

**THE INTERIM CONSTITUTION
OF SOUTHERN SUDAN, 2005**

THE INTERIM CONSTITUTION OF SOUTHERN SUDAN, 2005

ARRANGEMENT OF PARTS, CHAPTERS AND ARTICLES

ARRANGEMENT OF ARTICLES

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PREAMBLE

We, the People of Southern Sudan,

Grateful to Almighty God for giving the people of the Sudan the wisdom and courage to reach a peace agreement which ended a long and tragic conflict;

Recalling our long and heroic struggle for justice, freedom, equality and dignity in the Sudan;

Remembering and inspired by the selfless sacrifices of our martyrs, heroes and heroines;

Committed to the Comprehensive Peace Agreement of January 9, 2005 and the Interim National Constitution of the Republic of the Sudan, 2005;

Dedicated to a genuine national healing process and the building of trust and confidence in our society through dialogue;

Determined to lay the foundation for a united, peaceful and prosperous society based on justice, equality, respect for human rights and the rule of law;

Further committed to establishing a decentralized democratic multi-party system of governance in which power shall be peacefully transferred and to upholding values of human dignity and equal rights and duties of men and women;

Cognizant of our duty and responsibility to safeguard and ensure the true exercise of our inalienable right to self-determination through a fair and an internationally monitored referendum; and

Conscious of the need to manage our natural resources sustainably and efficiently for the benefit of the present and future generations and to eradicate poverty and attain the Millennium Development Goals;

Do hereby adopt and promulgate this Interim Constitution of Southern Sudan, 2005, as the supreme law by which Southern Sudan shall be governed during the Interim Period, and undertake to abide by, respect and defend it.

PART ONE

SOUTHERN SUDAN AND THE CONSTITUTION

CHAPTER I

THE CONSTITUTION AND TERRITORY OF SOUTHERN SUDAN

Territory of Southern Sudan

1. (1) a) The territory of Southern Sudan comprises all lands and areas that constituted the former three Southern Provinces of Bahr el Ghazal, Equatoria and Upper Nile in their boundaries as they stood on January 1, 1956.
- b) The January 1, 1956 boundary line between the north and the south shall be inviolable, subject to the provisions of Article 183 (3) of the Interim National Constitution on Abyei Referendum.
- (2) Southern Sudan is governed on the basis of decentralization; its territory consists of ten states and is an all embracing homeland for its people. It is a multi-ethnic, multi-cultural, multi-lingual, multi-religious and multi-racial entity where such diversities peacefully co-exist.
- (3) Southern Sudan is founded on justice, equality and respect for human dignity and advancement of human rights and fundamental freedoms; it is governed on the basis of a decentralized democratic system in accordance with this Constitution and the Interim National Constitution of the Republic of the Sudan, 2005.

Sovereign Authority of the People of Southern Sudan

2. (1) Without prejudice to Article 2 of the Interim National Constitution, sovereign authority in Southern Sudan is vested in the people and shall be exercised through their democratic and representative institutions established by this Constitution and elected by them in regular, free and fair elections.
- (2) The authority of government at all levels in Southern Sudan shall derive from the people and shall be exercised in accordance with their will, this Constitution and the law.

Supremacy of the Constitution

3. (1) Without prejudice to Article 3 of the Interim National Constitution, this Constitution shall be the supreme law of Southern Sudan and shall have

binding force on all organs and agencies of government and persons throughout Southern Sudan.

- (2) The interim constitutions and laws of the States of Southern Sudan shall comply with this Constitution and the Interim National Constitution.

Defence of the Constitution

4. (1) No person or group of persons shall take or retain control of the Government of Southern Sudan except in accordance with this Constitution.
- (2) Any person or group of persons who attempts to suspend, overthrow or abrogate this Constitution commits treason; all citizens shall have the right and duty to resist any person or group seeking to overthrow this Constitution, if no other remedy is available.
- (3) All levels of government in Southern Sudan shall promote public awareness of this Constitution by translating it into Southern Sudan national languages and disseminating it as widely as possible. They shall provide for the teaching of this Constitution in all public and private educational and training institutions as well as in the armed and other regular forces, by regularly transmitting and publishing programmes in respect thereof through the media and press.

Sources of Legislation

5. The sources of legislation in Southern Sudan shall be:
 - (a) the Interim National Constitution;
 - (b) the Interim Constitution of Southern Sudan;
 - (c) customs and traditions of the people of Southern Sudan;
 - (d) popular consensus of the people of Southern Sudan; and
 - (e) any other sources.

Language

6. (1) All indigenous languages of Southern Sudan are national languages and shall be respected, developed and promoted.
- (2) English and Arabic shall be the official working languages at the level of the governments of Southern Sudan and the States as well as languages of instruction for higher education.
- (3) There shall be no discrimination against the use of either English or Arabic at any level of government or stage of education.

- (4) English, as a major language in Southern Sudan, and Arabic, shall be the official working languages of the governments of Southern Sudan, and the states and the languages of instruction for higher education.
- (5) In addition to English and Arabic, the legislature of any sub- level of government in Southern Sudan may adopt any other national language as an additional official working language or medium of instruction in schools at its level.
- (6) The Government of Southern Sudan shall promote the development of a sign language for the benefit of people with special needs.

Symbols

7. The flag, emblem, public seal, medals, festivals and commemorations of Southern Sudan shall be specified by law.

Religion in Southern Sudan

8. (1) In Southern Sudan, religion and state shall be separate.
- (2) All religions shall be treated equally and no religion shall be declared the official religion of Southern Sudan; religion or religious beliefs shall not be used for divisive purposes.

CHAPTER II

SOUTHERN SUDAN RIGHT TO SELF-DETERMINATION

Affirmation of the Right to Self-Determination

9. (1) The people of Southern Sudan have the right to self-determination through a referendum to determine their future status.
- (2) Any Southern Sudanese who has attained the age of eighteen shall have the right to vote in the referendum.
- (3) For purposes of the referendum in sub-Article (1) above and without prejudice to Article 48 (2) herein, a Southern Sudanese is:
 - (a) any person whose either parent or grandparent is or was a member of any of the indigenous communities existing in Southern Sudan before or on January 1, 1956; or whose ancestry can be traced through agnatic or male line to any one of the ethnic communities of Southern Sudan; or
 - (b) any person who has been permanently residing or whose mother and/or father or any grandparent have been permanently residing in Southern Sudan as of January 1, 1956.

Southern Sudan Referendum Commission

10. (1) A Southern Sudan Referendum Act shall be promulgated by the National Legislature at the beginning of the third year of the Interim Period.
- (2) The Presidency of the Republic of the Sudan shall, as soon as the Southern Sudan Referendum Act is promulgated, establish the Southern Sudan Referendum Commission.

The Referendum on Self-Determination

11. (1) Six months before the end of the six-year Interim Period, there shall be an internationally monitored referendum for the people of Southern Sudan organized by the Southern Sudan Referendum Commission in cooperation with the National Government and the Government of Southern Sudan.
- (2) The people of Southern Sudan, voting on a single ballot and by majority vote, shall either:
 - (a) confirm unity of the Sudan by voting to adopt the system of government established under the Comprehensive Peace Agreement, this Constitution and the Interim National Constitution; or
 - (b) vote for secession.

Assessment and Evaluation Commission

12. (1) An independent Assessment and Evaluation Commission shall be established by the President of the Republic with the consent of the First Vice President of the Republic to monitor the implementation of the Comprehensive Peace Agreement during the Interim Period.
- (2) The Commission shall conduct a mid-term evaluation of the unity arrangements established under the Comprehensive Peace Agreement.
- (3) The Parties signatory 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 make the unity of the Sudan an attractive option to the people of Southern Sudan.

PART TWO BILL OF RIGHTS

Nature of the Bill of Rights

13. (1) The Bill of Rights is a covenant among the people of Southern Sudan and between them and their government 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 Southern Sudan.
- (2) The rights and freedoms of the individual and groups enshrined in this Bill shall be respected, upheld and promoted by all organs and agencies of the Government of Southern Sudan and by all persons.
- (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) This Bill of Rights shall be upheld by the Southern Sudan Supreme Court and other competent courts and monitored by the Southern Sudan Human Rights Commission.
- (5) The rights and freedoms guaranteed by this Constitution supplement and complement the Bill of Rights in the Interim National Constitution.

Sanctity of Rights and Freedoms

14. Subject to Article 199 (2) 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, Southern Sudan Supreme Court and other competent courts; the Southern Sudan Human Rights Commission shall monitor its application in Southern Sudan in accordance with this Constitution and the law.

Life and Human Dignity

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

Personal Liberty

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

Freedom from Slavery, Servitude and Forced Labour

17. (1) Slavery and slave trade in every form are 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

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

Right to found a family

19. Every person of marriageable age shall have the right to marry a person of the opposite sex and to found a family according to their respective family laws, and no marriage shall be entered into without the free and full consent of the man and woman intending to marry.

Rights of Women

20. (1) Women shall be accorded full and equal dignity of the person with men.
- (2) Women shall have the right to equal pay for equal work and other related benefits with men.
- (3) Women shall have the right to participate equally with men in public life.
- (4) All levels of government in Southern Sudan shall:
- (a) promote women participation in public life and their representation in the legislative and executive organs by at least twenty-five per cent as an affirmative action to redress imbalances created by history, customs and traditions;
 - (b) enact laws to combat harmful customs and traditions which undermine the dignity and status of women; and

- (c) provide maternity and child care and medical care for pregnant and lactating women.
- (5) Women shall have the right to own property and share in the estate of their deceased husbands together with any surviving legal heirs of the deceased.

Rights of the Child

21. (1) Every child has the right:
- (a) to life, survival and development;
 - (b) to a name and nationality;
 - (c) to know and be cared for by his or her parents or legal guardian;
 - (d) not to be subjected to exploitative practices or abuse, nor to be required to serve in the army nor permitted to perform work which may be hazardous or harmful to his or her education, health or well-being;
 - (e) to be free from any form of discrimination;
 - (f) to be free from corporal punishment and cruel and inhuman treatment by any person including parents, school administrations and other institutions;
 - (g) not to be subjected to negative and harmful cultural practices which affect his or her health, welfare and dignity; and
 - (h) to be protected from abduction and trafficking.
- (2) In all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interest of the child.
- (3) All levels of government in Southern Sudan shall accord special protection to orphans and other vulnerable children; child adoption shall be regulated by law.
- (4) For the purposes of this Constitution, a child is any person under the age of eighteen years.

Freedom from Torture

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

Fair Trial

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

- (2) Any person who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest and shall be promptly informed of any charges against him or her.
- (3) In all civil and criminal proceedings, every person shall be entitled to a fair and public hearing by a competent court of law in accordance with procedures prescribed by law.
- (4) No person shall be charged with any act or omission which did not constitute an offence at the time of its commission.
- (5) Every accused person shall be entitled to be tried in his or her presence in any criminal trial without undue delay; the law shall regulate trial in absentia.
- (6) Any accused person has the right to defend himself or herself in person or through a lawyer of his or her own choice and to have legal aid assigned to him or her by the government where he or she is unable to defend himself or herself in serious offences.

Right to Litigation

24. The right to litigation shall be guaranteed for all persons; no person shall be denied the right to resort to courts of law to redress grievances whether against government or against any individual or organization.

Restriction on Death Penalty

25. (1) No death penalty shall be imposed, save as punishment for extremely serious offences in accordance with the law.
- (2) No death penalty shall be imposed on a person under the age of eighteen or a person who has attained the age of seventy.
- (3) No death penalty shall be executed upon a pregnant or lactating woman, save after two years of lactation.

Privacy

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

Religious Rights

27. The following religious rights are guaranteed by this Constitution:

- (a) the right to worship or assemble in connection with any religion or belief and to establish and maintain places for these purposes;
- (b) the right to establish and maintain appropriate faith-based; charitable or humanitarian institutions;
- (c) the right to acquire, possess and own movable and immovable property and make, acquire and use the necessary articles and materials related to the rites or customs of religion or belief;
- (d) the right to write, issue and disseminate religious publications;
- (e) the right to teach religion or beliefs in places suitable for these purposes;
- (f) the right to solicit and receive voluntary financial and other contributions from individuals, private and public institutions;
- (g) the right to train, appoint, elect or designate by succession appropriate religious leaders called for by the requirements and standards of any religion or belief;
- (h) the right to observe days of rest, celebrate holidays and ceremonies in accordance with the precepts of religious beliefs; and
- (i) The right to communicate with individuals and communities in matters of religion and beliefs in Southern Sudan and at national and international levels.

Freedom of Expression and Media

- 28. (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) All levels of government in Southern Sudan 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.

Freedom of Assembly and Association

- 29. (1) The right to peaceful assembly is recognized and 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 or 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 Southern Sudan or state level unless it has:-
- (a) its membership open to any Sudanese irrespective of religion, gender, ethnic origin or place of birth;
 - (b) a programme that does not contradict the provisions of the Interim National Constitution and this Constitution;
 - (c) a democratically elected leadership and institutions; and
 - (d) disclosed and transparent sources of funding.

Right to Participation and Voting

30. (1) Every citizen shall have the right to take part in any level of government directly or through freely chosen representative, and shall have the right to nominate himself or herself for a public post or office in accordance with this Constitution and the law.
- (2) Every citizen shall have the right to vote or be elected in accordance with this Constitution and the law.

Freedom of Movement and Residence

31. (1) Every citizen shall have the right to freedom of movement and the liberty to choose his or her residence in Southern Sudan except for reasons of public health and safety as shall be regulated by law.
- (2) Every citizen shall have the right to leave and or return to Southern Sudan.

Right to Own Property

32. (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

33. (1) Education is a right for every citizen and all levels of government in Southern Sudan shall provide access to education without discrimination as to religion, race, ethnicity, HIV status, gender or disability.

- (2) All levels of government in Southern Sudan shall promote education at all levels and shall ensure free and compulsory education at the primary level; they shall also provide free illiteracy eradication programmes.

Rights of Persons with Special Needs and the Elderly

34. (1) All levels of government in Southern Sudan shall guarantee to persons with special needs participation in society and the enjoyment of rights and freedoms set out in this Constitution, especially access to public utilities, suitable education and employment.
- (2) The elderly and persons with special needs shall have the right to the respect of their dignity. They shall be provided with the necessary care and medical services as shall be regulated by law.

Public Health Care

35. All levels of government in Southern Sudan shall promote public health, establish, rehabilitate and develop basic medical and diagnostic institutions and provide free primary health care and emergency services for all citizens.

Right of Access to Information

36. Every citizen has the right of access to official information and records, including electronic records in the possession of any level of government in Southern Sudan or any organs or agencies thereof, except where the release of such information is likely to prejudice public security or the right to privacy of any other person.

Rights of Ethnic and Cultural Communities

37. 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 context of their respective cultures and customs in accordance with this Constitution and the law.

PART THREE
FUNDAMENTAL OBJECTIVES AND GUIDING PRINCIPLES

CHAPTER I

OBJECTIVES AND PRINCIPLES

Guiding Objectives and Principles

38. (1) All levels of government in Southern Sudan and all their organs, institutions and citizens shall be guided by the objectives and principles contained in this Chapter.
- (2) This Constitution shall be interpreted and applied to advance the individual dignity and address the particular needs of the people of Southern Sudan by dedicating public resources and focusing attention on the provision of gainful employment for the people, and improving their lives by building roads, schools, airports, community institutions, hospitals, providing clean water, electric power and telecommunications services to every part of Southern Sudan.

Political Objectives

39. (1) Governance in Southern Sudan shall promote democratic principles and political pluralism, and shall be guided by the principles of decentralization and devolution of power to the people through the appropriate levels of government where they can best manage and direct their affairs.
- (2) All levels of government in Southern Sudan shall:
- (a) uphold and implement the Comprehensive Peace Agreement, consolidate peace and create a secure and stable political environment for socio-economic development;
 - (b) initiate a comprehensive process of national reconciliation and healing that shall promote national harmony, unity and peaceful co-existence among all people in Southern Sudan;
 - (c) inculcate in the people of Southern Sudan a culture of peace, unity, cooperation, understanding, tolerance and respect for customs, traditions and beliefs of each other; and
 - (d) mobilize popular energies and resources in Southern Sudan for reconstruction and development.
- (3) The security and welfare of the people of Southern Sudan shall be the primary duty of all levels of government in Southern Sudan.

- (4) The composition of governments in Southern Sudan shall take into account ethnic, regional and social diversity of Southern Sudan in order to promote national unity and command national loyalty.
- (5) All public offices in Southern Sudan shall be held in trust for the people and all persons in positions of leadership and responsibility shall be answerable to the people in their work.

Economic Objectives

40. (1) The overall goal of economic development strategy in Southern Sudan shall be the 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 the people of Southern Sudan.
- (2) All levels of government in Southern Sudan shall:
 - (a) develop and regulate the economy of Southern Sudan 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;
 - (b) protect and ensure the sustainable management and utilization of natural resources including land, water, petroleum, minerals, fauna and flora for the benefit of the people of Southern Sudan;
 - (c) facilitate the development of the private sector, particularly indigenous entrepreneurs to establish and develop a viable private sector capable of participating effectively in reconstruction and development of Southern Sudan;
 - (d) encourage private initiative and self-reliance and take all necessary steps to involve the people in the formulation and implementation of development plans and programmes that affect them and to enhance as well their right to equal opportunities in development;
 - (e) promote agricultural, industrial and technological development by adopting appropriate policies and legislations for the encouragement and attraction of local and foreign investment; and
 - (f) take necessary measures to bring about balanced, integrated and equitable development of different areas of Southern Sudan and to encourage and expedite rural development as a strategy for averting urban-biased development and policies that have been responsible for the neglect of rural communities.
- (3) The Government of Southern Sudan shall ensure that the wealth of Southern Sudan is equitably shared among all levels of government in Southern Sudan for the welfare of the people.

