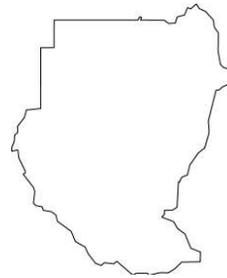


# **REPUBLIC OF SUDAN**

(AL – JUMHURIYAT AS - SUDAN)



## **BACKGROUND AND LEGAL SYSTEM**

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### LEGAL SYSTEM

Primary sources of law at all levels of government are Acts passed by the National Legislature, southern Sudan government legislature, state legislature, within the scope of the powers assigned to each level as prescribed under the constitution. Another important source of law is statutory or subordinate legislation under the authority of an Act of Parliament. The legal system resides on the constitution. The ultimate target of the Federal National Government is the protection of the rights and freedoms of the individuals as stipulated in the Bills of Rights. The constitution provides that religions, customs and beliefs are sources of moral strength and inspiration for Sudanese people. The National Constitution shall be the supreme law of the land. All laws must comply with the constitution. The constitution provides that nationally enacted legislation having effect only in respect of the states outside southern Sudan shall have as its source of legislation Islamic Shar'ia and the consensus of the people. Nationally enacted legislation applicable to southern states and/or the southern region shall have its source of legislation popular consensus, the values and customs of the people. Case law provides an important source of law at all levels of governments. It is pertinent to indicate that commercial law practice was influenced by the English common law system. This was due to the fact that the Sudan Judicial system was influenced by the English common law system during the Anglo-Egyptian Condominium rule of 1898. As no codified law was available at that time to cover areas of commercial law such as contracts, sale of good, agency etc, the British introduced

section (9) in the Civil Justice Ordinance which stated that in all matters not provided for by legislation "the court shall act according to justice, equity and good conscience". Under this pretext, the common law was received in the Sudan, though changes have been made to satisfy conditions unique to the country. The British had left Islamic Shari'ah law intact as regards personal matters such as marriage. Accordingly, Sudanese lawyers turned to cases which demand guidance to English commentators and even English decisions. The practice is still maintained, however not as in the past. English and American courts decisions are only of persuasive value, particularly in sophisticated areas of commercial law where available legislation would not provide sufficient answers. The company law Ordinance of 1925 as amended was modeled after its English counterpart. The same applies to Partnership Registration Ordinance 1933 as amended, the Registration of Business Names Act 1970. The law relating to negotiable instruments such as Bills of Exchange, Cheques, Promissory Notes and Bankers' Drafts have been codified by the Bills of Exchange Act 1931 as amended which was modeled after its English counterpart the Bills Of Exchange Act of 1882. Problems in connection with Securities for bankers' advances whether proprietary securities such as title to goods or possessory securities such as mortgages and fixed and floating charges granted by a corporation may be resolved, in intricate cases, by reference to the rules of the English common law. The intellectual property legislation such as patents Act of 1971, trademarks Act of 1969, industrial designs Act of 1974 and copyright Act of 1974 were modeled after their English counterparts. The same applies to income Tax Act of 1986, and bankruptcy legislation.

Banks in the Sudan invariably apply the ICC'S Uniform Customs and Practice of Documentary Credits (UCP 1993 revision) which provides that the role of the bank is to examine documents so as to ensure that the tendered documents do not contradict one another. This role is confirmed by the International Standard of Banking Practice (ISBP) for the examination of documents under documentary credits. The ISBP is envisaged to maintain uniformity of practice worldwide to the effect of saving time, speed up the flow of international trade, minimize costs and avoid unnecessary disputes. However, operating Islamic banks have shown some misgivings as

regards, inter alia, discounting of bills, foreign exchange dealings. Again ICC (Inco terms) are regularly utilized in compliance with the latest version.

The Civil Transaction Act of 1984 is an attempt to codify the general theory of contracts under Islamic Shari'ah. It is based on firmly embedded principles under Islamic law. It deals, inter alia, with contractual matters such as formation of contract, performance, void and voidable contracts, fraud, misrepresentation, error, unfair contract terms, frustration, illegality, assignability, breach of contract, remedies for breach of contract. It is difficult to understand the Civil Transactions Act without grasping the underlying cardinal Islamic law principles. This must be briefly addressed for a better understanding of the said legislation.

