

# **THE INTERIM NATIONAL CONSTITUTION THE REPUBLIC OF THE SUDAN, 2005**

## **PREAMBLE**

We the people of the Sudan

Grateful to Almighty God who has bestowed upon us the wisdom and will to reach a Comprehensive Peace Agreement that has definitively put an end to the longest running conflict in Africa,

Having survived the tragic consequences that have characterized that debilitating conflict,

Mindful of religious, racial, ethnic and cultural diversity in the Sudan,

Committed to establish a decentralized multi-party democratic system of governance in which power shall be peacefully transferred and to uphold values of justice, equality, human dignity and equal rights and duties of men and women,

Further committed to gearing governance, in the coming phase of our political advancement, towards the enhancement of economic development, promotion of social harmony, deepening of religious tolerance and building trust and confidence in the society generally,

Committed to the Comprehensive Peace Agreement of January 2005, guided by the 1998 Constitution and the Sudanese constitutional experience since independence and other relevant experiences,

Cognizant of conferences and the initiative of inclusive popular dialogue and agreements of peace and national reconciliation, particularly the Cairo Agreement signed in June 2005, and prospects of other peace agreements to end conflicts in the country,

Do hereby adopt this Constitution as the supreme law by which the Republic of the Sudan shall be governed during the Interim Period; and we undertake to respect and protect it.

## **PART ONE: THE STATE, THE CONSTITUTION AND GUIDING PRINCIPLES CHAPTER 1: THE STATE AND THE CONSTITUTION**

### **Nature of the State**

1 (1) The Republic of the Sudan is an independent, sovereign State. It is a democratic, decentralized, multi-cultural, multi-lingual, multi-racial, multi-ethnic, and multi-religious country where such diversities co-exist.

(2) The State is committed to the respect and promotion of human dignity; and is founded on justice, equality and the advancement of human rights and fundamental freedoms and assures multi-partism.

(3) The Sudan is an all embracing homeland where religions and cultures are sources of strength, harmony and inspiration.

#### Sovereignty

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

#### Supremacy of the Interim National Constitution

3 The Interim National Constitution shall be the supreme law of the land. The Interim Constitution of Southern Sudan, state constitutions and all laws shall comply with it.

#### Fundamental Bases of the Constitution

4 This Constitution is predicated upon and guided by the following principles:-

(a) the unity of the Sudan is based on the free will of its people, supremacy of the rule of law, decentralized democratic governance, accountability, equality, respect and justice,

(b) religions, beliefs, traditions and customs are the source

of moral strength and inspiration for the Sudanese people,

(c) the cultural and social diversity of the Sudanese people is the foundation of national cohesion and shall not be used for causing division,

(d) the authority and powers of government emanate from the sovereign will of the people exercised by them through referenda and in free, direct and periodic elections conducted through universal adult suffrage, using secret ballot.

#### Sources of Legislation

5 (1) Nationally enacted legislation having effect only in respect of the Northern states of the Sudan shall have as its sources of legislation Islamic Sharia and the consensus of the people.

(2) Nationally enacted legislation applicable to Southern Sudan or states of Southern Sudan shall have as its sources of legislation popular consensus, the values and the customs of the people of the Sudan, including their traditions and religious beliefs, having regard to Sudan's diversity.

(3) Where national legislation is currently in operation or is to be enacted and its source is religion or custom, then a state, and subject to Article 26 (1) (a) herein in the case of Southern Sudan, the majority of whose residents do not practice such religion or customs may:-

(a) either introduce legislation so as to allow practices or establish institutions, in that state consistent with their religion or customs, or

(b) refer the law to the Council of States to be approved by a two-thirds majority of all the representatives or initiate national legislation which will provide for such necessary alternative institutions as may be appropriate.

## Religious Rights

6 The State shall respect the religious rights to:-

(a) worship or assemble in connection with any religion or belief and to establish and maintain places for these purposes,

(b) establish and maintain appropriate charitable or humanitarian institutions,

(c) acquire and possess movable and immovable property and make, acquire and use the necessary articles and materials related to the rites or customs of a religion or belief,

(d) write, issue and disseminate religious publications,

(e) teach religion or belief in places suitable for these purposes,

(f) solicit and receive voluntary financial and other contributions from individuals, private and public institutions,

(g) train, appoint, elect or designate by succession appropriate religious leaders called for by the requirements and standards of any religion or belief,

(h) observe days of rest, celebrate holidays and ceremonies in accordance with the precepts of religious beliefs,

(i) communicate with individuals and communities in matters of religion and belief at national and international levels.

