

In the Name of God Most merciful Most Compassionate

National Bicameral Legislature

The Tenth Session

The Emergency Committee for studying the Sudanese Interim Constitution of the year 2005, as Amended 2014

The Committee's 3rd Review Report

Brother/Head of the National Bicameral Legislature

Sisterly and brotherly Members

Under the provisions of Articles 91 (2) (a) and 224 of the 2005 Interim Constitution of the Republic of Sudan and Article 20 (1) (g) of the Working Regulations of The National Bicameral Legislature of the year 2007, and following your approval of The Interim Constitution of the Republic of the Sudan of 2005 as amended in 2014 at the Second Reading , may you allow me to present the report of The Emergency Committee of Studying Sudanese Interim Constitution of the year 2005 as amended in 2014 at the 3rd Review Stage.

The most important points of reference for the work of the Committee were :

- The President's speech before the 10th Session of The National Bicameral Legislature in particular what has been stated over constitutional amendments and the review of decentralized government.
- Regulation of The National Bicameral Legislature under Articles 3 and 20.
- Deliberations of The National Bicameral Legislature over the President's speech and the reply speech.
- The State Reform documents: Committee of Vision and Advancement of the Ministry of Justice and judicial institutions.
- Report of the Emergency Committee in The General Characteristics Stage.
- Recommendations of the Academic Conference on the constitutional options to reforming decentralized government.
- Recommendations of Women Parliamentarians for the Constitution Campaign.
- Report of the States Council over the Constitutional status of the Council.
- Recommendations of the National Conference of Peace Matters.
- Outcome of the hearing sessions held by the Committee with relevant elements.
- In considering the Amendment on the Review stage, the Committee adopted the procedures provided for in Article 20 (1) (f). It invited the parties considered by the Committee to have a stake in Reviewing the Amendment. It held four hearing sessions and encounters with:
 - The National Investment Apparatus .
 - Nomadic Development and Advancement Council.
 - Ministry of Information.
 - The Supreme Council of Decentralized Government .
 - Ministry of Social Welfare and Security.
 - Ministry of Labour and Administrative Reform
 - Supreme Council of Wages.
 - The General Union of Sudanese Farmers.
 - The General Union of Pastorals.
 - National Unity Government political parties

The Committee of Experts heard the personnel of these entities or those it saw fit to consult to hear views likely to help the Committee to complete the proposed amendment together with necessary addenda to the amendments proposal presented by the President. Furthermore , the Committee conducted many exchanges with concerned parties.

Consultations took place with the Honourable Chief Justice and the Honourable President of The Constitutional Court, The Minister of Justice and the Director of The National Security and Intelligence Agency.

The Emergency Committee formed a technical panel from amongst its members to undertake drafting and to present recommendation to the Committee with proposals it consider necessary and justifiable amendments which do not undermine the original proposed amendment or are inconsistent with its general principles in accordance with the terms and conditions under article 20 (1) (f) and (Fourth) of The Regulations of The National Bicameral Legislature of the year 2007 after forwarding to it all minutes of hearing sessions and recommendations from the relevant parties consulted.

The proposals were presented to the Emergency Committee in session according to Article 20(1) (f) , (Third).

The Committee held 12 meetings and considered the proposed amendments presented by the President of the Republic and by the Technical Committee. It became clear to it that the grounds for its (?) amendments were objective and were related to the Amendments proposed by the President ,not undermining them but rather supporting and boosting them.

Federal Government issues including the institution and formation of some of its organs have become a threat to national unity. It has ruptured the social fabric, specially after the emergence of tribal and regional clannishness with their impact on the formation of state governments and choice of executive and legislative leaders including the institution of principalities on the basis of non objective criteria. This has led to inflated expenditure on running local administration. Obsessive pride on the identity of the state as well as their own constitutions has given rise to deviations which undermine national security of the whole company. Furthermore, making local government the exclusive authority in provinces and states has disabled it though it is the level of government responsible for offering services to citizens and which needs to have financial and qualified human resources devoted to it and to be built on objective standards, being the nearest government tier to the citizens with full awareness of their real needs

Amendments proposed by the President or by the Committee require amendments to scheduled appendixes of the Constitution and which define the exclusive national and state powers as well as joint and residual powers. It was necessary to review these powers so that constitutional provisions and schedules are consistent.