The general theory of contracts under Islamic Shari'ah is governed by the principle of freedom and binding force of contracts. Islamic Shari'ah upholds the sanctity of contracts on the maxim "Muslims are bound by their stipulations". The contract is considered to be the law of the parties. Honoring contracts is not considered as just a commercial efficacy, but it is elevated to a position of the highest noble virtues. On account of that, in Islamic Shari'ah validity of a contract does not depend on any particular formality such the presence of consideration or a distinction between nominate and innominate contracts. Even a Muslim state can not invoke sovereignty to cancel unilaterally a contract with an individual or a company. A sui generis contract is recognized under Islamic shari'ah. Many maxims support this position such as "a matter recognized by custom is regarded as though it was a contractual obligation." Again, the maxim states, "a matter established by custom is like a matter established by law." This signifies that custom is an arbitrator. A rule of custom which adapts to the needs of commercial practice is endorsed by Shari'ah insofar, as it does not contravene an enshrined Shari'ah precept. Again, commercial needs prevail over juridical niceties whenever the ultimate goal is public interest. By virtue of the broad principle of freedom of contract, unfettered by particular legal niceties, any defined set of rights and obligations are recognized under Islamic Shari'ah even a particular parallel could not be traced to accommodate these sets of rights and obligations.

POLITICAL SYSTEM

An essential feature of the political system in the Sudan is the separation of powers among three different branches, namely the legislature, the executive and the judiciary. The Sudan has a Federal system of government. Powers are distributed among the Federal Government, the Government of Southern Sudan and State Government. The constitution provides that all levels of governments shall be governed by elected Parliaments. The rule of law forms a significant part of the constitution. The background for the said system is hereinafter explained. The Sudan Government and the rebels led by the Sudan People Liberation Movement (SPLM) signed on July 2002 the Machakos Protocol under the auspices of Kenya, the United States of America, the United Kingdom, and Norway in coordination with the International Authority for Development (IGAD) having Eritrea, Ethiopia, Uganda, and Kenya as members. In the said Protocol an understanding was reached which resolved, inter alia, the main matter at issue which appeared in the past as an insurmountable obstacle. This main matter at issue was the secular or Islamic character of the state. Again, questions of wealth sharing and self-determination acquired a significant weight. Subsequent to the Machakos Protocol the Sudan Government represented by the National Congress Party (NCP) and the Sudan People's Liberation Movement (SPLA) signed in Nivasha on January 9, 2005 the Comprehensive Peace Agreement (CPA). This landmark agreement ended a cruel war which lasted for more than two decades. The Interim National Constitution which is an offshoot of the CPA came into force in July 6, 2005. By virtue of CPA the Sudan Government and the SPLAM reached an historic agreement in connection with the nature of the state in terms of religion.

The solution to this problem was incorporated in the Interim National Constitution. Article (1) Chapter 1 of part 3 clearly provides that "the Republic of the Sudan is an independent, sovereign state. It is a democratic, decentralized, multi-cultural, multi-lingual, multi-racial, multi-ethnic, and multi-religious country where such diversities co-exist". The constitution is based on a decentralized system of governance having four levels of government. First, the National level of government which shall exercise authority as regards protecting national

sovereignty and Territorial integrity of the Sudan and promoting welfare of the whole people of the Sudan. Second, the Southern level of government. Third, the state level of government which shall exercise authority at the state level throughout the Sudan. Fourth, the local level of government.

It is of prime importance to note non-reference in the Interim National Constitution to Islam as the religion of the majority as it was the case in the abolished constitution. Again, article 5 Chapter 1 of Part 1 of the same relating to sources of legislation repeals Islamic Law as a source of legislation as regards the Southern region of the Republic of the Sudan. Article 5(2) Chapter 1 of Part 1 reads so far as it is material that sources of legislation for the South consist of "nationally enacted legislation applicable to Southern Sudan or States of Southern Sudan shall have as its sources of legislation popular consensus, the values and customs of the people of the Sudan, including their traditions and religious beliefs, having regard to Sudan diversity". The Interim national Constitution clearly prescribes that the rule of law and supremacy of the rule of law shall prevail. This provision expressly abolishes the supremacy that was given to Islamic Shari'ah in the preceding constitution. The Interim National Constitution demonstrates a secular conceptualization tailored to fit in the practical realities of the Sudan. It is evident that a counter conceptualization based on the Islamic doctrine would have definitely led to evading the deal.

