

The Constitutional Court Act 1998

In pursuant to provisions of the republic of the Sudan 1998 the National Assembly has passed and the President of the republic has signed the Act hereunder provided.

Chapter 1

Preliminary Provisions

Title and Commencement

1. This Act may be cited as the Constitutional Court Act 1998 and shall Come into force from the dare of its signature.

Interpretation

2.1 In this Act unless the Context otherwise required:

"Constitution" means the constitution of the Republic of the Sudan 1998.

"Constitution and Suit" means any suit instituted before the Constitutional Court in accordance with law.

"Chief Justice" means the Chief justice of the Constitutional Court appointed in accordance with the provisions of article 3.

"Member" means the member of the Constitutional Court appointed by virtue of article 3.

"Judge" means the chief Justice ,Deputy Chief Justice or any of the members.

"Court" means the Constitutional Court provided for in article 3(1).

Chapter 2

The Court

3. Establishment and seat of the Court

3.1. The Court shall be Composed of the Chief Justice , Deputy Chief Justice ,and Five members all of them are appointed by The out the President of the Republic after the Consent of the National Assembly.

3.2. The seat of the Court shall be in Khartoum State and it may when necessary held its sessions in any other place decided by the Chief Justice after Constituting the members.

Court Sessions

4.1. The quorum of Judges required for the sittings of the Court shall be less than five members.

4.2. The Chief Justice shall Preside the sittings of the Court an If the Chief Justice and the Deputy Chief Justice are absent it shall be President.

4.3. The Court shall make an Internal regulation to conduct the works Procedures.

Condition of the appointment of the Chief Justice, Deputy and Other Justices

5. The Justice must meet the following requirements :

- a. to be a Sudanese national;
- b. of full capacity;
- c. be of good behavior and reputation;
- d. have a higher degree in Islamic law and common law from an university recognized in the Sudan;
- e. have worked in a (international) judicial institution or have lectured in law at any university or any other institution recognized in the Sudan for a period not less than 20 years;
- f. not convicted by a court of any offence against honor or honesty even if a pardon has been granted to him;
- g. be not be less than forty years of age.

Vacancy of posts

6. The post of the justice of the Constitutional Court shall be vacant in any of the following cases:

- a. if any of the requirements provided for in article 5 has not been met;
- b. upon resignation presented to the President of the Republic;
- c. upon a recommendation of removed made by four of the Justices upon which a decision shall be issued by the President of the Republic after giving him a chance to answer;
- d. if he has completed seven years in this post;
- e. Death.

Service Conditions

7. The President of the Republic shall determine by an order made by him the emoluments and Privileges of the justices.

Oath of Justices

8. The Chief Justice, deputy and other justices shall swear, before the President of the Republic, in the presence of the Speaker of the National Assembly, prior to assuming their posts, the following oath:

"I swear by Allah the almighty to respect the constitution and the laws, observe justice and fulfil the duty of my post with honesty , credibility, impartially **without desire**, fear or bias.

Prohibition of certain Activities

9. The Justice shall be prohibited from practicing any work or activity contradicting the independence of the Court and the Justice of the judicial post as it is Provided for on the regulations immunity of justices the justice may not be arrested , inquired or a criminal snit being instituted against him slave with the premising of the President of the Republic

Chapter 3

Jurisdiction and Powers of The Courts

Jurisdiction of The Courts

10. The Court shall be complement to hear and determine any matter concerning the following:

- a. Interpretation of the constitution when requested to do so by the President of the Republic, the National Assembly, half of the Governors of the states or half of the State Assemblies.
- b. Suits from any aggrieved person to protect the freedoms and rights guaranteed by the Constitution after exhausting the executive and administrative remedies available.
- c. Suits concerning jurisdictional conflicts between national and federal bodies.
- d. Criminal procedures against the President of the Republic and the Governors under the Constitution or the laws.
- e. Objections concerning the acts of the President of the Republic, the Council of Ministers or a National or Federal Minister if the objection concerns any infringement of the national constitutional system or the constitutional inviolable freedoms or rights.
- f. Any other matters determined to be within the competence of the Constitutional Court.

