

Constitutional Visions

A constitution is a document containing a set of basic legal rules considered as the basic law of the State.

- It identifies the basic principles for the society and the general guidelines of the State policies.
- It shows the form and nature of the state.
- It governs the rules of governance and determines the distribution of powers and competencies and sharing of the income.
- It decides the basic rights for the individuals and the guarantees thereof.
- It determines the state's relationship with the domestic and international community.

The Basic Principles of the Constitution

The following principles are considered the basic principles of each constitution:

- Supremacy of the constitution.
- Principle of the constitutional and legal legitimacy and the rule of law.
- Adoption of the constitution and endorsing thereof by the constituent assembly or by a popular constitutional referendum.
- Principle of the people's exercise of sovereignty through elected bodies.
- Pluralism of power exercise by the legislative, executive and judicial organs.
- Principle of separation of powers and the exercise of power in accordance with the constitutionally approved governance.
- Peaceful rotation of power through monitored free and fair elections.
- Principle of the legitimacy of human rights as a guarantee for the constitutional system.
- Principle of distribution of power and wealth in a unified, decentralized state based on the guiding constitutional standards.

Mechanism for the development of a draft constitution

In order for the draft constitution to gain acceptance and satisfaction of all political forces and civil society organizations interested in politics, economics, sociology and culture, its development must be assumed by a national committee that is inclusive and specialized, in which all these actors should be represented. This committee must be guided by the basic principles of both the constitution and constitutional legacy in any country to avoid the negative aspects of practice, and to come up with new texts that meet the requirements of positive change provided that a consensus must be reached to gain the support of the political forces in the parliament through the mechanism of adoption and endorsement, as this will ensure compliance with its texts and sanctity of its provisions as a supreme law that is respected by everyone.

The Establishing and Founding Authority for the Constitution

- Respect for the constitution and its supremacy requires that the will of the people to issue the document be the basis. It is not enough to have it issued by a constituent body, limited in number. The people sovereignty should be the establishing and founding factor for the constitution via endorsement obtained through a constitutional referendum, even if issued by the Parliament.
- Constitutions granted by the ruler do not get the acceptance and consent of the people who are the owner of the real sovereignty thereby leading to their revolt and demand for the abolition of these constitutions.
- The modern constitutional legacy of the Sudan shows that its constitutional provisions were either granted by the ruler or endorsed by a popular constitutional referendum after approval by the parliament or otherwise, as follows:

a. Self-Governance Act of 1953 which was granted by the Governor General during the Condominium in the Sudan.

b. The Interim Constitution of the Sudan 1956 was passed by the Senate and House of Representatives in a joint session. The constitution was prepared by the staff of the

Ministry of Justice, relying on what have been provided for in the Self-Governance Act of 1953 with some minor modifications necessitated by the declaration of independence of the Sudan from within the Parliament until the election of a constituent assembly to draft a permanent constitution.

c. The constitutional orders, from first to the fifth, during the period of military rule from 1958 - 1964 included constitutional provisions as a grant from the governor to run the affairs of the country after he has suspended the interim constitution and dissolved the parliament and the parties.

d. The Interim Constitution of the Republic of the Sudan of 1964 was a revival of the Interim Constitution 1956 and its subsequent amendments upon which they became the supreme constitutional authority of the nation for the council of sovereignty whose members were by elected by the Council of Ministers on 23.12.1964 following the popular revolution in October 1964 against the military rule. In this constitution, it was indicated that a Constituent Assembly would be established to develop a permanent constitution. It is worth mentioning that the amendments to that interim constitution had been endorsed by a constituent assembly which also approved the amendment number (5), which provided for the continuation of the Constituent Assembly even after the expiry of its tenure provided for in Article (53). It was supposed to expire after two years from the beginning of the convening of its first session. Its basic task was to establish and approve a permanent constitution for the country. The amendment was for the continuation of the Assembly until the holding of general parliamentary elections which, as stipulated, shall not be later than the twenty-ninth day of the month of February 1968. Despite the fact that a national committee formed had developed a draft constitution the Constituent Assembly did not approve it thereby necessitating another amendment which extended its term and assigned it with the task of enacting a law for electing another constituent assembly to approve the expected constitution.

e. On 25/5/1969, a military coup took place and the Military Council issued Republican Orders Nos. 1-5. The fifth order included constitutional provisions that decided the establishment of the executive, legislative and judicial organs. A committee was set up from academics and specialists to draft a permanent constitution called the Permanent

Constitution of 1973, after being endorsed by the People's Council (appointed) and approved by the President of the Republic thus amended the 1980 constitution and acknowledged the regional system of government.

