

In the Name of Allah, the Gracious, the Merciful

The Constitutional Court Bill, 2005

Be It hereby passed , by the National Assembly, and signed, by the President of the Republic, in accordance with the provisions of the Interim Constitution of the Republic of the Sudan, 2005, the following Act :-

Chapter I

Preliminary Provisions

Title and commencement

1. This Act may be cited as the, "Constitutional Court Act, 2005", and shall come into force, as from the date of signature.

Repeal and saving

2. The Constitutional Court Act, 1998 shall be repealed. Nevertheless all the regulations, made thereunder, shall remain valid, and in force, until revoked, or amended, in accordance with the provisions of this Act,

Interpretation

3. In this Act, unless the context otherwise requires , :-

"Constitution",	means the Interim Constitution of the Republic of the Sudan, 2005;
"Court",	means the Constitutional Court, referred to in section 4;
"Justice",	means the President, and any of the Justices of the Court;
"Member",	means any of the Justices of the Court;
"President",	means the President of the court;

“Suit”,

means the suit, in contest of constitutionality of laws, contravention of the Constitution, violation of constitutional rights, or conflict of jurisdiction .

## Chapter II

### The Court

#### Formation of the Court

4. The Court shall consist of :-
  - (a) nine members, to be appointed by the President of the Republic, upon recommendation of the National Judicial Service Commission, and approval of two-thirds of all the representatives, at the Council of States;
  - (b) the Court shall have a President, to be appointed by the President of the Republic, with the consent of the First Vice President, from among the Justices appointed, under the provisions of paragraph (a).

#### Answerability of the President of the Court

5. The President of the Court shall be answerable to the Presidency .

#### Tenure of a Justice

6. The tenure of a Justice shall be seven years, and may be renewed.

#### Seat of the Court

7. The seat of the Court shall be in the Khartoum State; and it may hold the sittings thereof, upon requirement, at any other place, as the President, in consultation with the members, may prescribe.

### Sittings and quorum of the Court

- 8.(1) The quorum of the Court shall be constituted by the attendance of seven of the members thereof.
- (2) the President shall preside sittings of the Court. In case of his absence, it shall be presided by any of the members, according to the arrangement, set out in the appointment decision.

### Conditions of appointment of Justices of the Court

9. A Justice shall :-
  - (a) be a Sudanese of full capacity, whose age shall not be less than forty years, and attested to for competence, chastity, credibility and disinterest;
  - (b) not have suffered a final judgement, to be passed against him, from a competent court, in a matter in contravention of honour, or honesty, even though a decision of pardon has been passed in his favour;
  - (c) be of commendable reputation, and good behavior and conduct;
  - (d) be in possession of a university degree in law, from a university, recognized in the Sudan;
  - (e) have previous work, in any of the legal professions, or practised teaching law, in one of the universities, recognized in the Sudan, for a period, not less than twenty years.

### Vacancy of office

- 10.(1) The office of the President shall fall vacant in case of death, resignation or removal; provided that he shall not be removed, save by a decision of the President of the Republic, upon the approval of two-thirds of members of the Council of States, in case of loss of capacity, or conduct inappropriate to his office.

- (2) A member shall be removed by a decision of the President of the Court, upon the recommendation of the President of the Court and approval of the Council of States, by the majority of two-thirds of the members thereof, in case of loss of capacity, or conduct inappropriate to his office.
- (3) The office of a Justice shall fall vacant, for any of the following reasons :-
- (a) accepting the resignation, by the President of the Republic;
  - (b) relief, by the President of the Republic, for a health disabling infirmity, by a decision of the Medical Commission, or for conviction of an offense, by a competent court, in a matter in contravention of honour and honesty;
  - (c) removal , in accordance with the provisions of sub-section (2);
  - (d) death.

Emoluments, privileges and Immunities of the  
President and members of the Court

- 11.(1) Emoluments of the President and members of the Court shall be specified by special contracts, to be approved by the Presidency.
- (2) There shall apply, to Justices of the Court, the privileges and immunities, specified for occupiers of leadership constitutional offices , provided for in the Emoluments , Privileges and Immunities of Occupiers of the Constitutional, Executive and Legislative Offices Act, 2001 .