## Citizenship and Nationality

7 (1) Citizenship shall be the basis for equal rights and duties for all Sudanese.

(2) Every person born to a Sudanese mother or father shall have an inalienable right to enjoy Sudanese nationality and citizenship.

(3) The law shall regulate citizenship and naturalization; no

naturalized Sudanese shall be deprived of his/her acquired citizenship except in accordance with the law.

(4) A Sudanese national may acquire the nationality of

another country as shall be regulated by law.

## Language

8 (1) All indigenous languages of the Sudan are national languages and shall be respected, developed and promoted.

(2) Arabic is a widely spoken national language in the Sudan.

(3) Arabic, as a major language at the national level and English shall be the official working languages of the national government and the languages of instruction for higher education.

(4) In addition to Arabic and English, the legislature of any sub-national level of government may adopt any other national language as an additional official working language at its level.

(5) There shall be no discrimination against the use of either

Arabic or English at any level of government or stage of education.

## National Symbols

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

## CHAPTER II : GUIDING PRINCIPLES AND DIRECTIVES

.

## National Economy

10 (1) The overarching aims of economic development shall be eradication of poverty, attainment of the Millennium Development Goals, guaranteeing the equitable distribution of wealth, redressing imbalances of income and achieving a decent standard of life for all citizens.

(2) The State shall develop and manage the national economy in order to achieve prosperity through policies aimed at increasing production, creating an efficient and self-reliant economy and encouraging free market and prohibition of monopoly.

(3) The State shall enhance regional economic integration.

## Environment and Natural Resources

11 (1) The people of the Sudan shall have the right to a clean and diverse environment; the State and the citizens have the duty to preserve and promote the country's biodiversity.

(2) The State shall not pursue any policy, or take or permit any action, which may adversely affect the existence of any species of animal or vegetative life, their natural or adopted habitat.

(3) The State shall promote, through legislation, sustainable utilization of natural resources and best practices with respect to their management.

### Social Justice

12 (1) The State shall develop policies and strategies to ensure social justice among all people of the Sudan, through ensuring means of livelihood and opportunities of employment. The State shall also encourage mutual assistance, self-help, co-operation and charity.

(2) No qualified person shall be denied access to a profession or employment on the basis of disability; persons with special needs and the elderly shall have the right to participate in social, vocational, creative or recreational activities.

### Education, Science, Art and Culture

13 (1) (a) The State shall promote education at all levels

all over the Sudan and shall ensure free and compulsory education at the primary level and in illiteracy eradication programmes.

(b) Every person or group of persons shall have the right to establish and maintain private schools and other educational institutions at all levels in accordance with the conditions and standards provided by law.

(2) The State shall mobilize public, private and popular resources and capabilities for education and development of scientific research, especially Research and Development.

(3) The State shall encourage and promote craft and arts and foster their patronization by government institutions and citizens.

(4) The State shall recognize the cultural diversity of the country and shall encourage such diverse cultures to harmoniously flourish and find expression, through the media and education.

(5) The State shall protect Sudan's cultural heritage, monuments and places of national historic or religious importance, from destruction, desecration, unlawful removal or illegal export.

(6) The State shall guarantee academic freedom in institutions of higher education and shall protect the freedom of scientific research within the ethical parameters of research.

### Children, Youth and Sports

14 (1) The State shall adopt policies and provide facilities for child and youth welfare and ensure that they develop morally and physically, and protect them from moral and physical abuse and abandonment.

(2) The State shall promote sports and empower the youth to develop their potentials.

(3) The State shall protect and support popular sports institutions and guarantee their independence.

#### Family, Women and Marriage

15 (1) The family is the natural and fundamental unit of the society and is entitled to the protection of the law; the right of man and woman to marry and to found a family shall be recognized, according to their respective family laws, and no marriage shall be entered into without the free and full consent of its parties.