It is relevant to this point to state that Arabic is no longer the only official language. Paragraph (3) of Article 8 Chapter 1 of Part 1 clearly prescribes that English shall be an official working language on the same footing as the Arabic language. Following the said arrangement the Government of National Unity (GNU) was formed which is a power sharing government where according to the provisions as contained in the Interim National Constitution entitled the Government of National Unity, the National Congress Party holds 52%, the SPLA holds 28%, other northerners' hold 14%, and other southerners hold 6%. The main task of the GNU is to implement the Comprehensive Peace Agreement (CPA) reflecting the need for inclusiveness, the promotion of national unity and protection of national sovereignty. The duties of GNU include administration of the state, formulation and implementation of national

policies, establishment of a decentralized economic system of governance, implementation of CPA in a manner as would ensure unity of the Sudan and make it an attractive option, particularly to the Southern Sudan or otherwise pave the way for the exercise of the right of self-determination as prescribed under the Interim National Constitution. One of the cardinal tasks of GNU is to devise a comprehensive solution that addresses economic and social problems to the effect of ensuring social, political and economic justice and respect of the fundamental freedoms and rights of the people of the Sudan.

The Nivasha Peace Treaty granted southern rebels autonomy for six years after which a referendum for independence is scheduled to be held. The Sudan system of government is Presidential. The National Interim Constitution provides in part 1 that the Sudan shall be a Federal Republic. The National Executive consists of the President and a Council of Ministers. The institution of Presidency consists of the President and two vice presidents. With a view to safeguarding the Peace Treaty the institution of Presidency shall assume a partnership and collegial decision making process. The President until such time as elections are held is the Commander-in- Chief of the Sudan Armed Forces (SAF). The SPLM chairman is the first vice president and the President of the Government of Southern Sudan (GOSS) and Commander –in-Chief of Sudan People's Liberation Army (SPLA). The President shall take decisions with the consent of the first vice president in matters including, inter alia, declaration and termination of a state of emergency, declaration of war, appointments that the President is required to make according to the Peace Agreement, and summoning or adjourning the National Assembly. In the event the post of the President falls vacant, the functions of the President shall be assumed by a Presidential Council comprising the Speaker of National Assembly, the first vice president and the vice president. The Presidential Council shall take its decisions by consensus. However, should the post of the President falls vacant in the period after elections, the post shall be filled through presidential elections which shall be held within sixty (60) days The Council of Ministers shall be accountable to the President and the National Assembly in the performance of their functions and may be removed by a resolution supported by two thirds 2/3 of all the members of the National Assembly. The president when elected shall stay for a four year term. On the

local level, executive authority shall rest with governors. The National Assembly shall have legislative authority. The Judicial system shall guarantee the independence of judges. The Constitutional Court shall be independent from the Judiciary and other courts in the country. It shall be headed by the president of the Constitutional Court, duly appointed by the President with the consent of the first vice president and shall be answerable to the president. The National Interim Constitution defines Federal and State power. It provides for establishing Southern States Coordinating Council to govern Southern states and arrange local elections. Pursuant to the CPA and the Interim National Constitution, the president issued Presidential Decree No. 36 of 2005 establishing the Assessment and Evaluation Commission (AEC) which shall among other things, monitor, evaluate the implementation of the CPA during the pre-interim and interim periods, evaluate the unity arrangement, advice presidency as to improving the institutions created, evaluate fulfillment of the obligations and the international support for the implementation and enforcement of CPA. Again, the president issued Presidential Decree No.37 (2005) establishing the National Petroleum Commission (NPC) responsible for formulating policies and guidelines in relation to the development and management of the Petroleum sector and monitor that implementation of these policies to ensure that they serve the best interests of the people of Sudan.