Education, Science, Art and Culture

41. (1) All levels of government in Southern Sudan shall:
- (a) promote education at all levels to create the necessary qualified cadres for development;
 - (b) mobilize public, private and communal resources and capabilities for education and promotion of scientific research geared towards development;
 - (c) encourage and promote arts and craft and foster their patronization by government institutions and citizens;
 - (d) recognize the cultural diversity of Southern Sudan and encourage such diverse cultures to harmoniously flourish and find expression through education and the media;
 - (e) protect cultural heritage, monuments and places of national, historic or religious importance from destruction, desecration, unlawful removal or illegal export; and
 - (f) protect, preserve and promote the cultures of the people of Southern Sudan which enhance their human dignity and are consistent with the fundamental objectives and principles set out in this Chapter.
- (2) The Government of Southern Sudan shall:
- (a) guarantee academic freedom in institutions of higher education and protect the freedom of scientific research within the ethical parameters of research and as may be regulated by law; and
 - (b) endeavour to avail the necessary financial resources to make education affordable at secondary and higher levels, including technical and vocational training, in order to bridge the educational gap caused by the collapse of educational services in Southern Sudan during the years of conflict.
- (3) 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.

Family

42. (1) Family is the natural and fundamental unit of society and is entitled to the protection of the law.
- (2) All levels of government in Southern Sudan shall promote the welfare of the family and enact the necessary laws for its protection.
- (3) It is the right and duty of parents to care for and bring up their children.

- (4) Children shall not be separated from their parents or persons legally entitled to care for them against the will of such parents or persons, except in accordance with the law.

Children, Youth and Sports

43. All levels of government in Southern Sudan shall:
- (a) adopt policies and provide facilities for the welfare of children and youth and ensure that they develop morally and physically, and are protected from moral and physical abuse and abandonment;
 - (b) promote recreational facilities and sports for all the citizens and empower the youth to develop their potentials; and
 - (c) establish, protect and support popular sports institutions and guarantee their independence.

The Environment

44. (1) Every person or community shall have the right to a clean and healthy environment.
- (2) Every person shall have the right to have the environment protected for the benefit of present and future generations, through reasonable legislative action and other measures that:
- (a) prevent pollution and ecological degradation;
 - (b) promote conservation; and
 - (c) secure ecologically sustainable development and use of natural resources while promoting rational economic and social development so as to protect genetic stability and bio-diversity of Southern Sudan.
- (3) All levels of government in Southern Sudan shall promote energy policies that will ensure that the basic needs of the people are met while protecting and preserving the environment.

Defence of the Sudan

45. (1) Defence of the Sudan in general and Southern Sudan in particular, is an honour and a duty of every citizen in Southern Sudan without prejudice to Article 18 of the Interim National Constitution.
- (2) The law shall provide for the care of the combatants, the wounded, the families of martyrs and those missing in action.

Regional Cooperation

46. The Government of Southern Sudan shall establish, develop and maintain good relations and cooperation with foreign governments, foreign non-governmental organizations and associations for mutual advantage in trade, investment, culture, sports, education, credit, loans, grants, technical assistance and other fields of development cooperation.

Saving

47. 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 Government of Southern Sudan shall be guided by them, especially in making policies and laws.

CHAPTER II

CITIZENSHIP, RIGHTS AND DUTIES

Citizenship and Rights

48. (1) Every person born to a Sudanese mother or father shall have an inalienable right to enjoy Sudanese nationality and citizenship.
- (2) Citizenship is the basis of equal rights and duties for all Sudanese in Southern Sudan, subject to Article 9 (3) of this Constitution.
- (3) Every citizen in Southern Sudan shall enjoy all the rights guaranteed by this Constitution and the Interim National Constitution.
- (4) The law shall establish a public registry of every birth, marriage or death in Southern Sudan.

Duties of the Citizen

49. (1) It shall be the duty of every Sudanese citizen in Southern Sudan to uphold and abide by this Constitution and respect the laws of Southern Sudan.
- (2) Every citizen in Southern Sudan shall in particular:
- (a) defend the country and respond to the call for national service in accordance with the provisions of the Interim National Constitution, this Constitution and the law;

- (b) abhor violence and promote harmony, unity, fraternity and tolerance among all people of Southern Sudan in order to transcend ethnic, religious, geographical, and political divisions;
- (c) preserve public funds and assets and respect legal and financial obligations;
- (d) avert and combat corruption and sabotage;
- (e) participate fully in the development of Southern Sudan;
- (f) take part in general elections and referenda as stipulated in this Constitution and the law;
- (g) abide by the law and co-operate with the appropriate agencies in the maintenance of law and order;
- (h) protect the environment and conserve natural resources;
- (i) be guided and informed in all actions by the interests of the nation and Southern Sudan and the principles enshrined in this Constitution and the Interim National Constitution;
- (j) promote democracy, good governance and the rule of law; and
- (k) respect the rights and freedoms of others.

CHAPTER III

THE DECENTRALIZED SYSTEM OF GOVERNANCE

Levels of Government in Southern Sudan

50. Southern Sudan shall have a decentralized system of government with the following levels:
- (a) the government of Southern Sudan level which shall exercise authority in respect of the people and states in Southern Sudan;
 - (b) the state level of government, which shall exercise authority within a state, and render public services through the level closest to the people; and
 - (c) local government level within the state, which shall be the closest level to the people.

Devolution of Powers

51. (1) The following principles shall guide the devolution and exercise of powers:
- (a) affirmation of the need for norms and standards of governance and management at the state and local government levels that reflect the unity of Southern Sudan while recognizing the diversity of its people;

- (b) acknowledgement of the role of the Government of Southern Sudan and the states in the promotion of the welfare of the people and protection of their human rights and fundamental freedoms;
- (c) recognition of the need for the involvement and participation of all people of Southern Sudan at all levels of government as an expression of unity; and
- (d) pursuit of good governance through democracy, separation of powers, transparency, accountability and respect for the rule of law to enhance peace, socio-economic development and political stability.

(2) The Government of Southern Sudan shall:

- (a) exercise its competences in accordance with the Comprehensive Peace Agreement, this Constitution and the Interim National Constitution.
- (b) respect the powers devolved to the states and local government.

Inter-Governmental Linkages

52. (1) In the administration of the decentralized system of governance in Southern Sudan, the following principles of inter-governmental linkages shall be observed:

- (a) The linkage between the national government and the states in Southern Sudan shall be through the Government of Southern Sudan and the linkage between the Government of Southern Sudan and the local government shall be through the government of the relevant state;
- (b) In their relationships with each other or with other government organs, all levels of government, particularly Southern Sudan and state governments, shall observe the following:
 - (i) respect each other's powers and competences; and
 - (ii) collaborate in the task of governing and assist each other in fulfilling their respective constitutional obligations.
- (c) Government organs at all levels in Southern Sudan shall perform their functions and exercise their powers so as:
 - (i) not to encroach on or assume powers or functions conferred upon any other level except as provided for by this Constitution;
 - (ii) to promote co-operation by rendering assistance and support to other levels of government;
 - (iii) to promote open communication and coordination between all levels of government;

- (iv) to adhere to procedures of inter-governmental interaction and comity;
 - (v) to respect the status and institutions of other levels of government; and
 - (vi) to promote amicable settlement of disputes before attempting litigation.
- (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 in Southern Sudan may agree on mechanisms or arrangements to enhance inter-state co-ordination and co-operation.

PART FOUR

THE GOVERNMENT OF SOUTHERN SUDAN

Establishment of the Government of Southern Sudan

53. (1) There shall be established in Southern Sudan a government to be known as the Government of Southern Sudan.
- (2) The Government of Southern Sudan is the institution around which the people of Southern Sudan are politically, economically, socially and culturally organized.
- (3) The powers of the Government of Southern Sudan emanate from the will of the people of Southern Sudan, the Comprehensive Peace Agreement, this Constitution and the Interim National Constitution.
- (4) The City of Juba shall be the capital of Southern Sudan and the seat of the Government of Southern Sudan. Its territory and administration shall be defined and regulated by law.

Organs of the Government of Southern Sudan

54. The Government of Southern Sudan shall have the following organs:
- (a) the Legislature;
 - (b) the Executive; and
 - (c) the Judiciary.

Powers and Competences of the Government of Southern Sudan

55. The Government of Southern Sudan shall exercise exclusive legislative and executive authority on all functional areas in Schedule B; it shall also exercise legislative and executive authority on all concurrent and residual matters as set forth in schedule D read together with schedules E and F herein.

Primary Responsibilities of the Government of Southern Sudan

56. (1) The primary responsibilities of the Government of Southern Sudan shall be, *inter alia*:
- (a) the maintenance of peace and security;
 - (b) reconstruction and development;
 - (c) promotion of good governance and welfare of the people;
 - (d) implementation of the Comprehensive Peace Agreement;
 - (e) exercising authority in respect of Southern Sudan and the States of Southern Sudan;
 - (f) acting as the link between the National Government and the States of Southern Sudan; and
 - (g) ensuring the protection of the rights and interests of the people in Southern Sudan.
- (2) The Government of Southern Sudan shall discharge its duties and exercise its powers as set forth in the Comprehensive Peace Agreement, this Constitution, the Interim National Constitution, and any other agreement relating to the development and reconstruction of Southern Sudan.

PART FIVE

SOUTHERN SUDAN LEGISLATURE

CHAPTER I

ESTABLISHMENT, COMPOSITION, POWERS AND FUNCTIONS OF THE SOUTHERN SUDAN LEGISLATURE

Establishment of the Southern Sudan Legislative Assembly

57. (1) There shall be established in Southern Sudan a legislature to be known as the Southern Sudan Legislative Assembly.
- (2) The legislative competences of the Government of Southern Sudan shall vest in the Southern Sudan Legislative Assembly in respect of all matters

assigned to it in Schedules B and D read together with Schedules E and F herein.

- (3) The Assembly shall exercise its legislative powers through bills assented to by the President of the Government of Southern Sudan in accordance with this Constitution.

Composition of the Assembly

58. (1) The Southern Sudan Legislative Assembly shall consist of:
 - (a) members directly elected to represent territorial constituencies;
 - (b) women, who shall constitute at least twenty- five percent of the total membership; and
 - (c) such number of representatives of other categories as may be determined by law.
- (2) Members of the Southern Sudan Council of Ministers who are not members of the Assembly shall participate in the deliberations of the Southern Sudan Legislative Assembly but shall not have the right to vote.
- (3) Following the outcome of the population census, the Government of Southern Sudan shall determine the number of electoral constituencies for Southern Sudan Legislative Assembly after consultation with the National Election Commission and the Presidency of the Republic.
- (4) Members of the Southern Sudan Legislative Assembly shall be elected through universal adult suffrage in free and fair elections and by secret ballot.

Powers and Functions of the Assembly

59. (1) The Southern Sudan Legislative Assembly represents the will of the people of Southern Sudan and shall foster their unity and that of the nation, exercise legislative functions, oversee the Executive, and promote the decentralized system of government in Southern Sudan.
- (2) Without prejudice to the generality of sub-Article (1) above, the Southern Sudan Legislative Assembly shall exercise the following functions:-
 - (a) consider and pass amendments to this Constitution;
 - (b) enact legislations on all matters assigned to it by the Comprehensive Peace Agreement, this Constitution and the Interim National Constitution;
 - (c) discuss statements by the President of the Government of Southern Sudan and take any decisions as may be necessary;

- (d) authorize annual allocation of resources and revenue, in accordance with Article 87 of this Constitution;
- (e) reconsider a bill which has been rejected by the President of the Government of Southern Sudan under Article 85(2) herein;
- (f) oversee the performance of Southern Sudan Government organs;
- (g) approve appointments as required by this Constitution or the law;
- (h) impeach the President and the Vice President of the Government of Southern Sudan;
- (i) approve plans, programmes and policies of the Government of Southern Sudan;
- (j) approve the annual budgets;
- (k) ratify bilateral technical cooperation agreements;
- (l) adopt resolutions on matters of public concern;
- (m) summon ministers to answer questions of members of the Assembly on matters related to their Ministries;
- (n) interrogate ministers about their performance or the performance of their ministries and may cast a vote of no confidence against any minister;
- (o) enact legislations to regulation of the conditions and terms of service of the Southern Sudan Judiciary and its oversight mechanisms;
- (p) oversee Southern Sudan Reconstruction and Development Fund; and
- (q) perform any other functions determined by this Constitution, the Interim National Constitution or the law.

Seat of the Assembly

60. 1. The Southern Sudan Legislative Assembly shall convene its sessions at its seat in the Southern Sudan Capital, Juba, but not withstanding the above, the Speaker may call the Assembly for an extraordinary sitting to convene at any other place in Southern Sudan.

Eligibility for Membership

61. (1) A candidate for membership of the Southern Sudan Legislative Assembly shall:-
- (a) be a Sudanese;
 - (b) be at least twenty-one years of age;
 - (c) be of sound mind;
 - (d) be literate; and
 - (e) not have been convicted during the last seven years of an offence involving honesty or moral turpitude.
- (2) Membership of the Southern Sudan Legislative Assembly shall not be combined with the membership of either the National Legislature or National Council of Ministers.

- (3) Members of the Southern Sudan Legislative Assembly and Southern Sudan Council of Ministers shall not be eligible for membership of state legislatures or state councils of ministers while occupying the aforementioned positions.

Loss of Membership of the Assembly

62. (1) Membership of the Southern Sudan Legislative Assembly shall be lost by a resolution passed by this body in any of the following cases:
- (a) mental infirmity or physical incapacity;
 - (b) conviction for an offence involving honesty or moral turpitude;
 - (c) absence from a number of sittings of the Assembly without permission or acceptable reasons, as shall be determined by the Assembly regulations;
 - (d) announcement of his or her written resignation in the Assembly;
 - (e) change of political affiliation or party on whose ticket he or she was elected to the Assembly;
 - (f) assumption of any constitutional office in the national government or any state government; and
 - (g) death.
- (2) Upon vacation of the seat of a member of the Southern Sudan Legislative Assembly, his or her successor shall be elected in the appropriate manner prescribed by this Constitution and the law within a period of sixty days.

By-elections

63. (1) When a vacancy occurs in respect of any constituency, the Speaker of the Assembly shall in writing notify the National Elections Commission within ten days from the occurrence of that vacancy.
- (2) A by-election to fill the vacancy shall be held within sixty days following occurrence of the vacancy.
- (3) No by-election to fill a vacancy may be held within the three months prior to the next general elections.

Oath of a Assembly Member

64. To assume his or her functions, every member of the Southern Sudan Legislative Assembly shall take the following oath before the Assembly:

“I....., having been elected as Member of the Southern Sudan Legislative Assembly, do hereby swear by Almighty God /solemnly affirm/ that I will bear faith and allegiance to Southern Sudan and its people; that I will obey

and respect this Constitution and the Interim National Constitution and abide by the law; and that I will faithfully and conscientiously discharge my duties as a member of the Southern Sudan Legislative Assembly and serve the people of Southern Sudan to the best of my ability; and so help me God/ God is my witness.

Term of the Assembly

65. (1) The term of the Southern Sudan Legislative Assembly shall be five years commencing from the date of its first sitting.
- (2) General elections for the Southern Sudan Legislative Assembly shall be held not later than the end of the fourth year of the Interim Period.

Determination on Objections Related to Membership

66. Objection regarding the validity of nomination or election of a member from a constituency in Southern Sudan to either the National Legislature or Southern Sudan Legislative Assembly shall be determined by competent courts of law in Southern Sudan in accordance with the provisions of the national elections law.

Immunity of Members of the Assembly

67. (1) No criminal proceedings shall be initiated against a member of the Southern Sudan Legislative Assembly; nor shall any measure be taken against his or her person or belongings without permission from the Speaker, except where he or she is caught committing an offence for which the police may arrest without warrant.
- (2) In case a member is charged with a serious crime, the Assembly may waive the immunity of the member concern.

Sessions of the Assembly

68. (1) The Southern Sudan Legislative 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) Without prejudice to Article 103 (2) (h) herein, the Assembly shall determine the commencement and closure dates of its sessions.
- (3) The Assembly may convene an emergency or extraordinary session on the request of half of its members or upon a call from the President of the Government of Southern Sudan.

Officers of the Assembly

69. (1) The Assembly shall have a Speaker and a Deputy Speaker to be elected from among its members at the first sitting.
- (2) The Speaker shall preside over sittings of the Assembly, control order and supervise the administrative affairs thereof. He or she shall represent the Assembly in and outside Southern Sudan.
- (3) The Assembly shall elect its other leaders and chairpersons of the specialized committees and members of ad hoc committees as may be determined by its internal regulations.
- (4) The Speaker, upon approval of the Assembly, shall appoint a Clerk for the Assembly, who shall not be a member of the Assembly. The Clerk of the Assembly shall be responsible for preparing the sessions of the Assembly and running of its administrative affairs under the supervision of the Speaker.
- (5) The Assembly shall consider broad inclusiveness in the apportionment of its positions.