(2) The State shall protect motherhood and women from injustice, promote gender equality and the role of women in family, and empower them in public life.

#### Morals and Public Integrity

16 (1) The State shall enact laws to protect the society from corruption delinquency and social evils and steer the society as a whole towards virtuous social values consistent with religions and cultures of the Sudan.

(2) The State shall enact laws and establish institutions to eliminate corruption, inhibit abuse of power and ensure integrity in public life.

#### Foreign Policy

17 Foreign policy of the Sudan shall serve the national interest and shall be conducted independently and transparently with the view to achieving the following:

(a) promotion of international cooperation, specially within the United Nations family and other international and regional organizations, for the purposes of consolidating universal peace, respect for international law, treaty obligations and fostering a just world economic order,

(b) achievement of African and Arab economic integration, each within the ongoing regional plans and fora as well as promoting African and Arab unity and Afro-Arab cooperation as foreseen in those plans,

(c) enhancement of respect for human rights and fundamental freedoms in regional and international fora,

(d) promotion of dialogue among civilizations and establishment of international order based on justice and common human destiny,

(e) enhancement of economic cooperation among countries of the South,

(f) non-interference in the affairs of other States, promotion of good-neighbourliness and mutual cooperation with all neighbours and maintaining amicable and balanced relations with other countries,

(g) combating international and trans-national organized crime and terrorism.

#### Defence of the Country

18 Defence of the Country is an honour and a duty of every citizen; the State shall care for the combatants, the afflicted in war, the families of martyrs and those missing in action.

#### Public Health

19 The State shall promote public health and guarantee equal access and free primary health care to all citizens.

#### Fiscal Levies

20 (1) No taxes, fees, tariffs or other fiscal dues, shall be levied save by law.

(2) Zakat is a duty on Muslims; its collection, expenditure and administration shall be regulated in the Northern states by law.

#### National Reconciliation

21 The State shall initiate a comprehensive process of national reconciliation and healing that shall promote national harmony and peaceful co-existence among all Sudanese.

#### Saving

22 Unless this Constitution otherwise provides, or a duly enacted law guarantees the rights and liberties described in this Chapter, the provisions contained in this Chapter are not by themselves enforceable in a court of law; however, the principles expressed herein are basic to governance and the State is duty-bound to be guided by them, especially in making policies and laws.

### CHAPTER III :DUTIES OF THE CITIZEN

.

23 (1) It shall be the duty of every Sudanese citizen to pledge allegiance to the Republic of the Sudan, abide by this Constitution, respect the institutions created hereunder and safeguard the territorial integrity of the country.

(2) In particular every citizen shall:

(a) defend the country and respond to the call for

national service within the terms of this Constitution and the law,

(b) abhor violence, promote harmony, fraternity and

tolerance among all people of the Sudan in order to transcend religious, regional,

linguistic, and sectarian divisions,

(c) preserve public funds and assets and respect legal and financial obligations towards the State,

(d) avert and thwart corruption and sabotage,

(e) participate fully in the development of the country,

(f) take part in the general elections and referenda as

stipulated in this Constitution and the law,

(g) abide by law and co-operate with the appropriate agencies in the maintenance of law and order,

(h) preserve the natural environment,

(i) generally, be guided and informed in his/her actions by the interests of the nation and the principles enshrined in this Constitution.

#### CHAPTER IV : THE DECENTRALIZED SYSTEM OF GOVERNANCE

.

##### Levels of Government

24 The Sudan is a decentralized State, with the following levels

of government: -

(a) The national level of government, which shall exercise

authority with a view to protecting the national sovereignty and territorial integrity of the Sudan and promoting the welfare of its people,

(b) Southern Sudan level of government, which shall exercise authority in respect of the people and states in Southern Sudan,

(c) The state level of government, which shall exercise authority at the state level throughout the Sudan and render public services through the level closest to the people,

(d) Local level of government, which shall be throughout the Sudan.