Taking the oath

12. A Justice, before assuming the tasks of his work, shall take the following oath, before the President of the Republic :-

" I swear, by Almighty Allah, to respect the provisions of the National Constitution and constitutions and laws of the country, give due regard, to the scales of justice, performing the trust, in disinterest, and discharging my duty, without desire, fear or favour."

**Activity in contravention of the duties  
of the post prohibited**

13. A Justice shall be prohibited, from practising any work, or activity, as may be incompatible with the duties of the judicial post, and independence of the Court , as the regulations may elaborate , in such way, as may secure the competence, chastity disinterest and credibility of Justices, in accordance with what has come in the Interim Constitution .

**Immunities of Justices**

14. A Justice shall not be arrested, nor shall any of the investigation procedure shall be taken, and nor a criminal suit shall be instituted against him, save upon permission of the President of the Republic , otherwise than in cases of red-handedness.

**Chapter III**

**Jurisdiction and Powers of the Constitutional Court**

**Functions of the Court**

- 15.(1) The Court shall be the guardian of the National Interim Constitution, the Southern Sudan Constitution and constitutions of the states. The judgements thereof shall be final and binding, and it shall assume :-

- (a) interpretation of the Constitutional provisions, upon the request, from the President of the Republic, the National Government, the Government of Southern Sudan, the government of any state, the National Assembly or the Council of States;
- (b) jurisdiction, upon determining disputes, governed by the Constitution and constitutions of Northern states, upon the request, from the Government, corporate personalities or individuals;
- (c) determining appeals, against judgements of the Southern Sudan Supreme Court, in the cases, relating to the Interim Constitution of the Southern Sudan and constitutions of the states of Southern Sudan;
- (d) protection of the rights of a human being and the fundamental freedoms thereof;
- (e) determining the constitutionality of laws and provisions, in accordance with the Constitution, the Interim Constitution of Southern Sudan or the constitutions of the states concerned;
- (f) determining the constitutional disputes, between the government levels and bodies, concerning the exclusive, concurrent or residual functions;
- (g) criminal jurisdiction, confronting the President of the Republic, and the First Vice President, in accordance with the provisions of Article 60(2), of the Constitution, and it likewise shall have criminal jurisdiction, confronting the Vice President, the Speakers of both houses of the National Legislature, Justices of the National Supreme Court, and Justices of the Southern Sudan Supreme Court;

- (h) any other functions, as the Constitution, or the law, or constitution of any of the states may specify .
- (2) Notwithstanding the provisions of sub-section (1), there shall not be subject, to review of the Constitutional Court, the business of the Judiciary, the judgements, decisions, proceedings and orders passed by the courts thereof .

### Powers of the Court

- 16.(1) The Court , for the sake of carrying out the functions, provided for in section 15, may exercise the following powers, to :-
- (a) consider and adjudge and annual any law, or work, in contravention of the Constitution, and restitute the right, and freedom, to the aggrieved person, and compensate him, for the injury;
  - (b) pass any order , to any body , on any matter, before it;
  - (c) pass any writ of habeas corpus, to any body, or person, to bring the detained, or confined person, ad subjiciendum, for the purpose of considering the constitutionality of the confinement, or detention;
  - (d) exercise the procedural powers of a criminal court, in case of impeachment of the President of Republic, his deputies, the Speaker of the National Assembly, the Speaker of the Council of States, Justices of the National Supreme Court or Justices of the Southern Sudan Supreme Court.
- (2) The Court, upon the request of the aggrieved person, may order the stay of execution, whenever it is deemed that the results of execution are difficult to parry, or redress by financial compensation, or one in kind, and that stay of execution does not entail prejudice to the other party ; and take such measures, as it may deem necessary, in guaranteeing rights and freedoms.

## Chapter IV

### Procedure of the Court

#### Procedure of request of interpreting constitutional provisions

17.(1) Application for interpreting constitutional provisions shall be presented, to the Court, by a petition from the following :-

- (a) the President of the Republic;
- (b) Speaker of the National Assembly ;
- (c) Speaker of the Council of States;
- (d) the National Government, by the Minister of Justice;
- (e) the President of the Government of Southern Sudan;
- (f) the government of any state.

(2) The application, provided for in sub-section(1), shall contain the following :-

- (a) name of the applicant body;
- (b) statement of the provision, intended to be interpreted, and such reasons and justifications, as may require interpretation;
- (c) any other information, or documents, as may assist in interpretation.