Emoluments of Members of the Assembly

70. (1) Members of the Southern Sudan Legislative Assembly shall be paid emoluments and provided with facilities as shall be determined by law.
- (2) A member of the Assembly may hold any other office with remuneration or engage in any profit making business; provided that such office or business does not compromise his or her duty as a member.

Leader of the Opposition

71. (1) The largest party or coalition of parties in the Southern Sudan Legislative Assembly not forming the government shall elect from among its members of the Assembly the Leader of the Opposition.
- (2) In relation to the conduct of business of the Assembly, the Leader of the Opposition shall:
- (a) rank fourth in precedence after the President and the Vice President of the Government of Southern Sudan, and the Speaker in that order; and
 - (b) have the right of second reply, after the minister designated to lead Government Business in the Assembly, to an address to the Assembly by the President of the Government of Southern Sudan.

- (3) The Standing Orders of the Assembly shall provide for the effective participation of the Leader of Opposition in the Assembly.

Committees of the Assembly

72. (1) The Assembly shall have standing specialized committees and may establish ad hoc committees for the efficient discharge of its functions.
- (2) The functions of the standing and ad hoc committees shall be determined by regulations of the Assembly.

Regulations of the Assembly

73. (1) The Assembly, on the initiative of its Speaker, shall make internal regulations for the conduct of its business.
- (2) The Speaker shall ensure that the internal regulations of the Assembly are respected and enforced.

Quorum

74. (1) The quorum for ordinary sittings of the Assembly shall be more than half of the members; the internal regulations may provide for a reduced quorum that may not apply for the final presentation of bills.
- (2) Except as otherwise provided for in this Constitution, the decisions of the Assembly shall be by majority of votes of the members present and voting. If the votes are equally divided, the Speaker or any person presiding, shall have no casting vote and the motion shall be rendered lost.

Publicity of Sittings of the Assembly

75. The sittings of the Assembly shall be open to the public; its proceedings shall be published and may also be broadcast. However, the Assembly may decide according to its internal regulations that certain deliberations take place in camera.

Passing Legislative Resolutions

76. Resolutions of the Assembly shall, whenever possible, be taken by unanimity or consensus. Alternatively, resolutions shall be passed by simple majority of those present and voting, save in cases where this Constitution provides otherwise.

Privileges of Members of the Assembly

77. Members of the Assembly shall 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 member, nor shall he or she be held accountable before any court of law only by reason of views or opinions that he or she might have expressed in the course of performing his or her duties.

Address by the President of the Government of Southern Sudan

78. The President of the Government of Southern Sudan may personally or by a message address the Southern Sudan Legislative Assembly. The Assembly shall accord priority to such request over any other business. The President may also request the opinion of the Assembly on any subject.

Address by the Vice President and Statements by Ministers and Governors

79. (1) The Vice President of the Government of Southern Sudan may request to address the Assembly. The Assembly shall provide an opportunity for hearing such address as promptly as possible.
- (2) A minister of the Government of Southern Sudan may request to deliver a statement before the Assembly.
- (3) The Assembly may request a Governor of a state in Southern Sudan to make a statement before it on any important matter concerning his or her state for information.

Questions addressed to Ministers by Assembly Members

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

Request of Statements

81. The Assembly may request a minister of the Government of Southern Sudan to deliver before it a statement on any matter of public concern.

General Summons

82. (1) The Assembly or any of its committees may summon any public official or any person within Southern Sudan, other than the President and the Vice President of the Government of Southern Sudan to testify or give opinion before it.

- (2) Inquiry on any matter that falls within the direct responsibility of the Government of Southern Sudan may only be made after notifying the President of the Government of Southern Sudan.
- (3) Any person who refuses to appear before the Assembly or any of its committees or refuses to produce any documents as required under sub-Article (1) above commits an offence punishable by law.

Tabling of Bills

83. (1) The President or the Council of Ministers of the Government of Southern Sudan may cause a bill to be presented by a minister before the Assembly.
- (2) A member of the Assembly may table a private bill before the Assembly on a matter that falls within its competence.
- (3) A private member bill shall not be tabled before the Assembly save after having been referred to the appropriate committee to determine whether it involves an important issue of public interest.
- (4) A committee of the Assembly may present before the Assembly a bill on any issue within its competence.

Procedures for Presentation and Consideration of Bills

84. (1) Bills presented to the Assembly shall be submitted for the first reading by being cited by title. The bill shall then be submitted for a second reading for general deliberation and approval in principle. Should the bill be passed in the second reading, there shall be a third reading for deliberation in detail and introduction of, and decision upon, any amendment. The bill shall then be submitted in its final form for the final reading, at which 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 appropriate committee of the Assembly, which shall make a general evaluation report for the purpose of the second reading. The committee shall also present a report on the amendments that the Committee might or might not have endorsed in the third reading for the decision of the Assembly; the Speaker may also refer the bill once again to the appropriate committee to prepare a report in a final draft in preparation for the final reading.
- (3) The Speaker of the Assembly or the appropriate committee may seek expert opinion on the viability and rationale of the bill; an interested body may also be invited to present views on the impact and propriety of the bill.

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

Assent of the President of the Government of Southern Sudan

85. (1) Any bill approved by the Assembly shall not become law unless the President of the Government of Southern Sudan assents to it and signs it into law. If the President withholds assent for thirty days without giving reasons, the bill shall be deemed to have been so signed.
- (2) Should the President of the Government of Southern Sudan withhold assent to the bill and give reasons within the aforementioned thirty days, the bill shall be re-introduced to the Assembly to consider the observations of the President of the Government of Southern Sudan.
- (3) The bill shall become law if the Assembly again passes it by a two-thirds majority of all its members, and the assent of the President of the Government of Southern Sudan shall not be required for that bill to come into force.

Provisional Orders

86. (1) Should the Assembly not be in session, the President of the Government of Southern Sudan may, 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. Where the Assembly ratifies the provisional order as it is, it shall be promulgated as law, but where the same is rejected by the Assembly or where the Assembly session ends without it being ratified, the provisional order shall lapse with no retrospective effect. A bill on the same subject matter may again be re-introduced before the Assembly and be considered under the normal procedure for consideration of bills.
- (2) Notwithstanding sub-Article (1) above, the President of the Government of Southern Sudan shall not make any provisional order on matters affecting the Comprehensive Peace Agreement, the Bill of Rights, the decentralized system of government, general elections, annual allocation of resources and financial revenue, penal legislations or alteration of administrative boundaries of the states of Southern Sudan .
- (3) Any 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.
- (4) The Assembly may delegate to the President of the Government of Southern Sudan the power to approve bilateral international and regional agreements while the Assembly is not in session; however, such agreements shall be

subject to subsequent approval by the Assembly and shall be deposited before it as soon as it is convened.

Bills Pertaining to Allocation of Resources and Revenues

87. (1) The President of the Government of Southern Sudan shall cause to be presented to the Assembly, before the beginning of the financial year, a bill of the allocation of resources and revenue in accordance with the provisions of this Constitution. The Assembly shall convene to approve, modify or reject that bill.
- (2) The financial year shall be twelve months beginning from January 1, and ending on December 31 each year.

General Budget Proposal, Estimates and Related Bills

88. (1) The President of the Government of Southern Sudan shall cause to be presented to the Southern Sudan Legislative Assembly before the beginning of the financial year, the bill on the general budget of Southern Sudan, including a general evaluation of the economic and financial performance and situation, detailed estimates of proposed revenue and expenditure for the forthcoming year compared to those of the previous financial year, a statement of the general budget, any reserve funds, transfers thereto or allocations therefrom, explanations of any special budgets or financial estimates, policies or measures to be taken by the Government of Southern Sudan in the financial and economic affairs within the framework of the general budget.
- (2) The President of the Government of Southern Sudan shall cause to be submitted to the Assembly proposals of total expenditure entered into the budget as an appropriation bill and proposals for taxes, fees and other levies as well as borrowing, investment or saving bonds as financial bills.
- (3) The Assembly shall discuss, and may amend, reject or adopt the general budget bill chapter by chapter including schedules, and it shall thereafter pass the appropriation bill in its totality. Where the bill 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 not also be spent save by a supplementary appropriation law.
- (4) After the passing of the budget, no funds shall be transferred from one chapter to another, nor shall any money be spent on an item that is not provided for in the budget without the approval of the Assembly.
- (5) In the event that the Assembly fails to pass the budget bill within a period of forty-five days, the President of the Government of Southern Sudan shall issue

a presidential decree on the budget for that year, and such budget shall be deemed to have been passed by the Assembly in accordance with the provisions of this Constitution.

Private Member Financial Bill

89. (1) No member of the Assembly, outside the context of the deliberations of the draft general budget, shall introduce any financial bill or move any amendment to a bill having the object or effect of abolishing, imposing or increasing any tax or imposing any charge upon the public revenue or reserves, save with the prior consent of the Southern Sudan Council of Ministers.
- (2) The Minister of Finance, on the authority of the Council of Ministers, shall issue a certificate that a proposed bill or an amendment has such object or effect and such certification shall be conclusive.
- (3) A bill or an amendment shall not be deemed to have such object or effect by reason that it includes provisions for the imposition of fines or other pecuniary penalties or the payment of fees for services rendered.

Provisional and Supplementary Financial Measures

90. (1) Notwithstanding the provisions of Article 86 (2) herein, the President of the Government of Southern Sudan may in the public interest, make a presidential order having the force of law, providing that the imposition of any tax, or fee or the amendment thereof shall come into force, pending submission of a bill requiring the same to the Assembly. When that financial bill is adopted or rejected, the force of the presidential order shall cease without retrospective effect in relation to rejection for amendment of the Bill.
- (2) Where the procedure of adopting the general budget and the appropriation bill is delayed beyond the beginning of the financial year, expenditure shall continue, pending adoption of the general budget, in accordance with the estimates approved for the previous year, as if the same has been appropriated by law for the new year.
- (3) Whenever new circumstances occur or a matter of public concern proves not to have been satisfactorily addressed by the general budget, the President of the Government of Southern Sudan may during the financial year cause to be submitted to the Assembly, a financial bill, a supplementary appropriation or an allocation from the reserve funds, to which the same provisions set out in respect of the general budget bill shall apply.
- (4) Without prejudice to the provisions of Article 88 (3) herein, the following expenditures shall be paid out of the consolidated reserve funds:

- (a) emoluments of the President of the Government of Southern Sudan;
- (b) expenses of the Southern Sudan State House;
- (c) emoluments of the Judiciary of Southern Sudan;
- (d) Government of Southern Sudan contractual financial obligations;
- (e) repayment of Government of Southern Sudan external debts under any loan agreements;
- (f) payment of any money the Government of Southern Sudan is required to pay under a court order arising out of any litigation or as a result of an arbitration award or any other settlement having similar legal effect; and
- (g) any other expenses as shall be regulated by law.

Final Accounts

91. The President of the Government of Southern Sudan shall cause to be presented to the Assembly during the six months following the end of the financial year, the final accounts for all revenue and expenditure as are set forth in that year, as well as expenditure withdrawn from the reserve funds; the Auditor General of Southern Sudan shall in accordance with Article 195 (5) herein present his or her report on such accounts to the Assembly.

Delegation of Powers of Subsidiary Legislation

92. The Assembly may, by law, delegate to the President of the Government of Southern Sudan, the 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 Assembly and be subject to adoption or amendment by a resolution of the Assembly in accordance with the provisions of its regulations.

Validity of the Proceedings of the Assembly

93. No court or any other authority shall call into question the validity of any proceedings of the Southern Sudan Legislative Assembly on the basis of violation of its internal regulations. A certificate duly signed by the Speaker shall be deemed to be conclusive evidence of the validity of the said proceedings.

CHAPTER II

INTERIM PROVISIONS FOR THE SOUTHERN SUDAN LEGISLATIVE ASSEMBLY

94. (1) Prior to elections, there shall be constituted a Transitional Southern Sudan Legislative Assembly to adopt this Constitution; it shall thereafter reconstitute itself into the Southern Sudan Legislative Assembly.

- (2) The Transitional Southern Sudan Legislative Assembly shall be an inclusive Constituent Legislature composed of one hundred and seventy members appointed by the President of the Government of Southern Sudan after broad consultation with the relevant political forces and on the basis of the following percentages:
- (a) seventy percent representing the Sudan People's Liberation Movement;
 - (b) fifteen percent representing the National Congress Party; and
 - (c) fifteen percent representing the other Southern Sudan political forces.

PART SIX

THE SOUTHERN SUDAN EXECUTIVE

CHAPTER I

THE SOUTHERN SUDAN EXECUTIVE AND ITS POWERS

Composition of the Executive

95. The Southern Sudan Executive shall consist of the President and Vice President of the Government of Southern Sudan and a Council of Ministers.

Powers and Competences of the Executive

96. The Southern Sudan Executive shall exercise the executive powers on all matters as set forth in Schedules B and D, read together with Schedules E and F of this Constitution and any other competences conferred upon it by the Comprehensive Peace Agreement, this Constitution, the Interim National Constitution and the law.

CHAPTER II

THE PRESIDENT OF THE GOVERNMENT OF SOUTHERN SUDAN

The President

97. There shall be a President for the Government of Southern Sudan who shall be directly elected by the people of Southern Sudan in general elections according to this Constitution and the provisions set forth by the National Elections Commission in accordance with the electoral law.

Eligibility for the Office of the President

98. A candidate for the office of the President of the Government of Southern Sudan shall:
- (a) be a Sudanese by birth;
 - (b) be of sound mind;
 - (c) be at least forty years of age;
 - (d) be literate; and
 - (e) not have been convicted of an offence involving honesty or moral turpitude.

Nomination and Election of the President

99. (1) Any eligible voter may nominate whoever he or she deems fit for the office of the President of the Government of Southern Sudan; however, the presidential candidate shall be seconded by a number of eligible voters as shall be specified by law.
- (2) The presidential candidate who wins more than fifty percent of the total votes of the polling electorate shall be the President elect.
- (3) Where the percentage mentioned in sub-Article (2) above is not attained, there shall be a runoff election between the two presidential candidates who have obtained the highest number of votes.
- (4) Any objection regarding the validity of the presidential election results shall be dealt with in accordance with the electoral law.

Postponement of Election of the President

100. (1) Where the Southern Sudan Council of Ministers determines that it is not practicable to hold elections due to natural disaster, catastrophe, war or hostilities that, in each case, materially affects a substantial portion of the territory of Southern Sudan, the Southern Sudan Legislative Assembly may by a resolution adopted by a three-quarters majority vote of all members recommend to the National Elections Commission the postponement of elections for the office of the President of the Government of Southern Sudan for a period of not more than sixty days at any one time.
- (2) Pending the holding of the postponed elections, the incumbent President of the Government of Southern Sudan shall continue as a caretaker President; his or her tenure shall be extended until the President elect takes the oath of office.

Oath of the President

101. To assume office, the President elect of the Government of Southern Sudan shall take the following oath before the Southern Sudan Legislative Assembly:

“ I....., do hereby swear by the Almighty God/ solemnly affirm, that as the President of the Government of Southern Sudan, I shall be faithful and bear true allegiance to Southern Sudan and shall diligently and honestly discharge my duties and responsibilities in a consultative manner to foster the development and welfare of the people of Southern Sudan; that I shall obey, preserve and defend this Constitution and the Interim National Constitution and abide by the law; and that I shall protect and promote the unity of the people of Southern Sudan and consolidate the democratic decentralized system of government and preserve the integrity and dignity of the people of Southern Sudan; so help me God/ and God is my witness”.

Tenure of the Office of the President

102. The tenure of the office of the elected President of the Government of Southern Sudan shall be five years, commencing from the date of assumption of office, and the same President may be re-elected for one more term only.

Functions of the President

103. (1) The President of the Government of Southern Sudan is the head of Government of Southern Sudan and the Commander-in-Chief of the Sudan People’s Liberation Army. He or she represents the will of the people, and shall exercise the powers vested in the office of the President of the Government of Southern Sudan by the Comprehensive Peace Agreement, this Constitution and the Interim National Constitution.
- (2) The President of the Government of Southern Sudan shall, *inter alia*, perform the following functions:
- (a) serve as First Vice President of the Republic of the Sudan in the circumstances set forth in Article 62 (1) of the Interim National Constitution;
 - (b) preserve the security of Southern Sudan and protect its territorial integrity;
 - (c) supervise constitutional executive institutions and provide exemplary leadership in public affairs in Southern Sudan and in the Republic of the Sudan;
 - (d) appoint holders of constitutional and judicial posts in accordance with this Constitution and the law;
 - (e) preside over the Southern Sudan Council of Ministers;

- (f) request, pursuant to Article 199 (2) of this Constitution, the President of the Republic to declare a state of emergency in Southern Sudan or any part thereof;
- (g) initiate constitutional amendments and legislations and assent to bills passed by the Southern Sudan Legislative Assembly by signing such bills into law;
- (h) summon, adjourn or prorogue the Southern Sudan Legislative Assembly in consultation with the Speaker;
- (i) confirm death sentences, grant pardons, and remit convictions or penalties according to this Constitution and the law of Southern Sudan;
- (j) appoint his or her advisors;
- (k) appoint ad hoc committees and commissions;
- (l) confer honours;
- (m) generally represent the Government and the people of Southern Sudan; and
- (n) perform any other function as may be prescribed by law.