**HEAD OF STATE**

President.

**HEAD OF GOVERNMENT**

The President is also the Head of Government. Section 58 (1) Chapter 2 of Part 3 of Interim National Constitution stipulates that the President of the Republic is the Head of the State and Government.

**SUBNATIONAL ENTITIES**

Sudan is divided into 26 states. Khartoum is the capital of the Republic of the Sudan. The state enjoys wide executive and legislative authorities. Each state is divided into a number of localities. Each local government has a number of organs responsible for planning, executing and managing public sectors such as agriculture, industry, education, health, transport etc.

TRANSLITERATION  
SYSTEM

In the Sudan no one single language is utilized for transliteration as regards other languages and dialects lacking orthography. Alphabet and use of Arabic character is confined to the Arabic language. However, some dialects and languages in the south are attempting to utilize the Latin script. Nubian tribes of the northern Nile valley, south of Egypt, sometimes called Baraabra are still utilizing their ancient Kushite language; however they have direct access to the Arabic language from which borrowing could be made. Other tribes living in the northern and central belt of the Sudan use the Arabic language. As a matter of fact, Arabic language is widely spoken in the Sudan. Over again, Arabic language is a factor of unifying Arab tribes in different parts of the Sudan. The Hadenwa, Bishariyan and Bani Amer of the Red Sea Hills utilize Bedawiye and other ancient Hamitic and Semitic languages. Hill Nubians of Southern Kordofan and Fur of western Sudan use different languages and dialects.

The most important languages and dialects in Southern Sudan are Dinka, Shilluk, Nuer, Zande, latuk, Bari and Mandari. The said languages and dialects are much more akin to each other and have near similarity to languages and dialects used by tribes living in Kenya, Uganda and Congo. Most these dialects have no literacy tradition, but an attempt to obtain access to writing is underway. Such languages need to have suitable language standardization. Simple English and elementary Arabic are used as lingua franca for Nioletic tribes which occupy the Nile Valley and the swamps in Southern Sudan. Ethno-linguistic heterogeneity of the population of southern Sudan is emphasized by the outcome of having English as the official language. The Constitution of the Sudan has recognized this situation and clearly provides that the English language shall be the official language for Southern Sudan. Unlike Swahili and Hausa languages, southern dialects do not maintain straight access to the Arabic language from which borrowing could be achieved.

The suggestion that English shall be the official language for Southern Sudan was not a recent one. Sir John Maffey, Governor General of the Sudan from 1924-1934 supported by J.G Matthew, the Civil Secretary and Minister of Education and Health spoke to the Rajaf Language Conference in 1928,

suggesting that English shall be developed as the official language in the South. In addition to that, the conference suggested developing unified orthographic guidelines with a script much more compatible to African users.

All the other local languages or dialects have no known scripts such as the Bedawiye spoken by nomadic Beja in Eastern Sudan. The same applies to Nubian dialects. Graphization as submission of a language to the rules of a written system is required for all the said dialects. It is estimated that the Sudan have over fifty ethnic groups embracing nearly six hundred tribes (600) having over one hundred dialects. Most of these dialects are merely used for verbal communications including songs and other human expressions.

Article 8 Chapter 2 of part 1 of the Interim National Constitution provides that all indigenous languages of the Sudan are national languages and shall be respected, developed and promoted. It further provides that Arabic, as a major language at the national level and English shall be the official working languages of the national government and the languages of instruction for higher education. There shall be no discrimination against the use of either Arabic or English at any level of government or stage of education. Again, in addition to Arabic and English, the legislature of any sub-national level of government may adopt any other national language as an additional official working language at its level.

## CONSTITUTION

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OFFICIAL NAME	The Interim National Constitution of the Republic of the Sudan.
ENACTMENT	Enacted in 2005.
CITATION FORMAT	THE INTERIM NATIONAL CONST. REPUB OF. SUDAN pt. x, chapter x art. x (2005).
<i>Examples</i>	THE INTERIM NATIONAL CONST. REPUB. OF SUDAN pt. I, chapter 1 art. 13 (2005).