The Committee saw the necessity of a provision in the Constitution providing for the creation of a constitutional entity to coordinate the various tiers and levels of federal government and its different agencies. Thus, the Committee's 3rd Review report included the following proposals :

First, in this Constitution the two terms " the self identity of states" and " the state's self identity" shall be deleted, wherever stated.

Rationale: These two terms have become means that may lead to conflicts and clashes of competences particularly the

Joint /common grounds of competence between Federal and state authorities. This confuses institutions and agencies. Moreover, the concept of the terms" the self identity of the state" may, by implication, be taken to lead to self determination which is contrary to established constitutional principles specially as regards Federal Governments as states have no right to secession. This self identity may encourage some states to breach these principles. The Committee noted that confrontation between the National Constitution and the state constitutions has risen, at the time, for political reasons .So the Committee recommends that the Ministry of Justice is to put state constitutions in conformity and tandem with the Interim Constitution specially if these amendments are approved to resolve any contradictions or clashes between them.

Second: In Article 25 , Clause(a) is to be deleted. Order of remaining paragraphs is to be adjusted accordingly.

Rationale: Because the" self identity" of states term has been deleted.

Third: Article 26

(1) Paragraph (1)(a) (First) to be deleted. Paragraphs are to be rearranged accordingly.

Rationale: For the grounds stated above in **First**.

(2) The following new clause is to be added at the end of the Article:

(5) " By provision of the law the Federal Government Office under supervision of the President of the Republic , undertakes running the process of Federal and state rule in terms of coordination , liaison and line of command between state governors , state agencies and the Presidential Office and Federal agencies."

Rationale: To tighten coordination between agencies in tiers of Federal Government bringing it back to what was provided for in Article 116 of the 1998 Repealed Constitution as it had proved to have been of benefit to the agencies.

Fourth: Article 58 (1) Paragraph (c) is to be deleted and substituted by the following paragraph:

(c) He appoints state governors, holders of constitutional , judicial and other legal posts as well as commanders of the armed forces ,police and security forces and relieves them from office, according to provisions of the law.

Rationale: To ensure that the decisions of the president of the Republic as regards appointment to these posts and relieving from them are sovereign acts.

Fifth: Article 61

The Committee saw no necessity to amend this Article as the proposed amendment is included in Article 58 (1) (c) above.

Sixth: In Article 85 (1) The phrase "of two representatives of each state to be elected.." is to be deleted and substituted by the phrase : " of three representatives of each state to be nominated by the Legislative Council of the state in accordance with National Elections Act and procedures determined by The National Election Commission.

Rationale: To conform to and reflect the expected increase in membership of The National Assembly under the National Election Act and to stretch the base of participation of state representatives in The All States Council.

Seventh: In Article 91 (4)

1- In paragraph (a),the phrase " The framework Legislation of local government and "any .." is to be added after the word "issuance" so that the Article will read as follows:

(a) Issuing the framework Legislation of local government and initiating pieces of legislation over The decentralized System of Government or any other matters of interest to the state provided that passing such pieces of legislations shall be by two thirds majority of all representatives.

2- In Paragraph (g) the phrase " from among state rulers "is to be added so as the Paragraph would read as follows:

91 (4) (g) Requiring reports from state governors and relevant Federal ministers about the effective application of the decentralized system of government and delegation of power.

Rationale:

Because the All States Council is concerned with advancing and developing the decentralized system of government and other issues directly related to the interests of the states.

Eighth : In Article 119 the following the following new clause is to be added :

(5) The Constitutional Court shall have the necessary financial and administrative independence.

Rationale: To ensure its financial and administrative independence similar to The Judiciary.

Ninth:

1- Article 124 is to be repealed and substituted with the following new Article:

The Structure of the Judiciary

124. The structure of the Judiciary shall be built as follows:

(a) The Supreme Court.

