



Interim Constitution for Upper Nile State



2008



THE INTERIM CONSTITUTION OF UPPER NILE STATE

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PREAMBLE

We, the People of Upper Nile State,

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;

Appreciative of the role of the Sudan People's Liberation Movement and the Sudan People's Liberation Army. The Government of Sudan and the Inter-Governmental Authority on Development in bringing about a lasting Peace in our Country.

Committed to the Comprehensive Peace Agreement of January 9, 2005, the Interim Constitution of Southern Sudan, 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 inter-ethnic and communal 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 decentralised, democratic, and 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;

Mindful of the fact that the aim of government is to facilitate and secure the existence of good governance, to protect it, and to furnish the individuals who compose it with the power of enjoying their basic rights, fundamental freedoms and blessings of life in safety and peace;

Cognizant of our duty and responsibility to safeguard and ensure the true exercise of our inalienable right to actively participate in 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 reduce famine, hunger , promote adult education and public awareness and attain the Millennium Development Goals; which are to—

- (a) eradicate extreme poverty and hunger;
- (b) achieve universal primary education;
- (c) Promote gender equality and empower women;
- (d) Reduce child mortality;
- (e) Improve maternal health;
- (f) Combat HIV / AIDS , malaria and other diseases;
- (g) Ensure environmental sustainability; and
- (h) Develop a global partnership for development.

Do hereby adopt and promulgate this Interim Constitution of Upper Nile State, 2008, as the supreme law by which the State shall be governed during the Interim Period, and undertake to abide by, respect and defend it.

PART ONE

THE STATE AND THE CONSTITUTION

CHAPTER I

THE CONSTITUTION AND TERRITORY OF THE STATE

Territory of Upper Nile State

1. (1) Subject to the provisions of National Legislation referred to in Article 177(2) of the Interim National Constitution, the territory of Upper Nile State comprises all lands and areas that were under the administration of the former districts of Eastern Nuer, Kodok, Renk and Malakal of former Upper Nile Province that now constitute Upper Nile State, as their boundaries stood on 1st January, 1956.
- (2) The State is governed on the basis of decentralisation; it consists of counties, as shall be established by law, and is an all embracing homeland for its people. It is a multi-ethnic, multi-cultural, multi-lingual, and multi-religious entity, where such diversities peacefully co-exist.
- (3) The State 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 decentralised and democratic system in accordance with this Constitution, the Interim Constitution of Southern Sudan and the Interim National Constitution.

Sovereign Authority of the People of the State

2. (1) Without prejudice to the provisions of Article 2 of the Interim Constitution of Southern Sudan and Article 2 of the Interim National Constitution, sovereign

authority in the State is vested in its 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 the government at all levels in the State 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 the provisions of Article 3 of the Interim Constitution of Southern Sudan and Article 3 of the Interim National Constitution, this Constitution shall be the supreme law of the State and shall have binding force on all organs and agencies of government and persons throughout the State.
- (2) This Constitution and all laws of the State shall comply with the Interim Constitution of Southern Sudan, the Interim National Constitution and the Comprehensive Peace Agreement.

Defence of the Constitution

4. (1) No person or group of persons shall take or retain control of the Government of the State except in accordance with this Constitution and the Interim Constitution of Southern Sudan.
- (2) Any person or group of persons, who attempts to suspend, overthrow or abrogate this Constitution, commits treason. All citizens of the State shall have the right and duty to resist any person or group of persons seeking to overthrow this Constitution, if no other remedy is available.
- (3) All levels of government in the State shall promote

public awareness about this Constitution by translating it into the national languages in the State 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 the State shall be—
- (a) the Interim National Constitution;
 - (b) the Interim Constitution of Southern Sudan;
 - (c) this Constitution;
 - (d) customs, values and traditions of the people of the State;
 - (e) popular consensus of the people of the State; and
 - (f) any other sources.

Languages

6. (1) All indigenous languages of the State are national languages and shall be respected, developed and promoted.
- (2) English and Arabic shall be the official working languages at all levels of the government of the State 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 in the State or any stage of education.
- (4) English, as a major language in the State, and Arabic,

shall be the official working languages of the government of the State, and the languages of instruction for higher education.

- (5) In addition to English and Arabic, the State legislature 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 the State shall promote the development of a sign language for the benefit of people with special needs.