Powers of the Court

11.1. The Court shall, for the purpose of exercising the jurisdiction provided for in article 11, exercise all powers to hear and determine a case, to declare any law, judgment, or order unconstitutional, and to restore the right of an aggrieved person and to compensate him.

11.2. The Court has the power to issue an order to any authority to prevent it from doing any act in respect of a matter before it, to transfer a matter to the Court, to issue an **immediate** order to any authority to prevent that authority from disposing of a matter in a specific way, to take specific action, or to bring the matter before the Court so that its constitutionality may be examined, or to issue an order to any authority or person to bring a detainee before the Court to examine the constitutionality of the detention of that person. **Failure to obey an order of the Court shall incur personal responsibility.**

11.3. The Court shall exercise the procedural powers of a criminal court in any criminal case against the President of The Republic or the government.

Chapter 4

Court procedures of the application for the Interpretation of the Constitution and Laws

12.1. The application for the interpretation of the constitutional laws shall be submitted by a petition from:

- a. the President of the Republic;
- b. from the National assembly;
- c. by the president or who may ever be authorized;
- d. by the assembly in writing;
- e. half of the number of the Assemblies signed by the President of that Assemblies, the application may be submitted by the authority which has been delegated in writing;
- f. the minister of justice.

12.2. The application provide for in paragraph 1 shall include the following:

- a. the name of the person or the authority who submitted the application;
- b. a statement as the provisions submitted for interpretation and the grounds necessitating an interpretation;
- c. any other information that may assist in the Court's interpretation.

Basis of Examination by Court

13. The Court shall hear and determine the application on the documents contained in the record the Court may call on any party to file further statements that it deems necessary.

Rejection of an Amendment to a Petition

14.1. Where the petition is not draws up in the manner prescribed, the Court may reject it or return it for amendment within such time as may be fixed by the Court.

14.2. If the Petition is not amended within the time fixed by the Court in accordance with paragraph 1, the application shall be rejected.

The Summarily dismissal of the Petition

15. The Court shall dismiss the application and record the reason for such dismissal were it appears to it that,

- a. the applicant has no right or direct interest in instituting the suit;
- b. the petition does not contain any legal issue to be decided;
- c. the petition does not disclose any infringement of any constitutional right; or
- d. the applicant has not exhausted all the domestic remedies available to him.

Admitting the Suit

16.1. The aggrieved person or authority must exhaust all available domestic remedies before having recourse to the Court.

16.2. In the case of non-response by the authority to which a complaint has been submitted in a period not exceed 30 days from the date of receipt of the complaint, the Court may proceed to hear the caes if it deems such a hearing to be reasonable.

16.3. If a petition is submitted to the Court in the proper form, the Court shall make an order allowing it and directing the payment of the prescribed fees unless the applicant is excused from such payment by a court order.

Application for the Determination of the Jurisdictional Conflict

17.1. An application for the determination of a conflict of jurisdiction may be submitted to the Court from any national or federal authority by the Minister of Justice or by the national or federal governance body concerned.

17.2. The application mentioned in paragraph 1 shall specify the subject matter in respect of which the conflict of jurisdiction has arisen, whether it is about the Constitution, or other legal provisions, the grounds for the Court's jurisdiction, the grounds and documents of each party concerning waiver of the fees, if relevant.

17.3. The Court may hear the parties, in addition to receiving written the grounds and documents in making it's judgment or any decision.

Application concerning Individual rights

18.1. The application for determining any suit Presented by any person aggrieved by the violation of freedoms rights inviolable

quarantined by the constitutional shall submitted by a petition to the Court.

18.2. The applicant must exhaust the avoidable domestic remedies concerning the executive and administrative Bureau.

18.3. The application shall undue the following :

- a. the name, address, and profession of the Plaintiff;
- b. the name, address, and profession (if there is) of the defendant;
- c. the direct interest or Injury suffered by the plaintiff;
- d. the plaintiff's claim(s).

18.4. The Court shall determine the application on the documents contained in the record and it may hear the parries if it thinks necessary for the purpose of achieving justice.