##### Devolution of Powers

25 The following principles shall guide the devolution and distribution of powers between all levels of government:-

(a) recognition of the autonomy of the Government of Southern Sudan and the states,

(b) affirmation of the need for norms and standards of governance and management at national, Southern Sudan and state levels, that reflect the unity of the country while asserting the diversity of the Sudanese people,

(c) acknowledgement of the role of the State in the promotion of the welfare of the people and protection of their human rights and fundamental freedoms,

(d) recognition of the need for the involvement and participation of all Sudanese people, particularly the people of Southern Sudan, at all levels of government as an expression of the national unity of the country,

(e) pursuit of good governance through democracy, transparency, accountability and the rule of law at all levels of government to consolidate lasting peace.

#### Inter-Governmental Linkages

26 (1) In the administration of the decentralized system of the country, the following principles of inter-governmental linkages shall be respected:-

(a) the linkage between the national government and the

states in Southern Sudan shall be through the government of Southern Sudan,

(b) in their relationships with each other or with other government organs, all levels of government and particularly national, Southern Sudan and state governments shall observe the following:-

(i) respect each others' autonomy,

(ii) collaborate in the task of governing and assist each other in fulfilling their respective constitutional obligations.

(c) government organs at all levels shall perform their functions and exercise their powers so as:-

(i) not to encroach on the powers or functions of

other levels,

(ii) not to assume powers or functions conferred upon any other level except as provided for by this Constitution,

(iii) to promote co-operation between all levels of government,

(iv) to promote open communication between all levels of government,

(v) to render assistance and support to other levels of government,

(vi) to advance good co-ordination of governmental

functions,

(vii) to adhere to procedures of inter-governmental interaction,

(viii) to promote amicable settlement of disputes before attempting litigation,

(ix) to respect the status and institutions of other levels of government.

(d) the harmonious and collaborative interaction of the different levels of government shall be within the context of national unity and for the achievement of a better quality of life for all,

(2) Any two or more states may agree on mechanisms or arrangements to enhance inter-state co-ordination and co-operation.

## PART TWO: BILL OF RIGHTS

.

### Nature of the Bill of Rights

27 (1) The Bill of Rights is a covenant among the Sudanese people and between them and their governments at every level and a commitment to respect and promote human rights and fundamental freedoms enshrined in this Constitution; it is the cornerstone of social justice, equality and democracy in the Sudan.

(2) The State shall protect, promote, guarantee and implement this Bill.

(3) All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill.

(4) Legislation shall regulate the rights and freedoms enshrined in this Bill and shall not detract from or derogate any of these rights.

### Life and Human Dignity

28. Every human being has the inherent right to life, dignity and the integrity of his/her person, which shall be protected by law; no one shall arbitrarily be deprived of his/her life.

### Personal Liberty

29 Every person has the right to liberty and security of person; no person shall be subjected to arrest, detention, deprivation or restriction of his/her liberty except for reasons and in accordance with procedures prescribed by law.

.

### Sanctity from Slavery and Forced Labour

30 (1) Slavery and slave trade in every form is prohibited. No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced or compulsory labour except as a penalty upon conviction by a competent court of law.

#### Equality before the Law

31 All persons are equal before the law and are entitled without discrimination, as to race, colour, sex, language, religious creed, political opinion, or ethnic origin, to the equal protection of the law.

#### Rights of Women and Children

32 (1) The State shall guarantee equal right of men and

women to the enjoyment of all civil, political, social, cultural and economic rights, including the right to equal pay for equal work and other related benefits.

(2) The State shall promote woman rights through affirmative action.

(3) The State shall combat harmful customs and traditions which undermine the dignity and the status of women.

(4) The State shall provide maternity and child care and medical care for pregnant women.

(5) The State shall protect the rights of the child as provided in the international and regional conventions ratified by the Sudan.

#### Sanctity from Torture

33 No person shall be subjected to torture or to cruel, inhuman or degrading treatment.

#### Fair Trial

34 (1) An accused is presumed to be innocent until his/her guilt is proved according to the law.

(2) Every person who is arrested shall be informed, at the time of arrest, of the reasons for his/her arrest and shall be promptly informed of any charges against him/her .

(3) In all civil and criminal proceedings, every person shall be entitled to a fair and public hearing by an ordinary competent court of law in accordance with procedures prescribed by law.