Vacancy of Office of the President

104. (1) The office of the President of the Government of Southern Sudan shall fall vacant in any of the following cases:
- (a) expiration of the term of office;
 - (b) acceptance of his or her written resignation by the Southern Sudan Legislative Assembly;
 - (c) impeachment in accordance with the provisions of this Constitution;
 - (d) mental infirmity or physical incapacity based on an official medical report approved by a two-thirds majority of all members of the Southern Sudan Legislative Assembly; and
 - (e) death.
- (2) Should the office of the elected President of the Government of Southern Sudan fall vacant, the post shall be assumed by the Vice President pending elections that shall be conducted within sixty days from the date of occurrence of the vacancy and in accordance with Article 99 of this Constitution.

Immunity and Impeachment of the President and Vice President

- 105 (1) The President and Vice President of the Government of Southern Sudan shall be immune from any legal proceedings and shall not be charged or sued in any court of law during their tenure of Office
- (2) Notwithstanding sub-article (1) above and in case of high treason, gross violation of this constitution or gross misconduct in relation to Southern

Sudan affairs, the President or Vice President of the Government of Southern Sudan may be charged before the Supreme Court of Southern Sudan upon a resolution passed by a three-quarters majority of all the members of the Assembly, in case of the President, or a two-thirds majority of all members of the Assembly in case of the Vice President.

- (3) The President of the Supreme Court shall, within seven days after receipt of the impeachment notice referred to under sub-Article (2) above, constitute a tribunal comprising three Justices of the Supreme Court to investigate the allegation in the notice and to report its findings to the constitutional panel of the Supreme Court comprising all the Justices of the Court.
- (4) The President or Vice President shall be entitled to appear at the proceedings of the tribunal and to be represented by a lawyer or other expert or any other person of his or her choice.
- (5) If the constitutional panel of the Southern Sudan Supreme Court convicts the President or Vice President as the case may be, it shall communicate its final verdict to the Assembly, and he or she shall be deemed to have forfeited the office.
- (6) If the notice for the removal of the President or Vice President is on the ground of mental or physical incapacity, the consultation with the head of the Southern Sudan Medical Commission five qualified and eminent medical specialists are to examine the President or the Vice President in respect of the alleged incapacity and to present its findings to the Assembly
- (7) The President or Vice President, as the case may be, shall submit himself or herself to the Medical Board for necessary examination as required.
- (8) If the Medical Board determines that the President or Vice President, by reason of mental or physical incapacity is unable to perform the functions of the office of the President or Vice President, and the Assembly passes the resolution for the removal of either of them supported by the votes of not less than three-quarters in case of the President and two-thirds in case of the Vice President of all members of the Assembly the President or Vice President shall cease to hold office.

Contesting Acts of the President

106. Any person aggrieved by an act of the President of the Government of Southern Sudan may contest such act:

- (a) before the Supreme Court of Southern Sudan, if the alleged act involves a violation of this Constitution, a Southern Sudan state constitution, the Bill of Rights, the decentralized system of government, or the Comprehensive Peace Agreement; and
- (b) before any other competent court of law, if the allegation is based on any other legal grounds.

Appointment and Removal of the Vice President

107. (1) The Vice President of the Government of Southern Sudan shall be appointed by the President of the Government of Southern Sudan subject to approval by a two-thirds majority of all members of the Assembly.
- (2) The Vice President of the Government of Southern Sudan may be removed by the President of the Government of Southern Sudan or by a decision passed by two-thirds majority of all members of the Assembly.
- (3) Should the post of the Vice President of the Government of Southern Sudan fall vacant for any reason, the President of the Government of Southern Sudan shall appoint a replacement.
- (4) The Vice President of the Government of Southern Sudan shall fulfil the conditions of eligibility for the office of the President of the Government of Southern Sudan.
- (5) To assume office, the Vice President of the Government of Southern Sudan shall take, before the President of the Government of Southern Sudan, the same oath taken by the President of the Government of Southern Sudan as prescribed by this Constitution.

Functions of the Vice President

108. The Vice President of the Government of Southern Sudan shall, *inter alia*, perform the following functions:
- (a) act as the President in the absence of the President of the Government of Southern Sudan;
 - (b) be a member of the Southern Sudan Council of Ministers;
 - (c) be a member of the Southern Sudan Security Committee; and
 - (d) perform any other functions or duties that may be assigned to him or her by the President of the Government of Southern Sudan.

Vacancy of Office of the Vice President

109. The office of the Vice President of the Government of Southern Sudan shall fall vacant in any of the following cases:
- (a) relief from office in accordance with provisions of Article 107 (2) herein;
 - (b) acceptance of his or her written resignation by the President of the Government of Southern Sudan;
 - (c) mental infirmity or physical incapacity based on an official medical report approved by a two-thirds majority of all members of the Southern Sudan Legislative Assembly; and
 - (d) death.

Presidential Advisors

110. (1) The President of the Government of Southern Sudan may appoint a limited number of Presidential Advisors and define their functions.
- (2) To assume office, a Presidential Advisor shall take, before the President of the Government of Southern Sudan, the same oath taken by a minister of the Government of Southern Sudan as prescribed by this Constitution.

CHAPTER III

INTERIM PROVISIONS FOR THE PRESIDENT OF THE GOVERNMENT OF SOUTHERN SUDAN

The Office of the President and its Vacancy before Elections

111. (1) Prior to the elections that shall be held during the Interim Period, the Chairman of the Sudan People's Liberation Movement, or his successor, shall be the President of the Government of Southern Sudan and Commander-in-Chief of the Sudan People's Liberation Army in accordance with this Constitution. By virtue of being the President of the Government of Southern Sudan, he or she shall be at the same time the First Vice President of the Republic of the Sudan.
- (2) Should the office of the President of the Government of Southern Sudan fall vacant prior to elections, the office shall be filled by the nominee of the Sudan People's Liberation Movement within two weeks of the occurrence of that vacancy.
- (3) Should the office of the President of the Government of Southern Sudan fall vacant prior to elections, and before the selection of the nominee of the Sudan People's Liberation Movement, the functions of the President of

the Government of Southern Sudan shall be assumed by the Vice President of the Government of Southern Sudan.

CHAPTER IV
SOUTHERN SUDAN COUNCIL OF MINISTERS
Establishment of the Council of Ministers

112. (1) There shall be established a Southern Sudan Council of Ministers to be appointed by the President of the Government of Southern Sudan, in consultation with the Vice President of the Government of Southern Sudan and approved by a simple majority of all members of the Southern Sudan Legislative Assembly. The Government of Southern Sudan shall be established with due regard to the need for inclusiveness in recognition of competence, integrity, gender, ethnic and regional diversity.
- (2) The President and Vice President of the Government of Southern Sudan shall be members of the Southern Sudan Council of Ministers.
- (3) The President of the Government of Southern Sudan shall ensure that at least twenty-five percent of members of the Council of Ministers are women.

Composition and Competences of the Council of Ministers

113. (1) The Southern Sudan Council of Ministers shall consist of the President and Vice President of the Government of Southern Sudan and Ministers.
- (2) The Southern Sudan Council of Ministers shall be the highest executive authority in Southern Sudan.
- (3) Without prejudice to the powers conferred upon the President of the Government of Southern Sudan by this Constitution, decisions of the Council of Ministers shall prevail over all other executive decisions. Such decisions shall be adopted by consensus or simple majority.
- (4) Deliberations of the Southern Sudan Council of Ministers shall be confidential.
- (5) Membership of the Southern Sudan Council of Ministers shall not be combined with membership of the National and state Executive or Legislature.

Oath of a Minister

114. To assume office, a minister of the Government of Southern Sudan shall, take the following oath before the President of the Government of Southern Sudan:

“ I....., do hereby swear by the Almighty God/solemnly affirm/, that as a minister in the Government of Southern Sudan, I shall be faithful and bear true allegiance to Southern Sudan and shall diligently and honestly discharge my duties and responsibilities and strive to foster the development and welfare of its people; that I shall obey, preserve and defend this Constitution and the Interim National Constitution and abide by the law; and that I shall protect and promote the unity of the people of Southern Sudan and consolidate the democratic decentralized system of government and preserve the integrity and dignity of the people of Southern Sudan; so help me God/ and God is my witness”.

Functions of the Council of Ministers

115. The Southern Sudan Council of Ministers shall have the following functions:

- (a) general planning and administration of Southern Sudan and implementation of the Comprehensive Peace Agreement;
- (b) approval of the general policies initiated by the respective ministries;
- (c) overseeing, receiving and discussing reports about the executive and administrative performance of ministries;
- (d) initiating, negotiating and concluding international and regional agreements on matters of culture, sports, trade, investment, credit, loans, grants and technical assistance with foreign governments and foreign non-governmental organizations;
- (e) receiving reports from governors about executive performance of Southern Sudan states for information and coordination with the respective states;
- (f) receiving reports on matters that are concurrent or residual and deciding whether it is competent to exercise such power in accordance with Schedules E and F herein. If it so decides, it shall notify the respective state in Southern Sudan of its intention to exercise such power. In case a state in Southern Sudan objects thereto, a committee shall be set up by the two levels concerned to amicably resolve the matter before resorting to the Southern Sudan Supreme Court;
- (g) keeping the Southern Sudan Legislative Assembly informed about the progress of the implementation of the Comprehensive Peace Agreement;
- (h) acting as a link between the National Government on the one hand and the institutions of the Government of Southern Sudan and Southern Sudan states on the other;
- (i) receiving requests originating from the National Government to the institutions of the Government of Southern Sudan and the states therein in connection with matters of mutual interest;
- (j) providing reports upon the request of the Southern Sudan Legislative Assembly;
- (k) formulating internal rules, procedures and regulations for the conduct of its business;
- (l) mobilizing the public to achieve the objectives of government policy and promote public life;

- (m) implementing Southern Sudan legislations and applicable national legislations in Southern Sudan;
- (n) formulating and implementing government policies;
- (o) coordinating the functions and reviewing the performance of the ministries, departments and administrations of the Government of Southern Sudan;
- (p) initiating legislative bills before the Southern Sudan Legislative Assembly; and
- (q) performing any other executive functions provided for in this Constitution or the law.

Functions of a Minister

116. (1) A minister in the Government of Southern Sudan shall be the head of his or her ministry and his or her decisions shall prevail therein. However, the Southern Sudan Council of Ministers may review, amend or cancel such decisions; the President of the Government of Southern Sudan may suspend the decision of a minister pending such review or cancellation.
- (2) Southern Sudan ministers shall:
- (a) collaborate and establish good working relations with corresponding ministers at state level in fulfilment of their respective constitutional obligations;
 - (b) perform any public or political role and provide leadership in public affairs to achieve the policy objectives of the Government of Southern Sudan; and
 - (c) perform any other functions or powers assigned by law or delegation.

Appointment and Removal of Ministers

117. (1) Ministers of the Government of Southern Sudan shall be appointed and removed from office by the President of the Government of Southern Sudan, in consultation with the Vice President.
- (2) Appointment of the Council of Ministers of the Government of Southern Sudan shall be confirmed by a resolution of the Southern Sudan Legislative Assembly adopted by a simple majority vote of all members.
- (3) Ministers of the Government of Southern Sudan shall be selected with due regard to the need for inclusiveness based on ethnic and regional diversity and gender.

Collective and Individual Responsibility of Ministers

118. (1) A minister of the Government of Southern Sudan shall be individually answerable to the President of the Government of Southern Sudan, the Southern Sudan Council of Ministers and the Southern Sudan Legislative Assembly for the performance of his or her ministry.
- (2) The Southern Sudan Council of Ministers shall be collectively answerable to the President of the Government of Southern Sudan and the Southern Sudan Legislative Assembly in the performance of its functions.
- (3) Ministers of the Government of Southern Sudan shall be bound by collective decisions of the Council of Ministers.

Vacancy of the Office of a Minister

119. The office of a minister of the Government of Southern Sudan shall fall vacant in any of the following cases:
- (a) acceptance of a written resignation by the President of the Government of Southern Sudan;
 - (b) removal from office by the President of the Government of Southern Sudan after consultation with the Vice President of the Government of Southern Sudan;
 - (c) removal from office by the President of the Government of Southern Sudan on the ground of mental infirmity or physical incapacity based on an official medical report;
 - (d) resolution of the Southern Sudan Legislative Assembly, as set forth in Article 120 (2) of this Constitution; and
 - (e) death.

Vote of No Confidence Against a Minister

120. (1) The Southern Sudan Legislative Assembly may, by a resolution supported by a two-thirds majority of all its members pass a vote of no confidence against a minister.
- (2) Upon a vote of no confidence being passed against a minister, he or she shall resign or be removed from office by the President of the Government of Southern Sudan.
- (3) Proceedings for a vote of no confidence against a minister shall be regulated by the Conduct of Business Regulations of the Assembly.

Declaration of Wealth and Prohibition of Private Business

121. (1) All executive and legislative constitutional office holders, Justices, and senior civil service officials at all levels of government in Southern Sudan shall, upon assumption of their offices, make confidential declarations of their assets and liabilities including those of their spouses and children in accordance with the law.
- (2) The President, Vice President, ministers and advisors of the Government of Southern Sudan, governors and state ministers, and other constitutional office holders shall, during their tenure of office, neither practice any private profession, transact commercial business, nor receive remuneration or accept employment of any kind from any source other than the Government of Southern Sudan or a state government as the case may be.

Emoluments and Remuneration

122. The President and Vice President of the Government of Southern Sudan, Ministers and Advisors of the Government of Southern Sudan, Governors, state ministers and other constitutional office holders shall be paid such emoluments and other remuneration, and on leaving office, receive such benefits as shall be regulated by law.

Confidentiality of Deliberations of the Council of Ministers

123. Deliberations of the Southern Sudan Council of Ministers shall be confidential; no minister shall disclose, communicate or reveal such deliberations save by permission of the Council of Ministers.

Contesting Ministerial Acts

124. Any person aggrieved by an act of the Southern Sudan Council of Ministers or a Southern Sudan minister may contest such act:
- (a) before the Supreme Court of Southern Sudan, if the alleged act involves a violation of this Constitution or the Interim National Constitution; and
 - (b) before any other court of law or competent authority if the allegation is based on other legal grounds.

CHAPTER V

INTERIM PROVISIONS FOR THE SOUTHERN SUDAN COUNCIL OF MINISTERS

Council of Ministers before Elections

125. Prior to elections, there shall be constituted an inclusive Southern Sudan Council of Ministers after broad consultation with the relevant political forces in accordance with the following percentages:
- (a) seventy percent representing the Sudan People's Liberation Movement;
 - (b) fifteen percent representing the National Congress Party; and
 - (c) fifteen percent representing the other Southern Sudan political forces.

PART SEVEN

THE JUDICIARY OF SOUTHERN SUDAN

The Judiciary of Southern Sudan

126. (1) Judicial power in Southern Sudan is derived from the people and shall be exercised by the courts in accordance with the customs, values, norms and aspirations of the people and in conformity with this Constitution and the law.
- (2) Judicial competence in Southern Sudan shall be vested in an independent decentralized institution to be known as the Judiciary of Southern Sudan.
- (3) The Judiciary of Southern Sudan shall be responsible for the maintenance of professional standards and training of judicial personnel throughout Southern Sudan.
- (4) The Judiciary of Southern Sudan shall have judicial competence to adjudicate on disputes and render judgments in accordance with this Constitution and the law.
- (5) In adjudicating cases of both civil and criminal nature, the courts shall, subject to the law, apply, *inter alia*, the following principles:
- (a) justice shall be done to all irrespective of their social or economic status, gender, religion or beliefs;
 - (b) justice shall not be delayed;
 - (c) adequate compensation shall be awarded to victims of wrongs;

- (d) voluntary reconciliation agreements between parties shall be recognized and enforced; and
 - (e) substantive justice shall be administered without undue regard to technicalities.
- (6) There shall be a substantial representation of women in the Judiciary of Southern Sudan having regard to competence, integrity, credibility and impartiality.
- (7) All organs and institutions at all levels of government in Southern Sudan shall obey and execute the judgments and orders of the courts.
- (8) The President of the Supreme Court of Southern Sudan, as the head of the Judiciary of Southern Sudan, shall be answerable to the President of the Government of Southern Sudan for the administration of the Judiciary.
- (9) The overall management of the Judiciary of Southern Sudan, its composition and functions shall be prescribed by law in accordance with the provisions of this Constitution.

Establishment and Structure of the Judiciary

127 The Judiciary of Southern Sudan shall be established and structured as follows:-

- (a) The Supreme Court of Southern Sudan;
- (b) Courts of Appeal;
- (c) High Courts;
- (d) County Courts; and
- (e) Other courts or tribunals as deemed necessary to be established in accordance with the provisions of this Constitution and the law.

Independence of the Judiciary

128. (1) The Judiciary of Southern Sudan shall be independent of the executive and the legislature. Its budget shall be charged on the consolidated fund and it shall have the necessary financial independence in the management thereof.
- (2) The Judiciary of Southern Sudan shall be subject to this Constitution and the law which the Judges must apply impartially and without political interference, fear or favour.
- (3) The executive and legislative organs at all levels of government in Southern Sudan shall respect and protect the independence of the Judiciary.

