elections:

- (1) .The current SPLM Chairman, or his successor, shall be the President of Government of Southern Sudan,
- (2) Should the office of the President of Government of Southern Sudan fall vacant, not withstanding **Article** \_\_\_\_\_ of Interim National Constitution, the office shall be filled by the nominee of the SPLM within two weeks.
- (3) The seats of the Government of Southern Sudan shall be allocated 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 First Southern Sudan Assembly shall be an inclusive, constituent legislature composed of:-
  - 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%).

### **Protocol on Power Sharing: 2.3.5, 3.6.4, 2.3.11.1 and 3.5.1 : PS4.4,4.5**

## Transitional, Miscellaneous and Special Provisions

**191.** (1) Upon adoption by the Transitional Assembly of Southern Sudan this Constitution shall come into force as the Southern Sudan Constitution.

(2) This Constitution is based on the Comprehensive Peace Agreement and the Constitution of the Republic of the Sudan 1998,

(3) The provisions of the Comprehensive Peace Agreement which are incorporated into this Constitution shall be deemed an integral part of this Constitution and the provisions of the Constitution of the Republic of the Sudan 1998, save those incorporated in this Constitution, shall be repealed,

(4) Pending the reconstitution of the executive and legislative bodies contemplated in this Constitution the President of the GOSS shall take necessary measures of the creation of a caretaker administration in Southern Sudan.

(5) By the end of the Interim Period this Constitution shall continue in force subject to any amendment or review that may have been 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 National institutions, representation, rights or obligations shall be deemed to have been duly repealed;

### Schedules

- ✍ Schedule B: Powers of GOSS
- ✍ Schedule C: Powers of the states
- ✍ Schedule E: Concurrent Powers
- ✍ Schedule F: Residual Powers
- ✍ Schedule G: Resolution of Conflict in respect of concurrent powers

### Schedule B: Powers of the Government of Southern Sudan

**192.** 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**

**193.** 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

**194.** 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**

**195.** 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:**

**196.** 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 subsidiary;
4. The need to promote the welfare of the people and to protect each person's human rights and fundamental freedoms.