Procedures For bringing Charges against of the President

19. Criminal procedures may not be instituted against the President of the Republic or any of the Governors except with the written permission of the National Assembly or the Federal Assembly.

19.1. If an application for permission to be granted by the National Assembly or the Federal Assembly has been received by the Court concerning the institution of criminal proceedings against the President of the Republic or the Governor, as the case may be, the Court shall take the following steps:

- a. the Court shall delegate one Justice to investigate the President of the Republic or the Governor.

- b. upon completion of the investigation of the President of the Republic or the Governor, the investigator shall submit the results of the inquiry to the Court, and this shall not affect the participation of the Justice in the trial.
- c. the Court shall issue a judgment concerning the acquittal or conviction of the President of the Republic or the Governor to the National Assembly or the Federal Assembly, as the case may be, to take the steps necessary according to the provisions of the Constitution and the law.

Chapter 5

Decision Making and Minority Opinions

20.1. The Court shall make decisions by consensus or majority.

20.2. In the case of majority decision each Justice may attach a dissenting opinion to the decision.

20.3. The decision of the Court shall be final and not subject to objection.

Judgments in Constitution Matters

21.1. The judgments and decisions of the Court shall be binding immediately upon its issuance for all state apparatus and all persons.

21.2. The judgments and decisions of the Court shall be published in the official Gazette.

21.3.1. The consequence of a judgment concerning the unconstitutionality of any provision in the law or in a regulation or order or any subsidiary measures shall be its non-applicability.

21.3.2. If a judgment of unconstitutionality is given concerning a provision of the criminal law, any conviction based on that provision of law shall be considered as it has never been made (abolished).

21.3.3. The Chief Justice shall inform the Minister of Justice immediately on making such judgment to take the necessary steps to implement the judgment.

21.4. If a provision of the civil law is found to be unconstitutional that shall not affect the working of the law prior to the judgment.

Execution of judgments

22. A decision to award compensation made by the Court shall be executed by the competent Civil Court.

Chapter 6

Financial and Administrative Affairs

Annual Budget

23.1. The Court shall have an independent annual budget made in accordance with the same bases as the national budget.

23.2. The Chief Justice shall submit a draft of the budget to the competent authority after considering it and getting the approval of all the Justices. The Chief Justice shall be in charge of the execution of the budget in accordance with the regulations made by virtue of this law.

23.3. The provisions of the standard national financial and accounting procedures shall be applied to the Court budget and the final annual accounts of the Court.

Administrative Affairs

24.1. The Court shall have a secretariat and a number of workers. The Chief justice shall have the power of full supervision over them.

24.2. There shall be established by an order made by the Chief Justice a committee for the workers' affairs specialized in the administrative affairs of the workers, including their service conditions.

Application of Public Service Acts

25.1. The provision of acts applicable to employees in the judiciary shall be applied to the Court's employees if there is no provisions dealing with a matter in this law.

Chapter 7

General and Transitional Provisions

Transitional Provisions

26.1. The provisions of this Act shall be applied to cases to be decided by the Court including pending constitutional cases or cases that have not yet been completed before the commencement of this Act.

26.2. All the Constitutional cases instituted before the High Court shall be transferred to this Court on the entry into force of this Act.

26.3. The Court may not review any judgment, decision, or order made by a competent court, or an administrative or executive authority, if the available means of appeal have been exhausted prior the entry into force of the Constitution of 1998.

Instituting the Proceedings in a Constitutional Case

27.1. A constitutional case shall not be instituted before a Court by anyone holding a power of attorney, except if they are a legal advisor or a lawyer practicing his profession for not less than 20 years.

27.2. With regards to paragraph 1, if the poverty of the plaintiff has been proven, and he has asked for an attorney, the Minister of Justice shall appoint a legal advisor or a lawyer to represent the plaintiff.

Court Fees

28. The Court may make rules regulating the fees of the Court after consulting the Minister of Finance and National Economy.

Rules of Evidence

29. The Court shall be guided by the principles of evidence, the rules for the interpretation of the law, and the notice provided for in article 33(4) of the Criminal Procedure Act of 1983 if there is no provision in this Act.