Composition of the Supreme Court of Southern Sudan

129. The Supreme Court of Southern Sudan shall be the highest court and shall consist of a President, a Deputy President and five other Justices.

Competences of the Supreme Court of Southern Sudan

130. (1) The Supreme Court of Southern Sudan shall:
- (a) be the court of final judicial instance in respect of any litigation or prosecution under Southern Sudan or state 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 this Constitution and the constitutions of Southern Sudan states at the instance of individuals, juridical entities or governments;
 - (c) adjudicate on the constitutionality of laws and set aside or strike down laws or provisions of laws of Southern Sudan or states of Southern Sudan that are inconsistent with this Constitution or the constitutions of Southern Sudan states to the extent of the inconsistency;
 - (d) be a court of review and cassation in respect of any criminal, civil and administrative matters arising out of 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 Legislative Assembly;
 - (f) review death sentences imposed by Southern Sudan courts in respect of offences committed under Southern Sudan laws;
 - (g) receive appeals against decisions and judgements of the courts of appeal;
 - (h) have original and final jurisdiction to resolve disputes between the states of Southern Sudan and between the Government of Southern Sudan and a State; this jurisdiction shall not extend to disputes relating to exclusive, concurrent or residual powers of the national government; and
 - (i) have such other competences as may be determined by law.
- (2) The Supreme Court shall sit in panels of three justices each on all matters; except that when sitting as a Constitutional panel it shall consist of all members of the Supreme Court. Where any of them is unable to sit on the Constitutional panel, the President of the Supreme Court shall confer powers upon the most senior justice of the court of appeal for that purpose.

- (3) Decisions of the Supreme Court shall be taken by majority of Justices in each panel.
- (4) The President of the Supreme Court shall regulate the functioning and procedures of the Supreme Court and its panels according to the law.

Courts of Appeal

131. The establishment, competences and procedures of Courts of Appeal shall be determined by law.

High Courts

132. (1) The High Court shall be the highest court at the level of a state in Southern Sudan and its establishment, competence, jurisdiction and procedures shall be determined by law.
- (2) The most senior judge of the High Court who shall be its president, shall be answerable to the Governor of the state for the performance and administration of the State Judiciary.
- (3) Decisions of the High Courts shall be appealed against before the Courts of Appeal.

County Courts and Other Courts

133. The establishment, competences and procedures of County Courts and other courts at lower levels in the states of Southern Sudan shall be determined by law.

Independence of Justices and Judges

134. (1) Justices and Judges of Southern Sudan are independent and shall perform their functions without interference. The provisions of this Constitution and the law shall protect their independence.
- (2) Justices and Judges shall uphold this Constitution and the rule of law and shall administer justice without fear or favour; they shall enjoy such immunities as shall be determined by law.
- (3) The tenure of office for Justices and Judges shall not be affected by their judicial decisions.

Appointment of Justices and Judges of Southern Sudan

135. (1) The President of the Government of Southern Sudan shall appoint the President, Deputy President and Justices of the Supreme Court, the

Presidents and Justices of the courts of appeal, having regard to competence, integrity, credibility and impartiality as shall be determined by this Constitution and the law.

- (2) The appointment of the President, Deputy President and Justices of the Supreme Court shall be subject to approval by a two-thirds majority of all members of the Assembly.
- (3) The Southern Sudan Legislative Assembly shall enact a law to provide for appointments, terms and conditions of service of Justices and Judges of Southern Sudan.
- (4) All Justices and Judges shall, before assuming their duties, take and subscribe to the judicial oath of allegiance as shall be prescribed by law.

Discipline of Justices and Judges

136. (1) Discipline of Justices and Judges shall be exercised by the President of the Supreme Court of Southern Sudan in accordance with the law.
- (2) Justices of the Supreme Court may only be removed by an order of the President of the Government of Southern Sudan for gross misconduct, incompetence and incapacity and upon the recommendation of the President of the Supreme Court in accordance with the law and subject to approval by a majority of two-thirds of all members of Southern Sudan Legislative Assembly.

Interim Provisions

137. The President of the Government of Southern Sudan shall, after the adoption of this Constitution and subject to Article 135(2) herein, appoint the President, Deputy President and Justices of the Supreme Court, the President and Justices of Appeal, having regard to competence, integrity, credibility and impartiality.

PART EIGHT

PUBLIC ATTORNEYS AND ADVOCACY IN SOUTHERN SUDAN

Public Attorneys and Legal Advisors

138. (1) The services of the public attorneys and legal advisors shall be decentralized and personnel shall be employed directly by the Government of Southern Sudan and the states.
- (2) The Southern Sudan Minister for Legal Affairs and Constitutional Development shall be the chief legal advisor of the Government of

Southern Sudan. The Minister shall be the prosecuting authority at the levels of the Government of Southern Sudan and the States and may perform such other functions of legal character as may be prescribed by law.

- (3) Public attorneys and legal advisors shall advise all levels of government in Southern Sudan, represent them in public prosecution, litigation and adjudication, and conduct pre-trial proceedings. They shall recommend law reform, strive to protect public and private rights, advise on legal matters and render legal aid.
- (4) Public attorneys and legal advisors at all levels of government in Southern Sudan shall perform their duties diligently according to this Constitution and the law.
- (5) Without prejudice to the generality of sub-Article (2) above, the Ministry of Legal Affairs and Constitutional Development shall, *inter alia*, be responsible for:
 - (a) drawing up, perusing and recommending approval or otherwise, of such agreements, contracts, and documents by whatever name called, to which the Government of Southern Sudan or a state government has an interest as specified by law;
 - (b) representing the government in court or any other legal proceedings to which any level of government is a party; and
 - (c) drafting legislation, including subsidiary legislation, for the government.
- (6) All executive institutions and organs of government in Southern Sudan shall comply with legal advice duly given by the Ministry of Legal Affairs and Constitutional Development.
- (7) The functions, immunities, emoluments, terms and conditions of service of the public attorneys and legal advisors at all levels of government in Southern Sudan shall be prescribed by law.
- (8) In the interest of justice and effectiveness in the execution of their legal duties, the National Ministry of Justice and Ministry of Legal Affairs and Constitutional Development of Southern Sudan shall co-ordinate, co-operate and assist each other in the fulfilment of their functions and may to this end, establish the necessary mechanisms and channels of implementation.

Interim Provisions

139. (1) Notwithstanding the provisions of Article 138 (1) above, the Public attorneys and legal advisors at levels of the Government of Southern Sudan and states shall be employed and serve under the authority of the Southern Sudan Ministry of Legal Affairs and Constitutional Development during the first four years of the Interim Period.
- (2) At the end of the four-year period as mentioned in sub-Article (1) above, the Ministry of Legal Affairs and Constitutional Development shall relinquish its authority and powers over state public attorneys and legal advisors and transfer them to the state governments. The terms and conditions of service of public attorneys and legal advisors in the states shall be regulated by state law.

Advocacy in Southern Sudan

140. (1) Advocacy is an independent private profession and it shall be regulated by law.
- (2) Advocates shall observe professional ethics, promote, protect and advance the fundamental rights and freedoms of citizens. They shall serve to prevent injustice, defend the legal rights and interests of their clients, seek conciliation between adversaries and may render legal aid for the needy according to law.

PART NINE

THE SOUTHERN SUDAN CIVIL SERVICE, INDEPENDENT INSTITUTIONS AND COMMISSIONS

CHAPTER I

THE SOUTHERN SUDAN CIVIL SERVICE

Establishment of Southern Sudan Civil Service

141. (1) The Government of Southern Sudan shall have a Civil Service consisting of all its employees who shall impartially carry out the functions assigned to them according to law.
- (2) The law shall determine terms and conditions of service, duties and rights of employees of the Southern Sudan Civil Service.

Basic Values and Guidelines for Civil Service

142. (1) The Civil Service shall be governed by, *inter alia*, the following values and principles:
- (a) a high standard of professional ethics shall be promoted and maintained through focusing on merit and training;
 - (b) efficient, economic and effective use of resources shall be promoted;
 - (c) Civil Service shall be development oriented;
 - (d) services shall be provided to all persons impartially, fairly, equitably and without bias or discrimination on the basis of religion, ethnicity, region, gender, health status or physical disability;
 - (e) needs of the people shall be appropriately addressed, and the public shall be encouraged to participate in policy-making;
 - (f) Civil Service shall be accountable to the appropriate level of government;
 - (g) transparency shall be fostered by providing the public with timely, accessible and accurate information;
 - (h) good human-resource management and career-development practices to maximise human potential, shall be cultivated;
 - (i) Civil Service shall be broadly representative of the people of Southern Sudan, with employment and personnel management practices based on ability, objectivity, fair competition for jobs, and the need to redress any imbalances of the past to achieve broad representation through affirmative action;
 - (j) persons with special needs shall be provided with specialized and appropriate training opportunities;
 - (k) the Civil Service shall function, and be structured, in accordance with the law; it shall execute the policies of the government;
 - (l) Civil servants shall not engage in party politics; no civil servant may be favoured or victimized because of his or her political opinion; any civil servant seeking an elective office shall resign from the Civil Service; and
 - (m) all levels of government in Southern Sudan shall be responsible for the recruitment, appointment, promotion, transfer and dismissal of employees of the civil service in their administrations guided by uniform norms and standards set out in this Constitution and the law.
- (2) The terms and conditions of employment in the Civil Service shall be regulated by law.

The Southern Sudan Civil Service Commission

143. (1) There shall be established a Southern Sudan Civil Service Commission composed of persons of proven competence, experience, integrity and impartiality.
- (2) The Civil Service Commission shall advise the Government of Southern Sudan on the formulation and execution of policies related to public service, employment and employees.
- (3) The Commission shall be independent and impartial, and shall exercise its powers and perform its functions without fear, favour or prejudice in the interest of the maintenance of effective and efficient Civil Service and a high standard of professional ethics therein.
- (4) The composition and terms and conditions of service shall be regulated by law.

Powers and Functions of the Commission

144. The Southern Sudan Civil Service Commission shall have the following powers and functions:
- (a) To promote the values and principles set out in Article 142 herein;
 - (b) To investigate, monitor and evaluate the organization, administration and personnel practices of the Civil service;
 - (c) To propose measures to ensure effective and efficient performance within the Civil Service;
 - (d) To give directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values and principles set out in Article 142 herein;
 - (e) To advise all levels of government in Southern Sudan on personnel practices, recruitment, appointment, transfer, discharge and other aspects of the civil service;
 - (f) To review the terms and conditions of service, standing orders, training and qualifications for public offices, personnel management, development of the civil service and to make recommendations to the Government;
 - (g) To guide and coordinate state civil service commissions;
 - (h) Addressing any imbalance in the Southern Sudan civil service;
 - (i) To hear and determine grievances from employees of Southern Sudan Government and appeals against the decisions of State Civil Service Commissions without prejudice to the right of resorting to courts; and
 - (j) Any other function assigned to it by law.

Southern Sudan Employees Justice Chamber

145. (1) There shall be established a Southern Sudan Employees Justice Chamber which shall be composed of a chairperson and members of proven competence, experience, integrity and impartiality.
- (2) The Southern Sudan Employees Justice Chamber shall, without prejudice to the right of resorting to courts or exhausting the proceedings of the Southern Sudan Civil Service Commission, be competent to consider and determine grievances from Southern Sudan civil service employees.
- (3) The Chamber shall present to the President of the Government of Southern Sudan any recommendations or proposed remedies it deems appropriate to ensure justice.
- (4) Appointment of the chairperson and members of the Chamber, their terms and conditions of service shall be regulated by law.

CHAPTER II

INDEPENDENT INSTITUTIONS AND COMMISSIONS

146. (1) The Government of Southern Sudan shall establish such independent institutions and commissions as provided for by the Comprehensive Peace Agreement, this Constitution and the Interim National Constitution. Such institutions and commissions shall perform their functions and duties impartially and without interference from any person or body.
- (2) The Government of Southern Sudan shall also establish such other institutions and commissions compatible with its powers as it deems necessary to promote the welfare of its people, good governance and justice.
- (3) The Government of Southern Sudan shall ensure that at least twenty-five percent of the aggregate membership of all such institutions and commissions shall be women.

CHAPTER III

SOUTHERN SUDAN ANTI-CORRUPTION COMMISSION

Establishment of the Anti-Corruption Commission

147. (1) There shall be established a Commission to be known as the Southern Sudan Anti-Corruption Commission.

- (2) The President of the Government of Southern Sudan shall appoint the chairperson and members of the Commission with the approval of the Assembly by a simple majority of all the members.
- (3) The members of the Commission shall be persons of high moral character and proven integrity and shall be independent, competent, non-partisan and impartial. They may not be removed from office except with the approval of the Assembly by a two-thirds majority of all members.
- (4) The law shall regulate the procedures, terms and conditions of service of the chairperson, members and employees of the Commission.

Functions of the Commission

148. (1) Without prejudice to the powers of the Ministry of Legal Affairs and Constitutional Development in public prosecution, the Commission shall, *inter alia*, have the following functions:
 - (a) protect public property;
 - (b) investigate cases of corruption involving public property as well as in the private sector; such investigation shall be submitted to the Ministry of Legal Affairs and Constitutional Development for necessary action.
 - (c) combat administrative malpractices in public institutions such as nepotism, favouritism, tribalism, sectionalism, gender discrimination, bribery, embezzlement and sexual harassment; and
 - (d) pursuant to provisions of Article 121 (1) herein, require all persons holding such public offices to make a confidential formal declaration of their income, assets and liabilities.
- (2) Without prejudice to sub-Article (1) above, the Commission shall not have any power to question the decision of any Justice, Judge, magistrate or chief registrar where such decision was made in the discharge of the functions of his or her office.

CHAPTER IV

SOUTHERN SUDAN HUMAN RIGHTS COMMISSION

Establishment of the Southern Sudan Human Rights Commission

149. (1) There shall be established a commission to be known as the Southern Sudan Human Rights Commission.

- (2) The President of the Government of Southern Sudan shall appoint a chairperson and members of the Commission with the approval of the Assembly by a simple majority.
- (3) The Chairperson and members of the Commission shall be persons of high moral character and proven integrity and shall be independent, competent, non-partisan and impartial.
- (4) The Commission shall have power to issue summons or other orders requiring representatives of relevant institutions and other bodies at all levels of government in Southern Sudan or persons or organizations to appear before it or produce any document or record relevant to any investigation by the Commission.
- (5) The Commission may request a government representative or any person or organization to take part in its deliberations if and when necessary.

Functions of the Commission

150. (1) The functions of the Commission shall, *inter alia*, be to:
- (a) monitor the application and enforcement of the rights and freedoms enshrined in this Constitution;
 - (b) investigate, on its own initiative or on a complaint made by any person or group of persons against any violation of human rights;
 - (c) visit jails, prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the inmates and make recommendations to the relevant authority;
 - (d) establish a continuing programme of research, education and information to enhance respect for human rights;
 - (e) recommend to the Assembly effective measures to promote human rights;
 - (f) create and sustain within society awareness of the provisions of this Constitution as the fundamental law of the people of Southern Sudan;
 - (g) educate and encourage the public to defend this Constitution at all times against all forms of abuse and violation;
 - (h) formulate, implement and oversee programmes intended to inculcate in the citizens of Southern Sudan awareness of their civic responsibilities and appreciation of their rights and obligations as citizens;
 - (i) monitor compliance of all levels of government in Southern Sudan with international and regional human rights treaties and conventions ratified by the Republic of the Sudan;

- (j) express opinion or present advice to government organs on any issue related to human rights; and
 - (k) perform such other function as may be provided by law.
- (2) The Southern Sudan Human Rights Commission shall publish periodical reports on its findings and submit annual reports to the Southern Sudan Legislative Assembly on the state of human rights and freedoms in Southern Sudan.
 - (3) The law shall specify composition, procedures, terms and conditions of service of the members of the Commission.

CHAPTER V

SOUTHERN SUDAN PUBLIC GRIEVANCES CHAMBER

151. (1) There shall be established in Southern Sudan an independent body, to be known as the Public Grievances Chamber. Its chairperson and members shall be nominated by the President of the Government of Southern Sudan from among persons of competence and integrity and approved by the Southern Sudan Legislative Assembly by a simple majority. The Chamber shall be answerable to the President of the Government of Southern Sudan and the Southern Sudan Legislative Assembly in the performance of its functions and duties.
- (2) Notwithstanding the finality of the judgments of the relevant courts, the Chamber shall consider complaints relating to grievances suffered by citizens in relation to government institutions. The Chamber shall consider grievances only after exhausting all means and stages of litigation by the complainant.
 - (3) The Chamber shall make recommendations or propose remedies to the President of the Government of Southern Sudan. The Chamber may on its own motion recommend to the Southern Sudan Legislative Assembly any measures it deems appropriate to ensure efficiency, justice or probity in the performance of the Southern Sudan governmental institutions.
 - (4) The law shall regulate the composition, functions, procedures, terms and conditions of service of the members and employees of the Chamber.

CHAPTER VI

SOUTHERN SUDAN RELIEF AND REHABILITATION COMMISSION

152. (1) There shall be established an independent body to be known as the Southern Sudan Relief and Rehabilitation Commission.