Upon the popular uprising in April 1985 and the fall of the May Regime, an Interim Military Council was formed after the army sided with the revolution. That council on 10/10/1985 issued (a grant from the Governor) the *Interim Constitution of the Sudan 1985* whose provisions shall be enforceable until a permanent constitution for the country is drafted by a constituent assembly which shall turn into a parliament after the approval of the permanent constitution.

f . On 30 June 1989 and before the Constituent Assembly approved the Constitution, a military coup took place and issued a numerous constitutional decrees (1 -14 decrees). Decrees number four, ten, eleven, twelve, thirteen and fourteen formed constitutional provisions for the rule of the country to adopt a presidential system of government whereby Sudan was divided into states after the approval of the federal system of government and divided the wealth and power between the national and state levels of government and signed a peace agreement in the south in 1997. Constitutional decree number fourteen was issued for the enforcement of this agreement, relating specifically to the government organs in South Sudan and its relationship with the national level.

Constitutional decree number fourteen issued by the President of the Republic after its approval by the Interim National Assembly stated that the President of the Republic shall prepare a draft constitution and submit it for the National Assembly's discussion and approval. Afterwards, the Electoral Commission shall present the draft for a general referendum and once it is approved by the majority of the people, it will be signed by the President of the Republic to become the "constitution in force".

g. The Permanent Constitution of the Sudan 1998 which was prepared by a national committee and another technical committee continued to exist until the signing of the Comprehensive Peace Agreement and the issuance of the Interim National Constitution of the Sudan 2005 for the implementation of the peace agreement after the draft interim constitution was approved by the National Assembly of the Government of Sudan and

the National Liberation Council of the Sudan People's Liberation Army in two separate meetings and then signed by the President of the Republic on 7 September 2005, to be enforceable from the date of its signature.

It is clear that in the successive constitutions of the Sudan, several methods were followed in the development and adoption of constitutions and therefore any subsequent constitution must observe that the direct will of the people is the one that achieves permanence of the constitution in the minds of the people and its continuance and sustainability in the future.

The Basic Principles and General Guidelines

- The introduction to any constitution must include the fundamental principles that indicate the nature of the State, its form; whether unified or decentralized, the system of governance either a parliamentary or presidential or between this and that, and the extent of its commitment to respecting and promoting human dignity and human rights and freedom. It should also indicate the applicability of the constitution and sources of legislation and issues relating to citizenship, nationality and the official language of the State and its National emblems.

- The general guidelines, the basic and guiding principles of the governance and the state are necessary and therefore shall be provided for in the constitution to be used as a guide in the development of policies and laws. It must also set out guidelines relating to the national economy, which must be directed towards the ultimate goals of eliminating poverty, equitable distribution of wealth and reduction of variation in the income and achievement of a decent standard of life for all the citizens, and must refer to the duty of the State towards the adoption of policies that aim to increase production and build the economy and decide the direction of the foreign policy and relations with neighboring countries and those in the regional and international surroundings with a view to achieving economic and political integration.

- One of the most important guiding principles relating to the environment and the need to maintain a sound environment free from pollution is to put in place policies and legislations that would guarantee the achievement of this goal. Also, the state needs to be urged to develop strategies and other policies that would ensure social justice and provide job opportunities for all people, including those with special needs as well as the need for the state to provide education, science, arts, culture and protection of freedom of scientific research and care for children and youth, support of sports and civil institutions as well as the principles relating to the family, marriage and women in recognition of her role in the family and in promoting fair equality between women and men and to empower women in public life. It is also necessary to refer to the guidelines for defense policies for the State provided that the materials relating to the guidelines and basic principles in the constitution should not be devoid of reference to the absolute constitutional duties on the citizen because the constitutions, if clarifies the rights, they must also refer to the duties because the guidelines and basic principles contained in the constitution must be followed by the state agencies and all individuals in their public and private life and when policies and basic laws of governance are developed.

The Bill of Rights

- The issue of rights and freedoms moved from the center of the national attention to that of the international following the establishment of the international system of human rights and the issuance of international instruments on human rights, at the forefront of which are the two international covenants which are considered a mainstay for the International Bill of Human Rights namely, the International Covenant on Civil and Political Rights 1966 and the International Covenant on Economic, Social and Cultural Rights 1996 and other international conventions such as the International Convention on anti-racial discrimination and the Convention on the Rights of All Migrant Workers and members of their families.
- The status of each state became, at the international level, closely and directly linked to the extent of its seriousness in the application of international

conventions on human rights and through the accession to and ratification thereof, and then taking the necessary measures to transform the compliance with those agreements into practical reality reflected in domestic legislation and seriousness in their implementation and providing the constitutional and legal guarantees to enjoy them and not misuse, violate or degrade them.

