



## **Concept Note: Support to the Constitutional Making Process in Sudan**

### **I. Introduction:**

Since the beginning of 2005, the Sudan was ruled under the Interim National Constitution (INC), created pursuant to the Comprehensive Peace Agreement and governing the transitional period generated by the peace accords. The CPA and the constitution provided that the people of the Southern Sudan were entitled to exercise their right to self-determination by making a choice either to retain their position under the current constitutional arrangements as a self-governing entity within a decentralized Sudan, or opt for secession.

Now that Southern Sudan Referendum for Self-Determination resulted in favor of separation from the rest of the country, the time might be appropriate for rethinking the existing constitutional arrangements to test their suitability for accommodating the political and social transformation that will result from this separation. The INC has provided that it shall continue in force, subject to changes that will be necessitated by a vote for secession, until replaced by a new constitution. There is a general conviction that the secession of the Southern Sudan ushers in a new phase in the political development of the Sudan. In this spirit, and in response to calls from political parties and civil society, the Government has publicly expressed its agreement to including political parties and NGOs in the process of revising the constitution. The UN – notably UNMIS and UNDP - would like to offer its support to the Government in preparing the ground for the process of Sudan’s constitutional revision. We recall that Article 1 of the Interim National Constitution 2005 defines the nature of Sudan as follows:

- “(1) The Republic of the Sudan is an independent, sovereign State. It is a democratic, decentralized, multi-cultural, multi-lingual, multi-racial, multi-ethnic, and multi-religious country where such diversities co-exist.
- (2) The State is committed to the respect and promotion of human dignity; and is founded on justice, equality and the advancement of human rights and fundamental freedoms and assures multi-partism.
- (3) The Sudan is an all embracing homeland where religions and cultures are sources of strength, harmony and inspiration.”

### **II. A Conference on Constitutional-Making:**

As an initial step, the UN would like to organize a conference on constitution-making in the context of the recent political change in the Sudan. Such a conference can help draw attention to current thinking on constitution-making processes in countries that also experienced situations of

transition. Participants will be exposed to the nature of the debates and the variety of processes that go in making a new constitution. A nation's constitution articulates principles, rules and processes that define the institutions of the State, their duties and functions, the relationship between such bodies and the citizens as well as the rights and duties of the citizenship itself. By involving a broad range of views in a constitutional process, the Government will not only benefit from a better text. The resulting constitution is more likely to reflect the needs and demands of the nation as a whole and, therefore, more likely to gain the respect and support of all Sudanese.

"The people must be made to identify themselves with the constitution. Without this sense of identification, of attachment and involvement, a constitution would always remain a remote, artificial object, with no more real existence than the paper on which it is written."<sup>1</sup> In the past, constitution-making in many countries was largely the work of elite body of politicians and lawyers; this is no longer the trend today, and the UN does not encourage this way forward for a large, complex country like Sudan.

### **III. Objectives of the conference on constitutional making are:**

- Sharing of national and international experiences of constitution-making processes,
- Drawing lessons from those experiences for constitutional reform in Sudan, and
- Encouraging broad dialogue and ownership by Sudanese in the constitutional process.

To illustrate, the conference will examine and discuss two relatively recent, constitution-making processes:

- Kenya: Although the process leading up to Kenya's new constitution required several drafts and almost 20 years, it led to a constitution developed by virtue of an open dialogue across society. The resulting draft constitution was adopted with overwhelming support in a 2010 referendum following an intense civic education campaign led by the Kenyan Government.
- South Africa: Political parties, some of which were affiliated with civil society organizations, were at the centre of negotiations that led to South Africa's most recent constitution. Throughout the transition period, the constitutional process was organized around multi-party negotiating forums; occasionally, parties engaged in bilateral talks in attempts to resolve differences.

### **IV. Participants:**

Participants at this conference would be mostly interested Sudanese with expertise relevant to the subject matter, from a spectrum of political and social opinions. A few international experts would be invited to participate in order exchange their experiences with Sudanese participants.

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<sup>1</sup> B.O. Nwabueze, *Constitutionalism in the Emergent States*, London, 1973, at pp. 24-25.

**V. Timeframe:**

It is planned for the conference to take place in May 2011 in Khartoum.

**VI. Expected Results:**

At the end of the conference, participants should reach some consensus on how to approach Sudanese constitution-making in a participatory manner appropriate to the Sudanese experience. It may be necessary to complement this conference with a series of other similar conferences that will focus on issues of substance which would constitute the backbone of such a constitution.