- (2) The functions of the Commission shall include repatriation, relief, resettlement, rehabilitation, reintegration of returnees and internally displaced persons and facilitation of the reconstruction of the conflict-affected areas.
- (3) The structure, composition, powers, functions, conditions and terms of service shall be determined by law.

CHAPTER VII

Demobilization, Disarmament and Re-Integration Commission

153. (1) The Southern Sudan Demobilization Disarmament and Re-integration Commission shall be established by the President of the Government of Southern Sudan to expedite the process of incorporation and reintegration of ex-combatants into other regular forces, civil service and other civilian institutions and society.
- (2) Members of the Commission shall be appointed by the President of the Government of Southern Sudan in accordance with the law.
- (3) The structure, composition, functions and terms and conditions of service of the Commission shall be regulated by law.

PART TEN

ARMED FORCES, LAW ENFORCEMENT AGENCIES AND SECURITY

CHAPTER I

ARMED FORCES IN SOUTHERN SUDAN

Composition, Status and Mission

154. (1) The Sudan People's Liberation Army, the Sudan Armed Forces and the Joint/Integrated Units constitute the Sudan National Armed Forces; they shall remain separate, regular, professional and non-partisan armed forces and shall be treated equally.
- (2) After the redeployment of surplus units of the Sudan Armed Forces outside Southern Sudan, the Sudan People's Liberation Army and the Joint/Integrated Units in Southern Sudan shall constitute the National Armed Forces in Southern Sudan during the Interim Period.

- (3) The mission of the Armed Forces in Southern Sudan shall be to defend the sovereignty of the country and the constitutional order, respect the rule of law, the civilian government, democracy, basic human rights and the will of the people.
- (4) The Armed Forces in Southern Sudan shall undertake the responsibility of the defence of the country against internal and external threats in their areas of deployment, and participate in reconstruction and assist in addressing national disasters and other emergencies.
- (5) The Armed Forces in Southern Sudan shall have no internal law and order mandate, except as may be requested by the civil authority when necessity so requires.
- (6) The military service, courts and other legal services shall be regulated by law for the Sudan Armed Forces, the Sudan People's Liberation Army and the Joint/Integrated Units.

Code of Conduct for the Armed Forces

155. (1) There shall be a code of conduct for the members of all armed forces based on the common military doctrine that shall be developed by the Parties to the Comprehensive Peace Agreement.
- (2) The code of conduct mentioned in sub-Article (1) above shall:
 - (a) be informed by the common military doctrine;
 - (b) make a clear distinction between the military functions and partisan political functions;
 - (c) underline the principle that such forces shall not be used as instruments of physical intimidation of the civilian population;
 - (d) make a clear distinction between military mandate and the policing mandate during ceasefire period; and
 - (e) make clear that all members of armed forces shall not be involved in illicit activities that may affect the environment and natural resources.

Joint/ Integrated Units

156. (1) The Joint/ Integrated Units shall consist of equal numbers from the Sudan People's Liberation Army and the Sudan Armed Forces during the Interim Period.
- (2) The Joint/Integrated Units shall constitute a nucleus of a post referendum army of the Sudan, should the outcome of the referendum on self-

determination of the people of Southern Sudan confirm unity, otherwise they shall be dissolved and the component parts integrated into their respective forces.

- (3) The Joint/Integrated Units shall fall under the command of the Joint Defence Board constituted in accordance with the provisions of the Comprehensive Peace Agreement.
- (4) The command of the Joint/Integrated Units shall be exercised on parity basis between the Sudan People's Liberation Army and Sudan Armed Forces officers with alternation of roles at the uppermost and other levels of command.
- (5) The Joint Defence Board shall command and control the Joint Integrated Units and coordinate between the Sudan People's Liberation Army and the Sudan Armed Forces.
- (6) The national law shall regulate the composition, character, size, organization, training, deployment, terms of service, functions and duties of the Joint/Integrated Units in accordance with the provisions of the Comprehensive Peace Agreement.

Redeployment of the Armed Forces

157. After the formation of the Joint/Integrated Units, the redeployment of surplus forces of the Sudan People's Liberation Army and Sudan Armed Forces in and outside Southern Sudan shall be carried out as stipulated in the Comprehensive Peace Agreement.

CHAPTER II

THE SUDAN PEOPLE'S LIBERATION ARMY

Mission and Duties

158. (1) The Sudan People's Liberation Army is a regular, professional, patriotic, productive, disciplined, non-partisan military force subordinate to civilian authority as established under this Constitution.
- (2) The mission of the Sudan People's Liberation Army, in addition to its other national duties, is to:

- (a) defend this Constitution;
 - (b) protect the people of Southern Sudan;
 - (c) secure the territorial integrity of Southern Sudan;
 - (d) undertake the responsibility for the defence of Southern Sudan against internal and external threats and aggression; and
 - (e) be involved in addressing specified emergencies, participate in reconstruction activities, and assist in disaster relief within the terms of this Constitution and the law.
- (3) The Sudan People's Liberation Army shall respect and abide by the rule of law, respect the will of the people, the civilian government, democracy and basic human rights.
- (4) No person or persons shall raise any armed force in Southern Sudan except in accordance with this Constitution.

Command and Control

159. (1) Command and control of the Sudan People's Liberation Army shall vest in the President of the Government of Southern Sudan as its Commander-in-Chief, assisted by the Chief of General Staff, his or her deputies and other staff officers.
- (2) The President of the Government of Southern Sudan and Commander-in-Chief of the Sudan People's Liberation Army shall commission, promote, retire or dismiss officers of the Sudan People's Liberation Army according to the law.
- (3) The structure, command, control and terms and conditions of service of the Sudan People's Liberation Army shall be as prescribed by law.

Funding

160. The Sudan People's Liberation Army shall be funded from the domestic financial resources of the Government of Southern Sudan and any external sources, with the approval of the Southern Sudan Legislative Assembly; these financial resources shall be channelled through the Bank of Southern Sudan.

The Permanent Ceasefire

161. (1) The Government of Southern Sudan shall fully enforce the permanent ceasefire provided for in the Comprehensive Peace Agreement.
- (2) The permanent ceasefire shall be internationally monitored and fully respected by all persons in Southern Sudan.

CHAPTER III
THE LAW ENFORCEMENT AGENCIES AND SECURITY SERVICE IN
SOUTHERN SUDAN

The Police Service

162. (1) There shall be established a police service to be known as the Police of Southern Sudan which shall be a decentralized professional service force whose mission is to prevent, combat and investigate crime, maintain law and public order, protect the people in Southern Sudan and their properties, and uphold and enforce this Constitution and the law.
- (2) The Police Service shall be organized at the level of Southern Sudan and states of Southern Sudan; its organization, structure, functions, powers, terms and conditions of service shall be regulated by law.
- (3) The Police Service shall be headed by an Inspector-General of Police to be appointed by the President of the Government of Southern Sudan on the recommendation of the minister in charge and approval of the Council of Ministers.
- (4) The Police of Southern Sudan shall be governed by this Constitution and the law. It shall respect the will of the people, the rule of law and order, civilian government, democracy and human rights.
- (4) The Police of Southern Sudan and their counterparts at the national level shall coordinate, cooperate and assist each other in the discharge of their functions, and to that end, shall recommend, through their respective authorities to the Presidency of the Republic the establishment of such necessary mechanisms.

Prisons Service The

163. (1) There shall be established a prisons service to be known as the Prisons Service of Southern Sudan and it shall be a decentralized professional service; its mission shall be correctional, reformatory and rehabilitative. It shall respect the will of the people, the rule of law and order, civilian government, democracy and human rights.
- 2) The Prisons Service shall be organized at the level of Southern Sudan and states of Southern Sudan.
- (3) The Prisons Service shall be headed by Director-General to be appointed by the President of the Government of Southern Sudan on the recommendation of the minister in charge and approval of the Council of Ministers.

- (4) The functions of Prisons shall, *inter alia*, be to manage, operate and maintain the prisons of Southern Sudan, and to administer the internment and care for the health of prisoners and inmates.
- (5) Prisons authorities shall treat prisoners humanely. Any treatment that is cruel, inhuman, degrading of the dignity of prisoners, or that may expose their health to danger is prohibited and punishable by law.
- (6) Organization, powers, terms and conditions of service of the Prisons Service shall be prescribed by law.

The Wildlife Service

164. (1) There shall be established a wildlife service to be known as the Wildlife Service of Southern Sudan and it shall be a decentralized professional service; its mission is to protect the wildlife and to preserve and conserve the natural habitat of flora and fauna of Southern Sudan.
- (2) The Wildlife Service shall be organized at the level of Southern Sudan and states of Southern Sudan.
- (3) The Wildlife Service shall be headed by a Director-General of Wildlife to be appointed by the President of the Government of Southern Sudan on the recommendation of the minister in charge and approval of the Council of Ministers.
- (4) The Wildlife Service shall coordinate and cooperate with the local communities on the protection and management of wildlife within their areas.
- (5) The Wildlife Service shall act in accordance with this Constitution and the following guiding principles:
 - (a) the protection of the natural ecosystems, bio-diversity and endangered species shall be the primary consideration in carrying out its duties;
 - (b) consistent with the provisions of this Constitution and the law, the Wildlife Service shall manage wildlife resources as necessary to protect human life; and
 - (c) wildlife shall be protected and managed in accordance with the international standards and obligations.
- (6) The organization, functions, powers and terms and conditions of service of the Wildlife Service shall be regulated by law. It shall respect the will of the people, the rule of law and order, civilian government, democracy, human rights and animal protection.

The Fire Brigade Service

165. (1) There shall be established a fire brigade service to be known as the Fire Brigade Service of Southern Sudan and it shall be a decentralized professional service, whose mission is to prevent and protect the people of Southern Sudan and their property from fire.
- (2) The Fire Brigade Service shall be organized at all levels of the government in Southern Sudan
- (3) The Fire Brigade Service shall be headed by a Commissioner of Fire Brigade to be appointed by the President of the Government of Southern Sudan on the recommendation of the minister in charge and approval of the Council of Ministers.
- (4) The functions, organization and terms and conditions of service of the Fire Brigade Service shall be regulated by law.

The Security Service

166. (1) There shall be established at all levels of government in Southern Sudan Security Committees; their composition and functions shall be determined by the National Security Act.
- (2) There shall be established National Security Service Offices at the level of Southern Sudan and the states; their composition, functions and duties shall be regulated by the National Security Act.

PART ELEVEN

THE STATES, LOCAL GOVERNMENT, TRADITIONAL AUTHORITY AND ABYEI AREA

CHAPTER I

STATES OF SOUTHERN SUDAN

General Provisions

167. (1) The territory of Southern Sudan shall be decentralized and composed of ten states.
- (2) The states shall adopt their own constitutions, which shall conform to this Constitution and the Interim National Constitution.
- (3) State boundaries, names and capitals shall not be altered except by a decision of the Council of States. State legislatures of Southern Sudan may

make recommendations on the same to the Council of States through the Government of Southern Sudan.

State Organs

168. (1) There shall be legislative, executive, and judicial organs at state level for each state of Southern Sudan which shall function in accordance with this Constitution, the Interim National Constitution and the relevant state constitution.
- (2) Each state of Southern Sudan shall have exclusive executive and legislative competences as set forth in Schedule C of this Constitution.
- (3) Each state of Southern Sudan shall have residual executive and legislative competence over matters within their borders that are not exclusive to the National Government or the Government of Southern Sudan.
- (4) Each state government within Southern Sudan shall exercise such other powers as shall promote the welfare of the people of that state and to protect their human rights and fundamental freedoms as are provided for in this Constitution.
- (5) Each state of Southern Sudan shall promote and empower local government. The organization and proper functioning of local government and elections to its respective institutions shall be conducted in accordance with the relevant state constitution and the law.
- (6) In fulfilment of the principle of affirmative action, women shall be allocated at least twenty-five per cent of the seats and positions in each legislative and each executive organ of each state, without prejudice to their right to compete for the remaining seats and positions in such organs.

State Executive

169. (1) There shall be a governor for each state within Southern Sudan, elected by the residents of that state in compliance with the requirements prescribed by the National Elections Commission and in accordance with this Constitution and the relevant state constitution.
- (2) The governor shall be the head of executive organ in the state and shall appoint the state council of ministers in accordance with the state constitution.
- (3) There shall be a deputy governor for each state to be appointed by the governor of the state; the deputy governor shall assume the portfolio of a minister other than the minister of finance, and shall act as governor in the absence of the governor.

- (4) State ministers shall be individually and collectively accountable to the governor and the state Legislative Assembly in the performance of their functions.
- (5) A state minister may be removed by the governor or on a motion supported by two-thirds of all the members of the state Legislative Assembly.
- (6) The governor, together with the state council of ministers, shall exercise the executive competences of the state in respect of the functional areas in Schedules C and D read together with Schedules E and F, as are conferred by this Constitution and the state constitution and such other executive powers as may be prescribed by law.

State Legislative Assembly

170. (1) Each state within Southern Sudan shall have a legislature to be known as State Legislative Assembly, which shall comprise members elected in accordance with the state constitution and the elections law.
- (2) Each state legislature shall prepare and adopt its state constitution, provided that it shall be in conformity with this Constitution, the Interim National Constitution and the Comprehensive Peace Agreement.
 - (3) Each state legislature shall have law-making competence in respect of the functional areas listed in Schedules C and D read together with Schedules E and F herein, and such other legislative competences as are conferred upon the state by this Constitution, the state constitution, and the law.
 - (4)
 - (a) The state legislature may, in accordance with the state constitution, pass a vote of no confidence in the Governor by three quarters majority of all its members;
 - (b) Should the state legislature pass a vote of no confidence as stated in paragraph (a) above, the President of the Government of Southern Sudan shall make a request to the President of the Republic calling for snap elections of the Governor. The President of the Republic shall act upon such a request and shall call the state electorate for snap elections of the Governor to be conducted within sixty days;
 - (c) The Governor elected in the snap elections shall serve for the remainder of the original tenure;
 - (d) Should the Governor who was subjected to the vote of no-confidence be re-elected, the state legislature shall be deemed to have been dissolved. A new state legislature shall be elected within sixty days to complete the tenure of the dissolved legislature; and
 - (e) A vote of no confidence in the Governor shall not be passed before he or she completes twelve months in office.

- (5) The term of a state legislative assembly shall be five years commencing from the date of its first sitting.
- (6) Governors, members of state legislatures and the state councils of ministers shall have such immunities as are provided by law.
- (7) Competent courts of law in Southern Sudan shall hear and determine any objection regarding the validity of nomination or election of a member of the state legislative assembly in accordance with the provisions of the national elections law.
- (8) Each state legislature shall make its own Conduct of Business Regulations, establish its committees and elect its speaker and other officers.

State Judiciary

171. (1) Judicial power in the states shall vest in the State Judiciary; the constitution of each State shall provide for the establishment of a state Judiciary consisting of the following hierarchy of courts:
 - (a) High courts;
 - (b) County courts; and
 - (c) Any other courts and tribunals as shall be determined by law.
- (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 for herein; however, the Southern Sudan Legislative Assembly shall determine the civil and criminal procedures in respect of litigation or prosecution under Southern Sudan laws in accordance with this Constitution.
- (3) Each state shall determine the jurisdiction of its customary law courts.
- (4) The constitution and legislation of each state shall provide for:
 - (a) the appointment, removal and other terms and conditions of service of judges and lay magistrates; and
 - (b) guarantees for the independence and impartiality of the State Judiciary, immunity of judges and magistrates, and measures to ensure that they are not subject to political or other interference.
- (5) The structures and powers of the courts of the states of Southern Sudan shall be subject to the provisions of this Constitution and constitution of the state concerned.
- (6) There shall be a substantial representation of women in the State Judiciary having regard to competence, integrity, credibility and impartiality.

Interim Provisions for States

172. (1) Pending the elections referred to in Article 202 of this Constitution and Article 216 of the Interim National Constitution:
- (a) State governors in Southern Sudan shall be appointed by the President of the Government of Southern Sudan in consultation with the Vice President of the Government of Southern Sudan; and
 - (b) The governor of one Southern Sudan state shall be a nominee of the National Congress Party, and one deputy governor in a different Southern Sudan state shall be a nominee of the National Congress Party.
- (2) Seats and positions of legislatures and executives of Southern Sudan states shall be allocated as follows:-
- (a) The Sudan People's Liberation Movement shall have seventy percent of the seats and positions; and
 - (b) The remaining thirty percent of the seats and positions shall be allocated as follows:-
 - (i) twenty percent of the seats and positions to be filled by other Southern Sudan political forces; and
 - (ii) ten percent of the seats and positions to be filled by the National Congress Party.
- (3) Notwithstanding the provisions of Article 171 (4) (a) herein, and pending the establishment of state judiciaries within four years of the interim period, state judges and magistrates shall be employees of the Southern Sudan Judiciary appointed by the President of the Government of Southern Sudan on the recommendation of the President of the Supreme Court of Southern Sudan.

CHAPTER II LOCAL GOVERNMENT

Local Government

173. (1) Pursuant to Article 50 (c) of this Constitution and the state constitutions, the states shall enact laws for the establishment of a system of local government based on urban and rural councils for which they shall provide structures, composition, finance and functions.
- (2) Without prejudice to the provisions of sub-Article (1) above and for the purposes of the initial establishment of a local government system throughout Southern Sudan, and in order to set common standards and

criteria for the organization of local government, the Government of Southern Sudan shall enact the necessary legislation.