- Reference by any constitution to the Bill of Rights and Freedoms detailing personal freedoms, including the freedom of belief, freedom of private life and the rights and freedoms relating to the thought like freedom of opinion, publication and education as well as detailing the civil and political rights like rights of ownership, political organization and the right of litigation and work and the like, reflects the extent of commitment of the state, the owner of the constitution, to the right of the people in enjoyment of those rights and freedoms, considering that the constitution is the most important legal document in the state that transcends any other legislation.

- Therefore, it becomes necessary for the next constitution of the Sudan to include a separate document for human rights and freedoms and the mechanisms and organs that will ensure that the document will find its way to practical implementation. This requires the confirmation of the role of the constitutional court in addressing violations of human rights based on the preliminary cases made before it, and that its decision will be the final and binding. A special commission for the human rights should be established comprising persons of high moral characters and impartiality and who enjoy the same standards that are included in the Paris Principles for such organs, whether they are popular voluntary organization of civil society organizations or quasi -governmental organizations helping the government in the enforcement of its constitutional and legal obligations to protect the human rights and freedoms with impartiality and seriousness. The constitution must also contain other necessary guarantees for the enforcement of all other economic, social, political and civil rights through controls, regulations and standards for which legislation will be passed as this will confirm the seriousness of the state in compliance with its constitution and the components thereof.

- The bill of rights in the Interim Constitution 2005 is one of the most distinguished documents that have been contained in the modern constitutions. It is clearer and more elaborate when it comes to all the civil, political, economic and social rights. Moreover, the link between the document and the ratified international conventions on human rights expresses the extent of the desire to adhere to it by integrating it in the legislation with the need for legislative intervention to regulate those rights and freedoms and not to degrade the right and liberty or totally misuse its resources or impose restrictions thereon in a way that makes the use of the right or freedom a hard matter for the individuals or groups while ensuring the individual's right to resort to constitutional court to repeal the legislation that may make the discretionary authority deviate to regulate those rights and freedoms to degrade and misuse thereof and impose arbitrary restrictions thereupon.

Form of the state and System of Government and the Exercise of Power

- The constitution shows the form of the State whether it is a unified or decentralized federal or treaty state.
- The constitution shows the system of governance which decides the public authorities of the state organs and their relationship to each other and the personnel, in terms of clarification of whether it is a "Royal", "Parliamentary", "Republican, "Absolute", "Presidential Council" or "Presidential Parliamentary".
- The constitution usually governs on the principle of plurality of the exercise of power between the legislative, executive and judicial system.

Form of the State

First: The Unified State:

The unified state exercises full sovereignty in terms of legislation, execution and judicial, without splitting, on all the lands of the state provided that the authority for the

concentration of power is limited by the existence of a local constitutional authority with executive and legislative powers prescribed by law.

Second: The Federal State

The federal state composes of states, provinces or nations with shared national powers and wealth which may really allow them to issue their own constitutions.

Third: The Treaty Federal State or Confederalism:

The treaty federal state exists between numerous states, however, without touching the sovereignty of the contracting States. It is just a treaty aimed to achieve the common interests among the nations at the international level.

System of Governance

First: The Parliamentary System:

- A king or Sovereignty Council as a symbolic presidency of the State with executive authority chosen by the parliament to be collectively responsible before it and with its continuation subjected to its confidence.

- The legislative power may be in the hands of one or two councils in which the presidency of the state formally participates in the ratification of the legislations.

- The judiciary, by virtue of law, is independent in the parliamentary system but its head will be a member in the Council of Ministers.

- Sudan followed this system according to the 1956 and 1964 provisional constitutions and 1985 interim constitution. Sudan was a parliamentary republic, in which the head of state is the Sovereignty Council composed of five members elected from within the parliament. The Sovereignty Council exercises limited constitutional powers while the executive power is exercised by the Council of Ministers. The judiciary is independent with supervisory powers over the constitutionality of the laws and illegality of the executive decisions.

Second: The Presidential System

The President of the Republic shall have real distinguished powers with a limited term of office which shall only be extended for the period or periods specified in the constitution. The president shall choose his aides in the various ministries and shall have the right of dismissing them at any time provided that they are not members in the parliament nor have they the right to attend its meetings.