(b) The Court of Appeal

(c) Other Courts

Rationale: So that the jurisdiction and competence of the judiciary would be exclusive at the national level of government and so that setting up of courts, appointment of Judges and the enactment of laws to that effect shall be undertaken by The Federal Authority, alone to ensure the national character of the Judiciary.

2 The term " national' shall be deleted from Articles 124, 125, 126 and 127 wherever it is stated.

Rationale : This is because the judiciary is national , originally.

Tenth: Article 129 shall be repealed and replaced with the following new Article:

The Supreme Judicial Council

129 (1) A council called " The Supreme Judicial Council" shall be instituted to conduct the general administration of the judiciary. Formation and tasks of the council shall be defined by law.

(2) The Chief Justice shall preside over The Supreme Judicial Council.

Rationale:

In order to undertake the general administration of the judiciary.

Eleventh:

(1) The title of the 6th Chapter shall be amended to read " **Legal consultation, The Attorney General and Advocacy**"

(2) In article (?) the title shall be amended to read " **Legal Consultancy**"

(3) Clauses (1) and (2) shall be repealed and replaced by the following two clauses:

133 (1) Government legal advisers shall report to the Minister of Justice to offer advice , represent the State , draft legislation as well as conducting civil and administer litigation. They are entitled to recommend law reviews as well as seeking to protect public and private rights , offering legal advice and legal aid in addition to any other matters regulated by law.

(2)The Minister of Justice is the primary legal adviser of the government. He shall perform any other assignments which are of legal nature as provided for in the law.

The remaining clauses stand as they are.

Rationale:

So that the legal Consultancy Department which report to the Minister of Justice can take charge of drafting legislation and undertake civil, administrative and legislative matters as well as offering legal aid.

Twelfth: The following new article shall be added immediately after Article 133:

The Attorney General

133 (1)By provisions of the law an independent attorney general directorate shall be instituted headed by an attorney general to be appointed by the President of the republic with approval of the National Assembly.

(2)The Attorney General Directorate shall undertake pre- trial procedures and general prosecution at federal and states levels. The law shall define its formation, task and relations to other justice agencies and its employment terms and conditions

(3) The status of the Attorney general shall remain, for an interim period, as it is , pending the issuance of the Act.

Rationale:

To ensure the independence of the Attorney General directorate from the Executive and to enable it to perform its prosecutor general duties in a neutral independent professional manner and to implement the resolutions of The State Reform Documents.

Thirteenth Article 148

Article 148 shall be repealed and shall be replaced with the following new Article:

The Police Force

148 (1) The police force is a national regular force charged with serving the security of the home land and the citizens, fighting crime , property protection , disaster management as well as preserving society's moral standards, ethics and maintaining public order.

(2) The Police force shall be run by Federal agencies in terms of planning ,training and supervision of some of its sectors. The states shall supervise the sectors which follow them. In cases of emergency supervision of all sectors shall revert to Federal agencies.

(3) The law shall define the Police Force regulations, terms of reference , employment conditions of its personnel and the interrelation between its Federal and state agencies and sectors.

(4) The law shall regulate the setting up of Police Courts, its formation, jurisdiction, procedures and legal services.

Rationale: to ensure the national attributes of the Police and for the law to regulate its competence, functions and agencies according to the provisions of the 1998 Constitution.

Fourteenth:

In Article 151, Clauses (2) and (3) shall be repealed and replaced with the two following clauses:

151 (2) The National Security and Intelligence Agency is a national regular force charged with caring for domestic and external national security , monitoring relevant happenings, analysing their impact and danger and adopting preventive measures against them.

(3)The National Security and Intelligence Agency shall work towards combating all political, military, economic and social threats as well as trans- country crime in co ordination with other with other regular forces.

(4) The National Security and Intelligence Agency shall regulate the institution the courts of The National Security and Intelligence Agency as well as its formation, jurisdiction, powers, procedures and their legal services.

Clauses shall be rearranged accordingly.

Rationale

To ensure the regularity national scope and its competence to protect Sudan's security from all threats.

Fifteenth: Article 178

In clause (2) the term "the constitution of the relevant state) shall be repealed and shall be replaced with the term "the provision of the law".