- (3) The President of the Government of Southern Sudan shall establish a Local Government Board under his or her office to review the local government system in Southern Sudan and recommend the necessary policy guidelines and action in accordance with the decentralization policy enshrined in this Constitution.
- (4) Without prejudice to the existing forms of the local government structures, local councils shall be established by law taking into account but not limited to the following criteria:
 - (a) size of territory;
 - (b) population;
 - (c) economic viability;
 - (d) common interest of the communities; and
 - (e) administrative convenience and effectiveness.
- (5) Local government tiers shall consist of County, Payam and Boma in the rural areas, and of city, municipal and town councils in the urban areas.
- (6) The objects of local government shall be to:
 - (a) promote self-governance and enhance the participation of people and communities in maintaining law and order and promoting democratic, transparent and accountable local government;
 - (b) establish the local government institutions as close as possible to the people;
 - (c) encourage the involvement of communities and community-based organisations in the matters of local government, and promote dialogue among them on matters of local interest;
 - (d) promote and facilitate civic education;
 - (e) promote social and economic development;
 - (f) promote self-reliance amongst the people through mobilisation of local resources to ensure the provision of services to communities in a sustainable manner;
 - (g) promote peace, reconciliation and peaceful coexistence among the various communities;
 - (h) ensure gender mainstreaming in local government;
 - (i) acknowledge and incorporate the role of traditional authorities and customary law in the local government system;
 - (j) involve communities in decisions relating to the exploitation of natural resources in their areas and promote a safe and healthy environment; and

- (k) promote and support the training of local cadres.
- (6) Local governments shall have powers to levy, charge, collect and appropriate fees and taxes in accordance with the law.
- (7) The Government of Southern Sudan may pay grants-in-aid to states in support of their budgetary deficits and that of local government councils.

Traditional Authority

- 174. (1) The institution, status and role of traditional authority, according to customary law, are recognised under this Constitution.
- (2) Traditional authority shall function in accordance with this Constitution and the law.
- (3) The courts shall apply customary law subject to this Constitution and the law.

Role of Traditional Authorities

- 175. (1) Legislations of the states shall provide for the role of traditional authority as an institution at local government level on matters affecting local communities.
- (2) Legislations at the Southern Sudan and states levels shall provide for the establishment, composition, functions and duties of the Councils of Traditional Authority Leaders.

CHAPTER III

ABYEI AREA

Citizenship, Special Status and Referendum

- 176. (1) Abyei Area, the territory of the nine Ngok Dinka chiefdoms transferred from Bahr el Ghazal Province to Kordofan Province in 1905, is accorded a special administrative status under the Presidency of the Republic, in which its residents shall be citizens of both Southern Kordofan and Warrap State.
- (2) The residents of Abyei Area, pursuant to sub-article (1) above, shall enjoy all rights and freedoms guaranteed by this Constitution.

- (3) Pursuant to Article 183 (3) of the Interim National Constitution, the residents of Abyei Area shall vote in a separate referendum simultaneously with the referendum of Southern Sudan, which shall present them, irrespective of the results of the Southern Sudan Referendum, with the following choices:-
- (a) that Abyei Area retains its special administrative status in the north; or
 - (b) that Abyei Area be part of Warrap State.

Security Arrangements

177. The security arrangements in Abyei Area shall be in accordance with the provisions of the Comprehensive Peace Agreement and the Interim National Constitution.

CHAPTER IV

LINKAGES AND COOPERATION WITH THE NORTHERN STATES

178. In accordance with Article 26 (2) of the Interim National Constitution, the Government of Southern Sudan and its component states may conduct, maintain and promote inter-state coordination and cooperation with Northern states, particularly the neighbouring states of Southern Kordofan, Blue Nile, White Nile, Sennar and Southern Darfur on matters of mutual interest.

PART TWELVE

FINANCE AND ECONOMIC MATTERS

CHAPTER I

GUIDING PRINCIPLES FOR DEVELOPMENT AND EQUITABLE SHARING OF COMMON WEALTH

179. (1) The Government of Southern Sudan shall support and encourage a decentralized and participatory economic development based on the principle of subsidiarity and devolution of governmental functions and powers to the people at appropriate levels where they can best manage and direct their own affairs.
- (2) The decentralized economic development in Southern Sudan shall be based on the agricultural and agro-industrial sectors, and promotion of private sector conducted in accordance with the best known practices of

sustainable development within a framework of transparent and accountable governance.

- (3) The Government of Southern Sudan shall promote and encourage the participation of the people of Southern Sudan in the formulation of its development policies and programmes.
- (4) The Government of Southern Sudan shall endeavour to build institutional, human, social and economic capacity, develop infrastructure and social services, and raise the standard of public services in Southern Sudan to attain the Millennium Development Goals.
- (5) The sharing and allocation of resources and common wealth of Southern Sudan shall be based on the premise that all states, communities and localities of Southern Sudan are entitled to development without discrimination.
- (6) Resources and common wealth of Southern Sudan shall be allocated in a manner that will enable each level of government discharge its legal and constitutional responsibilities and duties and ensure that the quality of life and dignity of all the people of Southern Sudan are promoted without discrimination on grounds of gender, religion, political affiliation, ethnicity, language or locality.
- (7) The Government of Southern Sudan shall fulfil its obligations to provide financial transfers to all levels of government in Southern Sudan, and shall, except as otherwise provided herein, apportion revenue equitably among Southern Sudan states and local governments.
- (8) Revenue sharing shall reflect a commitment to devolution of powers and decentralisation of decision-making in regard to development, service delivery and governance.
- (9) All taxes and duties set out in this Constitution shall be regulated by law to ensure coordination, fairness, equity, transparency and to avoid an excessive tax burden on the citizens, private sector and investors.
- (10) No level of government in Southern Sudan shall unduly withhold any allocation or financial transfer due to any other level of government. In case of dispute, any level of government, after attempting amicable solution, may initiate proceedings before the Supreme Court of Southern Sudan.

CHAPTER II

LAND AND NATURAL RESOURCES IN SOUTHERN SUDAN

Regulation of Land and Natural Resources

180. (1) The regulation of land tenure, usage and exercise of rights thereon shall be a concurrent competence, exercised at the appropriate level of government in Southern Sudan.
- (2) Rights in land owned by the Government of Southern Sudan shall be exercised through the appropriate or designated level of government in Southern Sudan, which shall recognize customary land rights under customary land law.
- (3) All levels of government in Southern Sudan shall institute a process to progressively develop and amend the relevant laws to incorporate customary laws, practices, local heritage and international trends and practices.
- (4) All lands traditionally and historically held or used by local communities or their members shall be defined, held, managed and protected by law in Southern Sudan.
- (5) Customary seasonal access rights to land shall be respected, provided that these access rights shall be regulated by the respective states taking into account the need to protect agricultural production, community peace and harmony, and without unduly interfering with or degrading the primary ownership interest in the land, in accordance with customary law.
- (6) Communities and persons enjoying rights in land shall be consulted and their views duly taken into account in decisions to develop subterranean natural resources in the area in which they have rights; they shall share in the benefits of that development.
- (7) Communities and persons enjoying rights in land shall be entitled to prompt and equitable compensation on just terms arising from acquisition or development of land for the extraction of subterranean natural resources in their areas in the public interest.

Southern Sudan Land Commission

181. (1) Without prejudice to the jurisdiction of the courts, there shall be established a Southern Sudan Land Commission that shall have the following functions:-
- (a) entertain claims, at its discretion, and in respect of land, be they against any level of government or other parties interested in the land;

- (b) arbitrate between willing contending parties on claims over land; the parties to the arbitration shall be bound by the decision of the Commission on the basis of mutual consent and upon registration of the award in a court of law;
 - (c) enforce the law applicable to the locality where the land is situated or such other law as the parties to the arbitration agree, including principles of equity;
 - (d) accept references on request from the relevant government, or in the process of resolving claims, make recommendations to the appropriate level of government concerning land reform policies and recognition of customary rights or customary land law;
 - (e) assess appropriate compensation for land including but not limited to monetary compensation, for applicants in the course of arbitration or in the course of a reference from a court;
 - (f) advise different levels of government on how to co-ordinate policies on Southern Sudan projects affecting land or land rights;
 - (g) study and record land use practices in areas where natural resource development occurs;
 - (h) conduct hearings and formulate its own rules of procedure; and
 - (i) any other functions that may be conferred upon it by law.
- (2) The structure, composition, appointment, terms and conditions of service of the Commission shall be regulated by law.
 - (3) The chairperson of the Commission shall be appointed by the President of the Government of Southern Sudan.
 - (4) The Commission shall be independent and representative of all levels of government in Southern Sudan.
 - (5) The Commission shall have its budget approved by the Southern Sudan Legislative Assembly and shall be accountable to the President of the Government of Southern Sudan for the administrative performance of its functions.

Cooperation between National and Southern Sudan Land Commissions

182. (1) The National Land Commission and Southern Sudan Land Commission shall co-operate and co-ordinate their activities so as to:
 - (a) use their resources efficiently;
 - (b) exchange information and decisions on land issues; and
 - (c) resolve any conflict between their findings or recommendations.
- (2) In case of conflict between the findings or recommendations of the National Land Commission and Southern Sudan Land Commission which cannot be

resolved or reconciled by agreement pursuant to sub-Article (1) (c) above, the matter shall be referred to the Constitutional Court.

- (3) The Southern Sudan Land Commission may carry out certain functions of the National Land Commission, including collection of data and research.

CHAPTER III

FRAMEWORK FOR PETROLEUM DEVELOPMENT AND MANAGEMENT IN SOUTHERN SUDAN

183. (1) The Government of Southern Sudan and the oil producing states in Southern Sudan shall be represented in the National Petroleum Commission in accordance with Article 191 of the Interim National Constitution.
- (2) The governments of Southern Sudan and the oil producing states shall participate in development and management of the various stages of petroleum development in Southern Sudan in consultation with the relevant communities, within the overall framework of petroleum development during the Interim Period.
- (3) The Government of Southern Sudan in conjunction with the governments of oil producing states, shall prioritize areas of petroleum development and make recommendations that are consistent with such priorities to the National Petroleum Commission taking into account:
 - (a) the impact from petroleum development on the environment of the area;
 - (b) the effect of petroleum development on traditional and community rights in land in the areas affected by such development;
 - (c) the expected economic yield and benefits from the petroleum reserves; and
 - (d) the required production facilities and the transportation system to be put in place.
- (4) Any petroleum development in Southern Sudan shall be conducted in a manner that will ensure that:
 - (a) the interests of the people of Southern Sudan are safeguarded;
 - (b) it does not violate national, Southern Sudan and state environmental laws and policies, biodiversity conservation guidelines and protection of cultural heritage;
 - (c) it recognizes and protects rights in land, including customary and traditional land rights;

- (d) the communities in whose areas development of subterranean natural resources occurs have the right to participate, through their respective states, in the negotiation of contracts for the development of those resources; and
 - (e) it is in conformity with internationally recognised industry standards of environmentally sensitive natural resource extraction or development.
- (5) It shall be the responsibility of the Government of Southern Sudan and the oil producing states in Southern Sudan to ensure the sustainable development and management of petroleum resources within Southern Sudan by:
- (a) formulating public policies, guidelines, legislations, regulations and procedures in relation to the development and management of the Southern Sudan petroleum sector in line with the guidelines developed by the National Petroleum Commission or as a supplement thereto;
 - (b) monitoring and assessing the implementation of policies developed by the National Petroleum Commission and their impact on the communities in the areas of petroleum development;
 - (c) formulating strategies and programmes for the development of the necessary technical cadres from Southern Sudan; and
 - (d) requiring that all petroleum projects be subjected to environmental impact assessment before approval and implementation.

CHAPTER IV

SOURCES OF REVENUE IN SOUTHERN SUDAN

Sources of Revenue for the Government of Southern Sudan

184. (1) The Government of Southern Sudan, through the legislative process, shall legislate for raising revenue or collecting 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 197 of the Interim National Constitution;
 - (b) revenue from any of the sources listed as state revenue sources referred to in Article 186 of this Constitution;
 - (c) oil revenue as set out in Article 185 (1) of this Constitution;
 - (d) taxes of the Government of Southern Sudan, which do not encroach on the exclusive National Government taxing powers;
 - (e) service charges of the Government of Southern Sudan;
 - (f) enterprises and projects of the Government of Southern Sudan;
 - (g) grants-in-aid and foreign financial assistance;

- (h) taxes and levies on small and medium businesses;
 - (i) excise duties on goods within Southern Sudan deemed to be luxury consumables;
 - (j) personal income tax of Southern Sudan;
 - (k) loans and borrowing in accordance with Article 193 (1) of this Constitution; and
 - (l) any other taxes as may be determined by law.
- (2) The Government of Southern Sudan shall be allocated fifty per cent of the national non-oil revenue collected in Southern Sudan, as provided for under Article 196 (1) of the Interim National Constitution to partially meet development costs during the Interim Period. This arrangement shall be reviewed during the mid-term review process, with the view to the National Government allocating additional resources to the Government of Southern Sudan if need arises.
- (3) All funds and special accounts referred to in this Constitution and future accounts shall be on-budget operations in accordance with the public budget.

Oil Revenue for the Government of Southern Sudan

185. (1) The Government of Southern Sudan shall be allocated oil revenue from the following sources:
- (a) fifty percent of net oil revenue derived from oil producing wells in Southern Sudan after the payment to the Oil Revenue Stabilization Account and to the oil producing states in Southern Sudan as of the beginning of the pre-interim period, and the remaining fifty percent to the National Government and states in Northern Sudan;
 - (b) forty-two percent of net oil revenue derived from oil producing wells in Abyei Area as provided in the Comprehensive Peace Agreement; and
 - (c) withdrawals from its share from the Oil Revenue Stabilization Account as provided in the Comprehensive Peace Agreement.
- (2) The Government of Southern Sudan shall establish a Southern Sudan Future Generation Fund from its share of net oil revenue once oil production in Southern Sudan reaches one million barrels per day.

Sources of Revenue of States in Southern Sudan

186. The states in Southern Sudan may legislate for raising revenue or collecting taxes from the following sources:

- (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) at least two percent of net oil revenue for oil producing states; in proportion to output produced in the state, taking into account the special allocation of two percent of net oil revenue produced in Abyei Area to Bahr El Ghazal as provided in the Comprehensive Peace Agreement;
- (g) state government projects and national parks;
- (h) stamp duties;
- (i) agricultural taxes;
- (j) grants-in-aid and foreign aid;
- (k) excise duties;
- (l) border trade charges or levies in accordance with national legislation;
- (m) other state taxes, which are not within the exclusive jurisdiction of the National or Southern Sudan governments;
- (n) loans and borrowing in accordance with Article 193 (3) of this Constitution; and
- (o) any other tax as may be determined by law.

CHAPTER V

FISCAL AND FINANCIAL INSTITUTIONS IN SOUTHERN SUDAN

Southern Sudan Revenue Fund

187. (1) All revenue collected for or by the Government of Southern Sudan shall be pooled in a Southern Sudan Revenue Fund administered by the Southern Sudan Ministry of Finance and Economic Planning. Such Fund shall embrace all accounts and sub-funds into which monies due to the Government of Southern Sudan are collected, reported or deposited.
- (2) All the revenue and expenditure of each level of government in Southern Sudan shall be on-budget operations and made public as the case may be.
- (3) Any withdrawals from the Southern Sudan Revenue Fund shall not be made except in accordance with the law.

Southern Sudan Fiscal and Financial Allocation and Monitoring Commission

188. (1) A Southern Sudan Fiscal and Financial Allocation and Monitoring Commission shall be established to ensure transparency and fairness in regard to the allocation of funds collected at the level of the Government of Southern Sudan to the states and local governments in Southern Sudan.

- (2) The Commission shall undertake the following duties and responsibilities:
 - (a) monitor and ensure that equalization grants from the Southern Sudan Revenue Fund are promptly transferred to the respective levels of government;
 - (b) guarantee appropriate sharing and utilization of financial resources; and
 - (c) safeguard transparency and fairness in the allocation of funds to the states and local governments in Southern Sudan.
- (3) The Commission shall be composed of representatives from the Government of Southern Sudan and the states as follows:-
 - (a) three representatives of the Government of Southern Sudan; and
 - (b) the finance minister from each state of Southern Sudan.
- (4) The chairperson of the Commission shall be appointed by the President of the Government of Southern Sudan after consultation with the Vice President of the Government of Southern Sudan.
- (5) The Commission shall quarterly report to the President of the Government of Southern Sudan and the Southern Sudan Legislative Assembly about its performance, and the President of the Government of Southern Sudan shall take appropriate remedial action in case of failure by the Southern Sudan Ministry of Finance and Economic Planning to discharge any of the functions stipulated in sub-Article 2 above.
- (6) The Commission shall set its rules and procedures

Southern Sudan Reconstruction and Development Fund

189. (1) There shall be established a Southern Sudan Reconstruction and Development Fund to solicit, raise and collect funds from domestic and international donors and disburse such funds for the rehabilitation and reconstruction of the infrastructure of Southern Sudan, the resettlement and reintegration of internally and externally displaced persons, and to address any imbalances in regional development and infrastructure.
- (2) 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.
- (3) The Fund shall be transparently administered and professionally managed by a body established by the Government of Southern Sudan which shall also

appoint an oversight committee having on it a representative of the National Ministry of Finance and of the National Audit Chamber; the Southern Sudan Legislative Assembly shall supervise the performance of the Fund.