(3) The Court shall consider the application, and determine the same, by relying upon the produced documents; and it may require such memoranda, as it may deem necessary .

#### Contents of the plaint

18.(1) The plaint, as the case may be, shall contain the following :-

- (a) name, and address of the applicant;
- (b) the law, or decision subject of the suit, and the aspects of its contravention of the Constitution;



- (c) the constitutional right, which has been violated, or the freedom, which has been breached;
  - (d) the interest, which has been prejudiced, where the suit is presented by individuals, or collectively, or the injury, which has been sustained thereby.
- (2) The Court shall determine the suit, from the actually produced documents, and may hear the parties, and admit the pleadings thereof, whenever it may deem the same fit, to achieve justice.

### Procedure of the suit

- 19.(1) The plaint shall be presented, to the President of the Court, and be considered by a circuit, consisting of three of the members thereof.
- (2) The circuit shall consider satisfaction, by the plaint, of its formal conditions, and may require the plaintiff to amend the same, at a date, to be fixed thereby, or completion of the requirements of the same.
- (3) Where the plaint is not amended, at the dates thereof, or rectified, the circuit shall reject the same, and such rejection shall not prevent presenting it, once more, satisfying all the requirements thereof.
- (4) Saving the rights and freedoms, contained in the Bill of Rights, set out in the Constitution, where the decision, or work, which is constitutionally contested is from such, as the law may empower a higher authority to review it, the plaintiff shall produce such, as may prove his exhaustion of the ways of grievance, or the expiry of thirty days, of the date of receipt, by the higher authority, of the grievance.

- (5) Where the suit relates to a decision, which the body, that issued it refuses to deliver the same, to the plaintiff, the President of the Court shall order the said body to deliver the required decision thereto .
- (6) Where the plaint satisfies its formal characteristics and requirements, the circuit shall order institution of the suit , and payment of the fees, unless the plaintiff is exempted, from payment thereof, by a decision of the Court.

#### Summary dismissal of the suit

20. Where the plaint is instituted, the Court, after discussion with the plaintiff, or whoever may represent him, where the matter necessitates the same, shall order the summary dismissal thereof, where it transpires thereto that :-

- (a) the plaintiff has no right, or interest in instituting the suit, or that more than six months, of the date of knowledge of the plaintiff have elapsed upon the interest, or right thereof;
- (b) the plaint does not contain any matter fit for determining the same;
- (c) the plaint does not contain prejudice of a manifest right, from the Bill of Rights and Freedoms ;
- (d) the plaintiff has not exhausted all the ways of grievance, available thereto .

#### Suit of conflict of jurisdiction

21.(1) The suit of conflict of jurisdiction shall be presented by the National Government, the Government of Southern Sudan, or governments of states, as the case may be, pertaining to the exclusive, concurrent or residual powers of such bodies.

- (2) The suit of conflict of jurisdiction shall be presented by the National Commissions, and other independent institutions, where there is an allegation of violation of the original jurisdiction of any one thereof.
- (3) The conflict complaint shall specify the disputed matter, the disputant body and reasons of entitlement to jurisdiction, and there shall be attached thereto, the produced documents and memoranda. The Court may hear both parties to the dispute .

Procedure of accusing the President of the  
Republic, his Deputies, Speakers of the  
National Legislature, Justices of the National  
Supreme Court and Justices of the Supreme  
Court of Southern Sudan

- 22.(1) Subject to the provisions of Article 60 , of the Constitution, no criminal proceedings shall be taken, against the President of the Republic, or the First Vice President, save upon a resolution of the National Legislature, by the majority of three-quarters of all the members.
- (2) No criminal proceedings shall be taken, against the Vice President, save upon the resolution of two-thirds of all members of the National Legislation .
- (3) No criminal proceeding shall be taken, against the Speaker of the National Assembly, or Speaker of the Council of States, save upon a written permission, from the President of the Republic.
- (4) No criminal proceedings shall be taken, against the Chief Justice, or his deputies, save upon a written permission, from the President of the Republic .