The legislative authority may be vested on one or two councils in which the president of the republic shall participate.

The judicial authority shall be for the courts formed by the parliament. The President of the Republic shall appoint the Chief Justice and judges who shall not be susceptible to dismissal or separation and their salaries can not be reduced for the duration of their service to ensure the independence of the judiciary.

Third: The Semi-presidential System

- The Semi-presidential System adopts some of the principles of the presidential system and some of the principles of the parliamentary system. This system was based on constitution of the fifth French Republic in October 1958 wherein the constitutional status of the President of the Republic was made stronger. The president, elected by a direct ballot, is the one who appoints the prime minister and presides over the council of ministers. The president, who has the right to address the parliament, is not subject to questioning by the parliament. The council of ministers shall be collectively responsible before the parliament and the latter shall have the right to individually question the ministers.

Fourth: The Parliamentary Council system

- This system exists in Switzerland and in which the legislative power shall have constitutional supremacy over the executive power which is called the Federal Council because the Federal Assembly is the parliament that chooses the Federal Council for a specific time frame. The head of state is chosen for one year from among the members of the federal council, but the president neither has powers in the parliamentary systems nor presidential powers in a

presidential republican system in dissolving the federal assembly (parliament). His status in the state is rather ceremonial and symbolic.

- The federal assembly shall elect the judges of the federal court which shall be fully independent and vested with constitutional powers.

The Guiding Principles for Power and Wealth Sharing

In any multi-ethnic, cultures and religions state, there shall be a comprehensive constitution to lay down the foundations of national unity, consolidating the foundations of coexistence and religious tolerance and ensuring full opportunity to express the diversity and foster a sense of citizenship and belonging to the homeland with fortified national consciousness by the ties of interests and common history to achieve harmony and interaction of cultural, ethnic and religious affiliations to establish identity for the nation and promote its concept through political democracy to ensure participation in the governance and social democracy to ensure the equitable distribution of wealth. This is achievable through the following: -

First: Principles of power-sharing

Participation in the voluntary social contract that consolidates the national unity, upholds the national loyalty and achieves balance and political stability if the following principles are taken into account:

- Involvement of all members of the national group with its various ethnic, regional, social and religious affiliations in the public political life in a democratic manner to ensure peaceful coexistence between the private and national identities.
- Recognition of freedom, difference and diversity and peaceful coexistence so that they can interact and evolve to establish elevated culture and unified national feeling.
- Establishing human rights and fundamental freedoms to achieve political security.
- Peaceful transfer of power to elect real representatives.
- The existence of a constitution that reflects social values.
- The existence of a functioning parliament that reflects the society and common sense.
- The existence of a political power that embodies a united spirit of public will.

- The existence of political parties to compete and reflect aspirations of the people.

Second: The Principles of Wealth Sharing

The feeling of lack of social democracy and the derogation of the entitled share in the pension, economy and development generates feeling of injustice. Hence, the following principles that ensure equitable distribution of wealth should be adopted:

- The principle of sharing the state wealth and resources a manner that would uplift improve the quality of life, uphold dignity and upgrade living conditions for the citizens without discrimination on the basis of gender, race, religion, political affiliation, ethnicity or culture.
- The principle of comprehensive and sustainable development for all parts of the country in such a way that gives right to each part thereof in the public resources and wealth.
- The principle of development of infrastructure, human resources and framing of sustainable development to meet necessary human needs through good governance that is subject to accountability and which exhibits transparency and Integrity.
- The principle of rational utilization and management of human and material resources to create development projects to ensure economic protection for the future generations.
- Principle of optimal utilization of the wealth, renewable and non-renewable natural resources in such a way that preserves the national interests and take into account the interests of the areas that may be affected and its citizens and ensure the maintenance of the environment and biodiversity and protection of the national heritage.
- The principle of adoption of policies and guidelines for wealth and income sharing and its declaration to ensure transparency and fairness in the allocation.