- (5) A monitoring and evaluation system shall be established to ensure accountability, transparency, efficiency, equity and fairness in the utilization of resources.

CHAPTER VI

BANKING IN SOUTHERN SUDAN

Banking System in Southern Sudan

190. There shall be established in Southern Sudan a conventional banking system in accordance with the provisions of Article 201 (2) of the Interim National Constitution.

Establishment of Bank of Southern Sudan

191. (1) There shall be established a Bank of Southern Sudan as a branch of the Central Bank of Sudan to provide, *inter alia*, conventional banking services within the framework of a single national monetary policy.
- (2) The Bank of Southern Sudan shall use the market-based conventional banking instruments developed by the Central Bank of Sudan to regulate and supervise the implementation of the national monetary policy in Southern Sudan.
- (3) The Bank of Southern Sudan shall be headed by a Deputy Governor of the Central Bank of Sudan who shall be a member of the Board of Directors of the Central Bank of Sudan.
- (4) The Bank of Southern Sudan, being a branch of the Central Bank of Sudan, shall manage the conventional window using conventional financing instruments in implementing the national monetary policy in Southern Sudan in relation to the following:
- (a) promoting and maintaining price stability;
 - (b) maintaining a stable exchange rate;
 - (c) maintaining sound, effective and efficient banking and credit system;
 - (d) chartering and supervising financial institutions in Southern Sudan; and
 - (e) performing any other functions not inconsistent with the national monetary policy.

- (5) All financial institutions in Southern Sudan shall be subject to internationally recognized regulatory and prudential standards for conventional finance as well as to rules and regulations set by the Central Bank of Sudan.

Management of Foreign Exchange Resources

192. (1) All foreign exchange resources of the Government of Southern Sudan shall be considered part of the national foreign exchange reserve and the Government of Southern Sudan shall use them to meet its foreign exchange requirements. The Government of Southern Sudan foreign exchange transactions shall be conducted through the Bank of Southern Sudan.
- (2) All domestic banking operations and transactions of the Government of Southern Sudan shall be in the national currency and any other circulating currencies in Southern Sudan until a new currency is issued as provided in Article 207 of the Interim National Constitution.
- (3) The Bank of Southern Sudan shall open a foreign correspondent account in a prime bank of its choice in which all foreign exchange resources of the Government of Southern Sudan shall be deposited.
- (4) The Bank of Southern Sudan shall manage this foreign correspondent account on the basis of the best banking practices in favour of the Government of Southern Sudan and disburse it in such manner as to ensure macro-economic stability and compliance with national monetary policy objectives and requirements.

Borrowing

193. (1) The governments of Southern Sudan and the states may borrow money with the approval of the respective legislature. The appropriate legislature may by law exempt any categories of loans from the requirement of approval and in this case determine the extent of the money value of the loan subject to such conditions as it may prescribe. Neither the Government of Southern Sudan nor the Bank of Southern Sudan shall be required to guarantee borrowing by any State government in Southern Sudan.
- (2) The governments of Southern Sudan and the states shall report financial and fiscal data relating to such loans to the relevant institutions in Southern Sudan for statistical purposes.
- (3) The governments of Southern Sudan and the states may borrow money from foreign sources depending on their respective credit worthiness.

- (4) Foreign borrowing by the governments of Southern Sudan and the states shall be in a manner that does not undermine national macro-economic policies and shall be consistent with the objective of maintaining external financial viability. All foreign borrowing transactions of all levels of government in Southern Sudan shall conform to the specifications of the Central Bank of Sudan.

CHAPTER VII

ACCOUNTING STANDARDS

Accounting Procedures, Standards and Fiscal Accountability

194. (1) All levels of government in Southern Sudan shall comply with generally accepted accounting procedures, standards and fiscal accountability to ensure that public funds are allocated and expended according to the budget of the respective level of government.
- (2) All levels of government in Southern Sudan shall hold all income and revenue received in public accounts and subject to public scrutiny and accountability.
- (3) The accounting procedures, standards and fiscal accountability in Southern Sudan shall be regulated by law.

Southern Sudan Audit Chamber

- 195.(1) There shall be established an independent Southern Sudan Audit Chamber.
 - (2) The Southern Sudan Audit Chamber shall, in accordance with the provisions of Article 205 (2) of the Interim National Constitution, supervise the financial performance of all levels of government in Southern Sudan, including revenue collection and expenditure, in accordance with the budgets approved by their respective legislatures.
 - (3) The President of the Government of Southern Sudan, with the approval of a two-thirds majority of all members of the Southern Sudan Legislative Assembly shall appoint from qualified persons the Southern Sudan Auditor General who shall be the head of the Southern Sudan Audit Chamber. He or she shall take oath before the President of the Government of Southern Sudan and shall not be removed except in the same manner in which he or she is appointed.
 - (4) The Southern Sudan Audit Chamber shall assume auditing of the accounts of the Southern Sudan Executive, the Southern Sudan Legislative Assembly, the Judiciary of Southern Sudan and the accounts of states, local

governments, independent commissions, public institutions and corporations and any other institutions in Southern Sudan as may be determined by law.

- (5) The Southern Sudan Auditor General shall present an annual report to the President of the Government of Southern Sudan and the Southern Sudan Legislative Assembly.
- (6) The Southern Sudan Auditor General shall be prohibited from engaging in all businesses in which constitutional office holders are not allowed to engage, pursuant to Article 121 (2) of this Constitution.
- (7) The law shall organize the Southern Sudan Audit Chamber and shall specify the functions, terms and conditions of service of its employees.

CHAPTER VIII

INTERSTATE TRADE AND COMMERCE

196. (1) Free interstate trade and commerce are guaranteed by this Constitution. No legislation shall impede interstate commerce, the flow of goods and services, capital or labour between the states and local governments in Southern Sudan.
- (2) There shall be no levies or fees or any other charges on interstate trade and commerce in Southern Sudan.

CHAPTER IX

TRANSITIONAL PROVISIONS FOR FINANCE AND BANKING

Circulating Currencies in Southern Sudan

197. (1) The Central Bank of Sudan shall issue a new currency, the design of which shall reflect the cultural diversity of the Sudan. Priority shall be given to meet currency demand and replacement of the circulating currencies in Southern Sudan.
- (2) Until a new currency is issued on the recommendation of the Central Bank of Sudan, the circulating currencies in Southern Sudan shall be recognised.

Government Liabilities and Assets

198. (1) Any debt or liability incurred by any level of government in Southern Sudan shall be the responsibility of that level of government.

- (2) There shall be a fair and equitable division of government assets in Southern Sudan. 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 consisting of a representative of each of the parties involved in the dispute and a mutually agreed expert. The decision of the committee shall be final and binding.

PART THIRTEEN

NATURAL DISASTERS

199. (1) The President of the Government of Southern Sudan, in consultation with the Southern Sudan Legislative Assembly, may upon the occurrence of any natural disaster or epidemic which may threaten the civil life of the people of Southern Sudan, take appropriate control measures to address the situation.
- (2) Should the situation contemplated in sub-Article (1) above require the declaration of a state of emergency, the President of the Government of Southern Sudan shall request the President of the Republic to declare the state of emergency in accordance with Article 210 of the Interim National Constitution.

PART FOURTEEN

CENSUS AND ELECTIONS

CHAPTER I

CENSUS AND STATISTICS

The Southern Sudan Centre for Census, Statistics and Evaluation

200. (1) There shall be established in Southern Sudan a Southern Sudan Centre for Census, Statistics and Evaluation.
- (2) The Southern Sudan Centre for Census, Statistics and Evaluation shall be an autonomous statistics bureau authorized, *inter alia*, to:
 - (a) collect, compile, analyze and publish all official statistical information on economic, social, demographic, environmental and general activities and conditions of the people of Southern Sudan;

- (b) conduct all censuses and surveys that are carried out throughout Southern Sudan;
 - (c) monitor and evaluate social impacts of public policies, projects and programmes; and
 - (d) monitor the progress of poverty alleviation and the attainment of the Millennium Development Goals in Southern Sudan.
- (3) The President of the Government of Southern Sudan shall appoint a Board of Directors and the Director of the Centre. The Board shall be the highest policy-making body of the Southern Sudan Centre for Census, Statistics and Evaluation; it shall formulate policies and set its internal regulations, priorities, standards and criteria for all the censuses and surveys to be carried out in Southern Sudan.
- (4) The organisation and powers of the Centre, and terms and conditions of service of its personnel shall be regulated by law.

Southern Sudan Population Census

201. (1) Population census in Southern Sudan shall be conducted and completed by the end of the second year of the Interim Period.
- (2) The population census in Southern Sudan shall be conducted by the Southern Sudan Centre for Census, Statistics and Evaluation in coordination with the national Central Bureau of Statistics.
- (3) In the interest of effectiveness in the execution of the population census or surveys throughout the Sudan, the national Central Bureau of Statistics and Southern Sudan Centre for Census, Statistics and Evaluation shall co-ordinate, co-operate and assist each other in the fulfilment of their functions and may to this end, establish the necessary mechanisms and channels of implementation.

CHAPTER II

ELECTIONS IN SOUTHERN SUDAN

Time of Elections in Southern Sudan

202. General Elections at all levels of government in Southern Sudan shall be held not later than the end of the fourth year of the Interim Period.

Referenda in Southern Sudan

203. (1) Pursuant to Schedule B (11) herein, the President of the Government of Southern Sudan, or the Southern Sudan Legislative Assembly, through a resolution passed by more than half of all its members, may refer for a referendum any matter of public interest within the competence of the Government of Southern Sudan.
- (2) Any matter submitted for a referendum shall be deemed to have been approved by the people of Southern Sudan if it has obtained more than half of the number of votes cast.
- (3) Any matter which has been approved by the people of Southern Sudan in a referendum shall have authority above any legislation. It shall not be annulled save by another referendum.

Running for Elections in Southern Sudan

204. Whoever runs in any elections in Southern Sudan shall respect, abide by and enforce the Comprehensive Peace Agreement, this Constitution and the Interim National Constitution.

PART FIFTEEN

INTERIM AND MISCELLANEOUS PROVISIONS

Coming into Force

205. (1) This Constitution shall be cited as the Interim Constitution of Southern Sudan, 2005; its English and Arabic versions are equally official and authentic. In case of any contradiction between the English and Arabic texts, the English text shall be authoritative as English was the language of the drafting of this Constitution. Any reference to the masculine gender in the Arabic text also denotes the feminine gender.
- (2) Upon the adoption of this Constitution by the Southern Sudan Legislative Assembly, it shall be presented to the National Ministry of Justice which shall, within two weeks from the date of receipt, declare its compatibility with the Interim National Constitution.
- (3) This Constitution shall come into force on the date of signature by the President of the Government of Southern Sudan.

Amendment of this Constitution

206. (1) This Constitution shall not be amended unless the proposed amendment is approved by two-thirds of all members of the Southern Sudan Legislative Assembly and only after introduction of the draft amendment at least two months prior to the deliberations.
- (2) Any amendment affecting the provisions of the Comprehensive Peace Agreement shall be introduced only with the approval of both Parties signatory to the Comprehensive Peace Agreement.

Incorporation of the Comprehensive Peace Agreement in this Constitution

207. The Comprehensive Peace Agreement is deemed to have been duly incorporated in this Constitution; any provisions of the Comprehensive Peace Agreement which are not expressly incorporated herein shall be considered as part of this Constitution.

Interim and Miscellaneous Provisions

208. (1) This Constitution derives its authority from the will of the people of Southern Sudan, the Comprehensive Peace Agreement and the Interim National Constitution of the Republic of the Sudan, 2005.
- (2) For the purposes of this Constitution and the Comprehensive Peace Agreement, the Interim Period commenced on July 9, 2005 and any measures taken or institutions established by the President of the Government of Southern Sudan pursuant to the Comprehensive Peace Agreement and the Interim National Constitution prior to the adoption of this Constitution, shall be deemed to have been taken or established by virtue of this Constitution.
- (3) All current laws shall remain in force and all judicial and civil servants shall continue to perform their functions, unless new actions are taken in accordance with the provisions of this Constitution.
- (4) This Constitution shall govern the Interim Period in Southern Sudan, subject to any amendment or review in accordance with Article 206 herein.
- (5) All the interim provisions contained in the various parts and chapters of this Constitution shall cease to have effect after the holding of the general elections stipulated under Article 202 of this Constitution.
- (6) Should the outcome of the referendum on self-determination confirm unity, the current system of governance established under this Constitution shall remain in force and all the institutions established under it shall continue to

function in accordance with the provisions thereof until a permanent Constitution is promulgated.

- (7) If the outcome of the referendum on self-determination favours secession, this Constitution shall remain in force as the Constitution of a sovereign and independent Southern Sudan, and the parts, chapters, articles, sub-articles and schedules of this Constitution that provide for national institutions, representation, rights and obligations shall be deemed to have been duly repealed.

SCHEDULES

Schedule (A) National Powers

The exclusive legislative and executive powers of the national level of government shall be as follows:

1. National Defence, National Security and Protection of the National Borders;
2. Foreign Affairs and International Representation;
3. Nationality and Naturalization;
4. Passports and Visas;
5. Immigration and Aliens;
6. Currency, Coinage and Exchange Control;
7. Constitutional Court and other National Courts;
8. National Police (including Criminal Investigation Department – CID, coordination of international, regional and bilateral criminal matters, and standards and regulations including the standards for training the police in the National Capital);
9. The fixing of and providing for salaries and allowances of civil and other officers of the National Government;
10. Postal Services;
11. Civil Aviation;
12. Maritime shipment;
13. Beacons;
14. Navigation and Shipment;
15. National Lands and National natural resources;
16. Central Bank, the Incorporation of National banks and issuing of paper money;
17. Bills of Exchange and Promissory Notes;
18. Weights, Measures and Standards, Dates and Standards of Time;
19. Meteorology;
20. Establishment and Maintenance of National Prisons;
21. National Institutions as envisaged under the Peace Agreement or as set forth in this Constitution;

22. Customs, Excise and Export Duties;
23. Intellectual Property Rights, including Patents and Copyright;
24. National Flag, National Emblem and National Anthem;
25. Signing of International Treaties on behalf of the Republic of the Sudan;
26. National Debt and borrowing on public credit;
27. National Census, National Surveys and National Statistics;
28. National States of Emergency;
29. International and Inter-State Transport, including roads, airports, waterways, harbours and railways;
30. National Public Utilities;
31. National Museums and National Heritage Sites;
32. National Economic Policy and Planning;
33. Nile Water Commission, the management of the Nile Waters, trans-boundary waters and disputes arising from the management of interstate waters between Northern states and any dispute between Northern and Southern states;
34. National information, publications, telecommunications regulations;
35. National Taxation and National Revenue Raising;
36. National Budget;
37. Laws providing for National elections and their supervision by the National Elections Commission; and
38. Issuance of National Identity Card.

Schedule (B)
Powers of the Government of Southern Sudan

The exclusive legislative and executive powers of Government of Southern Sudan shall be as follows:

1. The adoption and amendment of the Constitution of the Government of Southern Sudan;
2. Police, Prisons and Wildlife Services;
3. Security and military forces during the Interim Period;
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, 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, control of animal diseases 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 the Government of Southern Sudan 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 within the competencies of Southern Sudan Government;
 12. Taxation and revenue raising in Southern Sudan;
 13. Southern Sudan Budget;
 14. Public utilities of Government of Southern Sudan;
 15. Government of Southern Sudan flag and emblem;
 16. Reconstruction and development of the Southern Sudan;
 17. Government of Southern Sudan 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 Government of Southern Sudan legislation or intervention including, but not limited to the following:-
 - (1) Matters relating to businesses, trade licenses and conditions of operation;
 - (2) Natural resources and forestry;
 - (3) Town and rural planning;
 - (4) Disputes arising from the management of interstate waters within Southern Sudan;
 - (5) Fire fighting and ambulance services;
 - (6) GOSS reformatory institutions;
 - (7) Firearms licenses within Southern Sudan; and
 - (8) Government of Southern Sudan recreation and sports.
 20. Such matters relating to taxation, royalties and economic planning as is specified in the Agreement on Wealth Sharing;
 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 any other appropriate documentation.

Schedule (C)

Powers of States

The exclusive executive and legislative powers of a state of the Sudan shall be as follows:-

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;
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;
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; and
45. Flag and emblem of the state.

Schedule (D)

Concurrent Powers

The National Government, the Government of Southern Sudan and state governments, shall have legislative and executive competencies on any of the matters listed below:-

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 Government of Southern Sudan 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 Government of Southern Sudan, 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. Pastures, veterinary services, and animal and livestock diseases control;
 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;
 29. Southern Sudan and state Courts responsible for enforcing or applying National laws;
 30. Such matters relating to taxation, royalties and economic planning 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; and
 32. Regulation of land tenure, usage and exercise of rights in land.

Schedule (E)

Residual Powers

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

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