Rationale

To ensure peaceful transfer of power. Election shall be held at all levels of government via The National Election Commission. This shall include local government elections which the states have failed to hold.

Sixteenth : Article 179

1/ Clauses (1) and (2) shall be repealed and shall be replaced by the following two new clauses:

(1) (a) The Executive of the state shall be headed by a governor appointed by the President of the Republic from among those endowed with efficiency, righteousness and impartiality in accordance with this Constitution. He shall be responsible, before the President and the state's Legislative Council.

(b) Following his appointment, the state governor shall swear before the president the following oath in order to take office:

(I am). Now that I have been appointed governor, I swear by the name of Allah The Almighty , that at all times I will be loyal to the Republic of Sudan and will abide by, respect and maintain the Constitution and to observe all laws of the country , to defend its independence with devotion and to work towards its unity, consolidation of the decentralized democratic system of government established by the constitution and to exert sincerely my utmost effort in the service of the people of the state and of the whole country and may Allah be my witness ”.

(2) The president , may, of his own accord or on the basis of the recommendation of three quarters of all members of the Legislative Council of the state, relieve the governor of his post.

The remaining clauses stand as they are.

Rationale

Is to assert the general sovereign authority of the President through his election as President by the whole Sudanese people and his right to choose those charged with his tasks in the state in a bid to secure national unity and maintain national security as well as authenticating the tasks of the holder of primary sovereign authority. It is to be noted that the powers of the governor to appoint his ministers and officials remains as it is.

Seventeenth : In Article 180

In Clause (1), the term “ the state's constitution” shall be repealed .The rest of Clause remains as it is.

Rationale

So that The Election Act would determine the number of members of the state's Legislative Council under Article 84 and so that states Constitutions would not be subject to frequent amendment.

Eighth: Article 181 shall be repealed and shall be replaced with following new Article:

Native Courts

181 ‘ Without prejudice to the provisions of Article 124, the law regulates the setting up of native courts by states judicial authorities wherever necessary’”

Rationale

This is because rural and town courts are native courts which complement official judicial bodies in order to resolve conflicts and maintain justice on the basis of norms, customs and traditions observed in some regions of the country.

Nineteenth

Article 186 shall be repealed and shall be replaced with the following new Article:

Land Tenure Regulation

- 1- Acquisition and exploitation of land and enjoyment of rights over it is a common capacity exercised across the relevant level of government according to the provisions of the law.
- 2- The National Assembly shall approve the National Investment Plan
- 3- The President of the Republic may , from time to time, issue Presidential Decrees to define the lands to be exploited as investment and how the investment returns shall be used and the level of government concerned with running it and enjoy rights over it , observing citizen rights and the social responsibilities of investors.

Rationale

In order to preserve common and joint powers shared between tiers of government as regards acquisition of land , independently of the right of the President of the Republic who represents the will of the State and who has set forth State powers and who adheres to fairness in distribution investment plans and the land dedicated to it all over the country. So as to secure even development through setting up investment schemes and deciding how the returns may be spent observing citizen rights and the social responsibilities of investors.

Twentieth

The following new Article shall be added after Article 195:

Financial Resources of Municipalities

195 (?) States and municipalities may issue financial state laws and municipal orders as required , to levy the following taxes and fees as municipal income:

The financial resources of municipalities are as follows:

- (a) Property rates.
- (b) Sales duties
- (c) Agricultural and animal stock production tax a share of which shall be allocated to the state ,under federal legislation.
- (d) Charges on local land and river transport.
- (e) Charges on local industrial and crafts production
- (f) Charges on local mining services.
- (g) Any other local resources.

Rationale

To secure access to resources for municipalities and to enable the issuance of state or municipal legislation for that purpose so that local councils could exercise their functions and offer services to citizens.

Twenty First

Schedule (1) National Terms of Reference

Schedules of competence and terms of reference shall be amended in the following manner:

1. Clause (1) shall be repealed and shall be replaced with the following:

- (1) Defence, the Armed Forces the Regular Police, Security and Popular Forces and Border Guards.