- (5) No criminal proceedings shall be taken, against any of the Justices of the National Supreme Court, or Supreme Court of Southern Sudan, save upon permission, from the President of the Republic .
- (6) Where the Court takes cognizance of the said resolution, or permission, the Court shall take the following procedure :-
- (a) the President of the Court shall assume investigation, with the President of the Republic, and his deputies. The deputy of the President of the Court shall assume investigation, with the Chief Justice, his deputies, the Speaker of the National Assembly and Speaker of the Council of States ;
  - (b) one of the members of the Court shall assume investigation, with any of the Justices of the National Supreme Court, and the Supreme Court of Southern Sudan;
  - (c) the Investigator shall submit the investigation results, to the Court.
- (7) A special law shall specify the nature of such offenses and procedure, as may be followed by the Court, in the investigation and impeachment .
- (8) The Court shall submit its decision of conviction, or acquittal, to the body, which has resolved, or permitted the impeachment .

## Chapter V

### Judgements and Decisions

#### Passing judgements and revision

- 23.(1) The Court shall pass its judgement by unanimity , or majority, signed by those, who passed the same .
- (2) In case of passing the judgement by majority, the dissenting opinions shall be recorded in the record .
  - (3) The Court shall determine all the subsidiary matters.
  - (4) Judgements and decisions of the Court shall be published in the Gazette, pertaining thereto .

- (5) Judgements and decisions of the Court are final, and are not subject to contest, before any body. However the Court, of its own accord, or upon request of the parties, may revise the judgements thereof, where it transpires thereto that the subject of the decision, or judgement does not enter into any matter, as may directly be within the jurisdiction thereof.
- (6) Notwithstanding the provisions of sub-section (5), the Court may summarily reject the application for revision, where there has elapsed such time, as may be impossible therein, to parry the results of the judgement and decision, as to its own discretion.

#### Judgement binding

- 24.(1) Judgements and decisions of the Court are binding to all levels of government in the Sudan, the National Government organs, Government of Southern Sudan, governments of states and all, forthwith passing the same. A special law shall specify the procedure of execution, by the Court, of the judgements thereof.
- (2) There shall be entailed, by the judgement of unconstitutionality of any provision, in any law, or the unconstitutionality of any work, or any subsidiary legislative measures, the non-permissibility of application thereof. Where the judgement of unconstitutionality relates to a criminal provision, the judgements, which have been passed with conviction, in reliance on such provision, shall be as if they have not been passed; and the President shall inform the bodies concerned, as the case may be, forthwith pronouncement thereof, for action thereunder.
- (3) Where the judgement of unconstitutionality relates to a civil provision, the same shall not affect the legal rights, which have settled, before passing the judgement.

### Judgements of compensation executed

25. The Court shall execute the judgements thereby, of compensation, as the law thereof concerning the civil procedure of the same, may require .

## Chapter VI

### Financial Affairs

#### Annual budget

- 26.(1) The Court shall have an independent annual budget, to be prepared, as to such bases, as on which the State budget may be prepared, and shall be passed, by a decision, from the President of the Republic .
- (2) The President shall assume preparing the draft budget, to present the same, to the competent body, after the approval of all the members. The President shall be responsible, for all the matters, relating to execution of the budget, in accordance with the regulations, made under the provisions of this Act .
- (3) There shall apply, to the budget of the Court , and the final account, the provisions of public funds laws.

#### Administrative affairs

27. The Court shall have a secretary general, and sufficient number of employees, to be appointed by the President .

#### Service laws applied

28. There shall apply, to employees of the Court, the terms of service, applied to employees of the Judiciary .

## Chapter VII

### General Provisions

#### Conduct of the constitutional suit procedure

- 29.(1) A constitutional suit shall not be conducted, before the Court, save by a legal counsel, or advocate, the experience of whom shall not be less than ten years, in practice of the law profession .
- (2) Subject to the provisions of sub-section (1) , where the insolvency of the plaintiff is proved, the Minister of Justice shall appoint a legal counsel, or advocate, to conduct the suit .

#### Exemption from fees

30. The Court may exempt the plaintiff from fees, where, the insolvency thereof transpires.

#### Application

- 31.(1) Provisions of the rules of evidence, and the interpretation of laws and general provisions shall apply, where no provision is set out therefor in this Act .
- (2) The Court shall apply the civil and criminal procedure laws , pertaining thereto, for impeachment and execution.

#### Power to make regulations

- 32.(1) The Court may make such regulations and rules, as may be necessary, for implementation of the provisions of this Act.
- (2) Without affecting the generality of the provisions of sub-section (1), the Court, after consultation with the Minister of Finance and National Economy, may make the regulations of litigation fees .