**STATUTES**

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GOVERNMENT  
STRUCTURE

The structure of the Republic of the Sudan is defined by the Interim National Constitution. The said constitution provides for four levels of governments which are: the National Government, the Government of Southern Sudan, State Government and local government. Powers for each level of government are clearly defined under the constitution. The details structure and responsibilities of all levels of governments are defined under the constitution. The state constitution differs from state to state, but do not contradict the Interim National Constitution for the Republic of the Sudan. Like the Federal Government both the government of Southern Sudan and the state government have three branches, the executive, the legislative and the judicial. The government of Southern Sudan is headed by the first vice president. At the state level the executive branch is headed by the governor. The Federal National Government consists of three branches which are: the National Executive, the National legislature, and the National Judiciary. The National Executive consists of the Presidency of the Republic, and the National Council of Ministers. The Presidency of the Republic consists of the President of the Republic and two vice presidents. The elected President of the Republic shall appoint two vice presidents, one from Southern Sudan and the other from the northern Sudan. If the elected President is from the north, the position of the first vice president shall be filled by the person who has been elected to the post of the President of the Government of Southern Sudan as the President appointee to the said position. In the event that a person from the south was elected to the Presidential post, the elected President shall appoint the first vice president from the north upon recommendations of the party that won the highest number of northern seats in the National Assembly. The President of the Republic appoints assistants and advisors and defines their functions and authorities.

The President shall after consultation with the Presidency appoint the National Council of Ministers. The President and the two vice presidents shall be members of the National Council of Ministers. Decisions of the National Council of Ministers shall preside over all other executive decisions. Decisions taken by the National Council of Ministers shall be

adopted by consensus or simple majority. Ministers at the States level shall be appointed by the President after consultation within the Presidency.

The National Legislature is composed of the National Assembly and the Council of States. Both Chambers of the National legislature shall approve the allocation of resources and revenues in accordance with agreement of wealth sharing. The National Assembly shall approve the annual national budget. The National legislature is bicameral in form; composed of the National Assembly and the Council of States. The Interim National Constitution provides that when the process of elections starts, the National Assembly shall be elected by an impartial and representative electoral commission in accordance with fair electoral laws. The Council of States shall be comprised of two representatives from each state. The term of each Chamber of the National Legislature shall be five years commencing from the date of its first sitting. The National Judiciary shall be independent of the National Legislature and the Executive with the necessary financial and administrative independence. However, the public attorneys and the states' legal advisors shall be under the National Minister of Justice. Their function is to advise states, represent them in public prosecution, litigation and adjudication and conduct pre-trial proceedings. The National Minister of Justice is the chief legal advisor of the National Government. The National Civil Service shall consist of employees at the National level of government who shall impartially carry out the functions assigned to them according to law.

The National Government is assisted by independent national institutions and commissions such as the National Constitutional Commission, the National Elections Commission, Human Rights Commission and the Public Grievances Chamber which considers grievances suffered by citizens in relation to state institutions. The Chamber shall consider grievances only after exhausting all means and stages of litigation by the complainant.

LEGISLATIVE  
PROCESS

The procedure of government by which bills are deliberated and law enacted is normally referred to as the legislative process. The Republic of the Sudan legislature is a bicameral parliament, that is to say the Republic of the Sudan legislature is composed of two chambers which are the National Assembly and the Council of State. Both Chambers have equivalent legislative functions within clearly prescribed limits. Each Chamber establishes the rules of its proceedings and internal regulations. A bill can not turn into law without deliberation and sanction by both Chambers and assent of the President of the Republic. The open and broad debate provided under the Interim National Constitution frequently concludes in an upgrading of a bill by amendment prior to becoming law.

The National legislature shall conduct its business in joint sittings of the two chambers chaired by the Speaker of the National Assembly and deputized by the Speaker of the Council of States; however, as indicated above each chamber shall make its own internal regulations and shall sit separately to conduct its business as prescribed under the Interim National Constitution. The National Assembly shall be composed of members elected in free and fair elections in compliance with the National Election Law which shall determine the number of members. On the other hand, the Council of States shall be composed of two representatives from each state, elected by state legislature in compliance with National Election Law and the Regulations set forth by the National Election Commission.