Rationale

So that competence and terms of reference would be national as regards the Armed Forces ,the Police , Security and Popular Forces.

2. Provision of Clause (7) shall be repealed and shall be substituted with the following provision:

(7) The Judiciary, the Constitutional Court and The Attorney General Directorate

Rationale

To ensure the national character of them.

3 . Clause (8) shall be repealed.

Rationale

To ensure the national identity of the Police Force as stated in Clause (1)

4. Clause (9) shall be repealed and shall be replaced by the following new clause:

(9) The overall policy, the framework law of the civil service ,preparation of organizational and occupational structures, fixing wages, salaries and allowances for civil servants and other employees and providing wages , salaries and allowances of Federal Government employees.

Rationale

To secure a civil service capable and qualified in the country in accordance with overall policies , occupational and organizational structures , disciplined cadres and fair wages.

5. In Clause (15), the term " and the lands of the national investment plan" at the end of the Clause".

Rationale

In order that dealing with investment lands would be subject to an investment plan which incorporates municipal and state investment plans.

6. In Clause (28) the phrase "humanitarian affairs" shall be added at the fore of the Clause.

Rationale

This is because humanitarian affairs are linked to regional and international agreements Which necessitates their national federal aspect.

7. In Article (34) , the phrase " and electronic media, radio and TV broadcasts and content censorship" after the phrase "and publications". The rest of the clause stands as it is.

Rationale

Because what has been added is a federal terms of reference linked to international ,regional or external treaties.

8. After Clause (38), the following new clause is added:

(39) " social security fund"

Rationale

To secure the flow of social security fund services all over Sudan, in terms of policy, collection, management and services, this being an exclusive federal terms of reference.

9. After Cause (39) the following new clause shall be added:

(40) " population policy and family planning ".

Rationale

Due to the national nature of these policies.

Schedule (c) states Terms of Reference

1- Clauses (2) and (3) shall be deleted. The remaining clauses shall be rearranged accordingly.

Rationale

So that the Police Force would be federal and that municipal government would be a joint common authority regulated by a federal legal framework.

2 In Clause (5) the term “including state pensions” shall be deleted.

Rationale

To be consistent with the amendment of Schedule (A) and the social security fund addendum so as to be a federal authority.

3 - At the end of Clause (6) the phrase “in accordance with the framework law’ shall be added.

Rationale

As the Civil Service has become part of the Joint Common Authorities.

4 . Clause 7 shall be deleted.

Rationale

To be consistent with the amendment making the Judiciary Federal.

5. In Clause 8 the following phrase shall be added: “save for what is provided for in the National Investment Plan”

Rationale

To be consistent with the National Federal feature of the Investment Plan.

6. Article (26)

Rationale

To be consistent with the amendment that related to population policy in terms of its national feature.

Schedule (d) Joint Common Terms of Reference

1- Clause (14) shall be deleted.

Rationale

To be consistent with the approved amendment regarding the national aspect of the Police Force with all its aspects.

2. In Article 16 the phrase “and wire and wireless communications” shall be deleted.

Rationale

Because of its national nature.

3. In Clause (32) the phrase “save for the lands of the National Investment Plan” at the end of the Clause.

Rationale

To be consistent with the national nature of Investment lands.

4. The two following clauses shall be added after Clause (32).

(33) Local Government .

(34) The Civil Service.

Rationale

So that Federal authorities would be able to issue a framework legislation to define all matters which are of a national character. States shall have the right to issue their own laws which are not inconsistent with the relevant national framework legislation.

Brother President of the Republic,

Esteemed Brothers and Sisters

Yaaqoub Mohammed , member of the Emergency Committee objected to all the Constitutional Amendments.

Ms Awaatif Mohammed Ali Aljaali objected to some complementary amendments. She indicated that it is necessary to adhere to the letter of the amendments presented by the President.

In conclusion, we request that the esteemed Assembly would approve the report of the Emergency Committee for the study of the 2005 Interim Constitution of Sudan as amended in 2014 at the 3rd Review stag, and the amendments introduced to it by the Committee.

And it is all intended for Allah's sake.

Dr. Badriyah Silaiman Abbaas.