(4) No person shall be charged of any act or omission which did not constitute an offence at the time of its commission.

(5) Any person shall be entitled to be tried in his/her presence in any criminal charge without undue delay; the law shall regulate trial in absentia.

(6) Any accused person has the right to defend himself/herself in person or through a lawyer of his/her own choice and to have legal aid assigned to him/her by the State where he/she is unable to defend himself/herself in serious offences.

#### Right to Litigation

35 The right to litigation shall be guaranteed for all persons; no person shall be denied the right to resort to justice.

#### Restriction on Death Penalty

36 (1) No death penalty shall be imposed, save as retribution, hudud or punishment for extremely serious offences in accordance with the law.

(2) The death penalty shall not be imposed on a person under the age of eighteen or a person who has attained the age of seventy except in cases of retribution or hudud.

(3) No death penalty shall be executed upon pregnant or lactating women, save after two years of lactation.

#### Privacy

37 The privacy of all persons shall be inviolable; no person shall be subjected to interference with his/her private life, family, home or correspondence, save in accordance with the law.

#### Freedom of Creed and Worship

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

#### Freedom of Expression and Media

39 (1) Every citizen shall have an unrestricted right to the freedom of expression, reception and dissemination of information, publication, and access to the press without prejudice to order, safety or public morals as determined by law.

(2) The State shall guarantee the freedom of the press and other media as shall be regulated by law in a democratic society.

(3) All media shall abide by professional ethics, shall refrain from inciting religious, ethnic, racial or cultural hatred and shall not agitate for violence or war.

## Freedom of Assembly and Association

40 (1) The right to peaceful assembly shall be guaranteed; every person shall have the right to freedom of association with others, including the right to form or join political parties, associations and trade or professional unions for the protection of his/her interests.

(2) Formation and registration of political parties, associations and trade unions shall be regulated by law as is necessary in a democratic society.

(3) No association shall function as a political party at national, Southern Sudan or state level unless it has:-

(a) its membership open to any Sudanese irrespective of religion, ethnic origin or place of birth,

(b) a programme that does not contradict the provisions of this Constitution,

(c) democratically elected leadership and institutions,

(d) disclosed and transparent sources of funding.

## Right to Vote

41 (1) Every citizen shall have the right to take part in the conduct of public affairs, through voting as shall be regulated by law.

(2) Every citizen who has attained the age specified by this Constitution or the law, shall have the right to elect and be elected in periodic elections, through universal adult suffrage in secret ballot, which shall guarantee the free expression of the will of the electorate.

## Freedom of Movement and Residence

42 (1) Every citizen shall have the right to freedom of movement and the liberty to choose his/her residence except for reasons of public health and safety as shall be regulated by law.

(2) Every citizen shall have the right to leave the country as shall be regulated by law and shall have the right of return.

## Right to Own Property

43 (1) Every citizen shall have the right to acquire or own property as regulated by law.

(2) No private property may be expropriated save by law in the public interest and in consideration for prompt and fair compensation. No private property shall be confiscated save by an order of a court of law.

## Right to Education

44 (1) Education is a right for every citizen and the State shall provide access to education without discrimination as to religion, race, ethnicity, gender or disability.

(2) Primary education is compulsory and the State shall provide it free.

## Rights of Persons with Special Needs and the Elderly

45 (1) The State shall guarantee to persons with special needs the enjoyment of all the rights and freedoms set out in this Constitution; especially respect for their human dignity, access to suitable education, employment and full participation in society.

(2) The elderly shall have the right to the respect of their dignity. The State shall provide them with the necessary care and medical services as shall be regulated by law.

## Public Health Care

46 The State shall promote public health, establish, rehabilitate, develop basic medical and diagnostic institutions, provide free primary health care and emergency services for all citizens.

## Ethnic and Cultural Communities

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

## Sanctity of Rights and Freedoms

48 Subject to Article 211 herein, no derogation from the rights and freedoms enshrined in this Bill shall be made. The Bill of Rights shall be upheld, protected and applied by the Constitutional Court and other competent courts; the Human Rights Commission shall monitor its application in the State pursuant to Article 142 herein