The functions of national legislature embrace, inter alia, fostering national unity, exercise national legislative functions, oversee the national executive and promote the decentralized system of government. The national legislature in joint sitting is empowered to amend the constitution, approve amendments affecting the CPA, authorize annual allocation of resources and revenues, reconsider a bill which has been rejected by the President, approve declarations of war, confirm declaration of a state of emergency or termination of the same, impeach the President of the Republic or the first vice president. The National Assembly is empowered to assume legislation in all national matters, approve plans, programmes relating to the state and society, ratify international treaties, conventions and agreements, and adopt decisions in matters of public concern.

The Council of states is empowered to initiate legislations on the decentralized system of government and other issues of interest to the states. Again, approval by two thirds majority of all representatives of the Council of States must be obtained prior to appointment of Constitutional Court judges. It is also authorized to review bills passed by the National Assembly. An important qualification is that state legislatures or executives shall not be eligible for membership of the National legislature while occupying any of the aforesaid positions. Representatives of the Council of States shall not be appointed as members of the National Council of Ministers.

Sources of ideas for legislation originate from a range of sources. The process begins when the President of the Republic, the Presidency, the National Council of Ministers, a national minister or a committee of the national legislature authors or tables a bill before either Chamber of the National Legislature, provided however, that the tabled bill shall fall within the ambit of the competence of the relevant chamber. There are two kinds of bills. One is the public bill; the other is the private bill. A public bill is one that involves the public in the main. On the other hand, a bill that influences particular individuals or a private entity rather than the people in general is termed a private bill. A bill that has been approved by both chambers turns into law only after Presidential endorsement. A member of the national legislature may author or table a private bill before the chamber to which she belongs on a matter which falls within the jurisdiction of the said chamber. A private member bill shall be reviewed by the concerned committee prior to being tabled before the appropriate chamber. Bills are presented and considered in conformity with prescribed procedures. Bills presented to either chamber of the national legislature shall be submitted for the first reading by being cited by title. The title provides members of the chambers of notice of the subject matter embraced in the bill. After the first reading, the speaker shall refer the bill to the appropriate committee which shall make a general evaluation report for the purpose of the second reading. The suggestions of the appropriate committee are directly given a second reading. Accordingly, the bill shall then be submitted for a second reading for general deliberation in detail including a decision upon any amendments. When the bill is deliberated and approved, this is termed a third reading. It is at the third

reading of the bill that the whole national legislature provides consideration to the bill's passage. At this stage, the bill may be deliberated in detail, discussed, amended and read in depth before final passage. The speaker may also refer the bill once again to the appropriate committee to prepare a report on the final drafting in preparation for the final reading.

After the bill has been discussed, each member casts his or her vote. If a majority of the members who are present and voting vote against the bill, the bill would fail, otherwise, it would pass. However, the procedure of passing a bill requires assent of the President of the Republic. Any bill approved by the national legislature shall not become law unless it is approved by the President of the Republic 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. In the event the President withholds assent to the bill and provides reasons within the stipulated thirty days, the bill shall be reintroduced to the national legislature to consider the observations of the President of the Republic. However, the bill shall become law if the national legislature again passes it by a two thirds majority of all the members and representatives of the two chambers. In such an instance the assent of the President of the Republic shall not be required for the bill to come into force. The president is empowered to issue a provisional order on an urgent matter in situations where the national assembly is not in session. In the event an appropriate chamber of the national legislature ratifies the Provisional order, it shall be promulgated as law. In the event of non-ratification the provisional order shall lapse with no retrospective effect.