The Judicial Organs

The constitutional experiences in the justice system remained firm after the judiciary authorities became a single authority after it was divided into the legislature headed by a chief judge and civil headed by a Chief Justice and after the Attorney General Chamber was transferred to Ministry of Justice and after the Constitutional Court

Chamber transferred from the Supreme Court chamber to become an independent judicial organ. However, the constitution of the next phase may require the following arrangements:

- It is agreed that the experience of the constitutional court that was separate from the judicial authority which was approved since the 1998 constitution is fully suitable for a constitution to recognize a decentralized governance with exclusive national powers and other state powers and joint powers due to the probability of arise of dispute in the powers and for the importance of existence of a constitutional court to adjudicate issues related to the bill of human rights as well as its jurisdictions to adjudicate in the constitutionality of laws and its other functions set out by its law.
- The existence of a judicial power as a national basis for the judicial authority must be clearly spelt out in the constitution so that no text shall be understood to purport that judicial organs may be established in the State by the executive organs in the states. The independence of the judiciary requires the need to ensure its independence of all the executive and legislative organs in order to have exclusive jurisdictions to adjudicate disputes and give verdicts. The Chief Justice shall be responsible for the administration of the judiciary before the President of the Republic and shall dissolve the National Commission of Judicial Service. The administrative affairs of the judicial authority shall be in the hands of a supreme council of justice, as it was before.
- The next phase may require the need for review of the formation of the ministry of justice and its associated departments and sections to be responsible for legislation, advisory opinions, civil cases, contracts, agreements and the commercial registrar, provided that the prosecution shall be reconsidered to become detached from the ministry of justice and led by the attorney general who shall be nominated and appointed by the same mechanism as of the one applicable for the public auditor to whom all the specialized prosecutions and any commission established for transparency and combat of corruption, or even for monitoring violations of human rights and international humanitarian law as well

as the management of ill-gotten and suspicious wealth and necessarily the prosecutor-general oath to review the public cases and the accusation starting from filing the case through out all its stages.

- It has emanated from among the legal scholars a prevalent opinion which calls for the need to establish a Council for the legal profession, like the Medical Council, Engineering Council and the like in order to assume promotion of the profession and manage the registry for those who exercise the legal profession and to participate with the other high education departments in the development of curricula for the colleges of law and approve the development, by these colleges, of specific controls and standards and determine the controls for the selection of their students.
- The prevalent opinion called for reference to the Council of Justice, such as what was decided in the Thirteenth Constitutional Decree, Article 16 which stipulated the establishment of the Council to include all judicial organs to look after the justice system in general and movement of those working for it in the state and society and for the sake of coordination between these organs and approval of policies and plans for the justice in order to be consistent and to make the rule of law predominant.

Other Constitutional Organs

This is one of most important constitutional organs that guarantee the realization of the basic principles of the constitution on the ground and the integrity and transparency of the three authorities which are established to carrying out its tasks and functions in order to achieve the well-being of the nation and its safety, and political and economic stability.

First: The Electoral Commission

To ensure peaceful transition of power and exercise by citizens of their right in choosing their executive and legislative leaders, the existence of a constitutional body is necessary to assume that job. This body shall be established by a law that sets out the

standards for the selection of the officials who must be impartial and honest in the exercise of their work. These officials shall be assigned with the task of controlling the electoral process ranging from the management of the electoral register, establishment of the subordinate organs and for nomination, polling, sorting, counting, announcement of the result, issuance of regulations and rules and timetables that must not be influenced in its approval by any political pressures or coercive practice by any party. They must ensure that all procedures of the electoral process were free, fair and monitored and are reflecting the real opinion of the citizens and that they have practiced the process in secrecy and safety pursuant to the law.

Second: The Civil Service

The civil service that is controlled by the law necessitates the existence of criteria and basis for appointment and promotion based on compliance with efficiency, abilities and fair competition conducted by selection and promotion committees without any special promotions but only if such promotions are based on excellence with legal conditions as motivation without causing any frustration for the others.

For the proper exchange of senior leadership positions in the civil service, the continuation in such positions shall be restricted by a specific time frame which eliminates the circles of powers in the civil service and put an end to the financial, administrative and professional corruption at the very beginning.

Auditor General, Bureau of justice for workers and Transparency Institution

These are the organs that ensure the soundness of financial, administrative and professional performance and work to lift injustice and establish reparation because of the actions undertaken by the state organs whenever damage was caused to the citizens due to the shortcomings in the procedures or improper application of law or violation thereof or due to negligence that led to it. These institutions also work to combat all forms of corruptions and prosecute the perpetrators by formation of public opinion against them and bringing them to a fair trial and restitution of the victims.

Human Rights Commission

The Human Rights Commission is one of the greatest mechanisms that have been agreed upon to monitor human rights violations by any person or institution. These mechanisms shall be provided for in the constitutions which in turn shall include a document on human rights and freedoms to confirm the will of the state and the people and their solidarity in protecting this document from abuse or violation.