The national assembly may delegate to the President of the Republic the power to ratify international conventions and agreements while the national assembly is not in session. Such ratification by the President shall not be subject to subsequent ratification by the national assembly. The President of the Republic shall cause to be presented to the national legislature before the beginning of the financial year a bill of the allocation of resources and revenues. Once more, the President of the Republic shall cause to be presented to the national legislature before the beginning of the financial year the bill on the general budget of the Republic, including a general

assessment of the economic and financial condition of the country, comprehensive estimates of proposed revenues and expenditure for the coming year in relation to the practice of the preceding year, a statement of the manner of the general balance of the budget, and reserve funds, transfers thereto or allocations therefrom, and explanations of any special budget or financial statements, policies or measures to be taken by National Government in the financial and economic affairs relating to general budget. The president of the Republic shall put forward to the National Assembly proposal of total expenditure entered into the budget as appropriation bill. Again, the President shall cause to be submitted the proposed taxes, fees, and other levies as financial bills. Yet again, the president shall cause to be put forward any proposals for borrowing, investment or saving bonds by the National Government as financial bills. The national legislature shall approve the general budget chapter by chapter including schedules and shall pass the total appropriation bill. Comprehensive estimates as appropriated in the General budget shall not be surpassed except by a supplementary law. Again, Surplus funds greater than revenue estimates and funds out of reserve legally separated shall also not be spent except by supplementary law.

REPORTER	Sudan Gazette (“Republic of the Sudan Gazette”)
CITATION FORMAT	<name of code> <chap.>, <art.>, <law number.> of <year> OR <name of code> <chap.> <year> <Sudan>
<i>Examples</i>	Article 3 of Criminal Procedure Act, 1991 Article 9 of Criminal Code, 1991 Article 6 of Civil Procedure Act, 1983 Article 10(2) of Evidence Act, 1993 Article 6(2) of the Encouragement of Investment Act 1999 Section 24 of the Trademarks Act, 1969 Section 40 of Patents Act, 1971 Section 8 of Industrial Designs Act, 1974 Article 7(2) of Planning Act, 1994

## ADMINISTRATIVE REGULATIONS

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### ADMINISTRATIVE SOURCES

Administration and inter-governmental linkages are governed by principles clearly stated in the Interim National Constitution which mandates that the administration of the government of national unity shall be a decentralized system of government with significant devolution of powers having regard to the National, Southern Sudan, State and local level of government. The Interim National Constitution shall be the supreme law of the land. Accordingly, the southern Sudan constitution, states constitutions, and the laws of all levels of government must comply with it. The linkage between the National Government and the states in the southern Sudan shall be through the government of the southern Sudan, provided however, that the National Government and State governments shall respect each other's autonomy, collaborate rather than compete in the process of governance as would assist each other in fulfilling each constitutional obligations. The Sudanese Interim Constitution gives the President the power to appoint ministers who form the Council of Ministers. Ministers may perform administrative tasks and may pass appropriate regulations

Administrative sources are useful data to show social and economic indicators, in particular business statistic sources. However, in the Sudan administrative activities depend on the authorized body which regulates the form of documentation for each administrative body. The administrative body manages the manner by which administration data are collected and processed. The Sudan Interim National Constitution provides that national consensus, national surveys and national statistics fall within the ambit of national powers. The authority assigned the task is the National Population Council. The powers given to the said department includes the right to access to and utilize administrative sources held by other people. Administrative sources include corporate tax data, personal income tax; value added tax and other indirect taxes. The said matters are a viable source for national accounts. Value added tax data which is regularly collected monthly, mandates businesses to report sales and purchases. Such a report stands as a possible source for short term indicators in connection with GDP. It also acts an indicator of economically active units. Customs and Excise is one of the most significant examples of an administrative data.

Customs clearance process primarily focuses on value for duty. Records held by the Central Bank provide very useful data in connection with foreign exchange, balance of payments and provides an opportunity to assess cross-borders transactions in services, income and transfers. Public Utilities records provide information on the production, consumption of the major commodities such as electricity, water and telephone services. Water and electricity records for Khartoum could be traced at Khartoum Water Corporation and Khartoum Electricity Corporation. Irrigation administrative sources could be traced at Irrigation and Excavation Public Corporation. Roads infrastructure could be traced at Roads and Bridges Public Corporation. Maritime sources could be traced at Sudan Shipping Lines Company. Aviation matters could be traced at Sudan Airways. Administrative sources as regards resources of oil and gas could be traced at the Sudan Petroleum Corporation. Questions as regards industry could be traced at the Ministry of Industry. Labor Department records provide information on employment and wages, social security payments deducted from employees. Department of Pensions records provide information on retired personnel. Again, records held by private sector provide useful information. Local authority records provide council tax registers, building and dwellings. In Khartoum construction matters could be traced at Ministry of Physical Planning and Public Utilities with the Housing and Development Fund as its major executing instrument. Registers of the Chamber of Commerce provide important information. Once more, the Commercial Registrar General records provide information relating to businesses registration for all forms of business organizations. Legislation documents maintained by the National Assembly summarize the motion during each session. Attorney General legal opinions provide an important administrative source. Presidential Documents including executive orders, proclamations and President's messages to National Legislature provide invaluable information.

REPORTER                      Sudan Gazette (“Republic of the Sudan Gazette”)

CITATION FORMAT        Currently unavailable.

*Example*

Sudan Gazette, 1969.

## **CASE LAW**

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### **JUDICIAL OVERVIEW**

The powers of the Judicial organs are exercised by courts and other specialized tribunals. The Judiciary is independent of the legislative and the Executive power. At the National level the established courts are: the constitutional court, the national supreme court, the national appeal courts, and other national courts. The constitutional court is independent from the judiciary. It is headed by the president of the constitutional court duly appointed by the president with the consent of the first vice president. The president of the Constitutional Court is answerable to the Presidency. The constitution court is composed of nine judges. Appointment of all justices of the Constitutional Court shall be approved by the Presidency on the Recommendation of the National Judicial Service Commission subject to approval by two thirds majority of all members of the Council of States. In appointing a constitutional court judge, regard must be given to competence, credibility and the need for fair representation. The jurisdiction of the Constitutional Court includes, inter alia, interpretation of the Interim National Constitution, hearing claims based on constitutional rights violations, and claims of conflict of competence between federal and states organs. The National Supreme court is a court of review and cassation in respect of any criminal or civil matters arising out or under national laws. It has criminal jurisdiction over the justices of the constitutional court. One of the cardinal tasks of the National Supreme Court is the review of death penalties imposed by any court in respect of matters arising out or under national laws. All justices of the National Supreme Court shall be approved by the Presidency on the recommendation of the National Justice Service Commission, having regard to competence and creditability. Similarly, all other justices shall be appointed by the Presidency on the recommendation of the National Judicial Service Commission which is chaired by the Chief Justice.

The Supreme Court is the highest judicial authority. It consists of seventy judges operating through panels; each panel is

composed of three judges. The decisions of the Supreme Court are subject to review only in instances where the Chief Justice deems a decision is in violation of an established Islamic shari'a precept. In such an instance a panel of five Supreme court judges shall revise the decision to bring it in conformity with Islamic law. Four circuits of the Supreme Court operate in western, Eastern and Central States of the Sudan. In the Sudan there are one hundred and thirty Appeal Courts judges. They are distributed among twenty eight (28) Appeal Circuits covering all the twenty six (26) states. Each circuit consists of three judges presided over by the most senior judge. They deal with appeals against decisions pronounced by first grade judges and appellate decisions of public courts in civil, criminal and personal matters cases. Public Courts come down in the hierarchy. The public court is the court of a single judge having jurisdiction as prescribed under the law to preside over civil, criminal and personal matters cases. However, the public court acts as an appellate court against decisions pronounced by second and third class magistrates. The number of Public Courts in the Sudan is in the range of 133. The lowest courts in the hierarchy are town and rural courts. These are popular courts whose members are selected from laymen of good repute in rural areas well conversant of local customs and inhabitants of the locality. These courts primary apply customary laws well entrenched in the said locality, provided however that the custom applied does not contravene established law principles or public policy considerations. In most cases the said courts resort to conciliation as an alternate dispute resolution method which proved to be fruitful. Matters of disputes normally reside in areas of pasture, water and cultivation. The jurisdictions of said courts are prescribed by the Chief Justice. The total number of town and rural courts is in the range of one thousand sixty two (1062). These courts deal with cases referred to them by a duly authorized judge in the locality. In addition to the aforementioned courts there are specialized tribunals such as labor courts, tax courts, military courts and commercial law courts dealing with intellectual property disputes.

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