Symbols and Public Holidays

7. The flag, emblem, seal, medals, festivals, public holidays and commemorations of the State shall be specified by law.

Religion in the State

8. (1) In the State, religion and State shall be separate.
- (2) All religions shall be treated equally and no religion shall be declared the official religion of the State; 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 Upper Nile State, as Southern Sudanese, shall participate in exercise of the right to self-determination, together with all the Southern Sudanese, through a Referendum to determine their future status in accordance with the provisions of Article 9 of the Interim Constitution of Southern

Sudan.

- (2) The people of Upper Nile State, as Southern Sudanese, who have attained the age of eighteen, shall have the right to vote in the Referendum in accordance with the provisions of Article 9 of the Interim Constitution of Southern Sudan.
- (3) For purposes of the referendum in Sub-Article (1) above and without prejudice to the provisions of Article 46 (1) herein, a Southern Sudanese in the State is—
 - (a) any person whose parent or grandparent is or was a member of any of the indigenous communities existing in Southern Sudan before or on the 1st of January, 1956; or whose ancestry can be traced through agnatic or male line to any one of the ethnic communities of Upper Nile State in 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 the 1st of January, 1956.

The Referendum on Self-Determination

10. (1) The people of Upper Nile State shall participate in the internationally monitored referendum for the people of Southern Sudan organized by the Southern Sudan Referendum Commission in cooperation with the National Government, the Government of Southern Sudan and the Government of this State in accordance with the provisions of Article 222 of Interim National Constitution and Article 11 of Interim Constitution of Southern Sudan.
- (2) The people of Upper Nile State with other Southern

Sudan States, 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, the Interim Constitution of Southern Sudan and the Interim National Constitution; or
- (b) vote for secession of Southern Sudan.

PART TWO

BILL OF RIGHTS

Nature of the Bill of Rights

11. (1) The Bill of Rights is a covenant among the people of Upper Nile State and between them and their government at every level in the State and a commitment to respect and promote human rights and fundamental freedoms enshrined in this Constitution; it is the cornerstone of social justice, equality and democracy in the State.
- (2) The rights and freedoms of the individuals and groups enshrined in this Bill shall be respected, upheld and promoted by—
 - (a) all organs and agencies of the Government of the State; and
 - (b) all natural and juristic persons, if, and to the extent that, the rights are applicable, taking into account the nature of the right and the nature of any duty imposed by the right.
- (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 Supreme Court of Southern Sudan and other competent courts and monitored in the State by the Southern Sudan Human Rights Commission and the State Human Rights Office.
- (5) The rights and freedoms guaranteed by this Constitution supplement and complement the Bill of Rights in the Interim Constitution of Southern Sudan

and the Interim National Constitution.

Sanctity of Rights and Freedoms

12. Subject to the provisions of Article 168 (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 competent courts and Upper Nile State Human Rights Office shall monitor its application in the State in accordance with this Constitution and the law.

Sanctity of Life and Human Dignity

13. 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.

Restrictions on Death Penalty

14.
 - (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.

Personal Liberty

15. 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

16. (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

17. 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

18. 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

19. (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 Upper Nile State shall–
 - (a) promote women's 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

20. (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, or 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, teachers, and other institutions;
 - (g) not to be subjected to early or forced marriage, or negative or harmful cultural practices which affect his or her health, welfare or dignity, including female genital mutilation;
 - (h) to be protected from abduction and human trafficking;
 - (i) to be protected from sexual abuse and

- exploitation including child defilement and rape; and
- (j) to participate in decisions affecting his or her life according to the law.
- (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 Upper Nile State shall accord special protection to orphans, street children 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

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

Fair Trial

22. (1) An accused person 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, in a language that he or she understands, 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

that 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

- 23. 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 organisation.

Privacy

- 24. 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

- 25. 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 the State, Southern Sudan, and at national and international levels.

Freedom of Expression and Media

26. (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 the State shall guarantee the freedom of the press and other media as shall be regulated by law in a democratic society.
- (3) All media in the State shall abide by professional ethics.

Freedom of Assembly and Association

27. (1) The right to peaceful assembly is recognised 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 in Upper Nile State 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 this Constitution and the Interim Constitution of Southern Sudan;
 - (c) a democratically elected leadership and institutions; and
 - (d) disclosed and transparent sources of funding.

Right to Participation and Voting

28. (1) Every citizen in Upper Nile State shall have the right to take part in any level of government directly or through freely chosen representatives, 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 in the State shall have the right to vote or be elected in accordance with this Constitution and the law.

Freedom of Movement and Residence

29. (1) Every citizen in Upper Nile State shall have the right to freedom of movement and the liberty to choose his

or her residence in the State, 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 the State.

Right to Own Property

30. (1) Every citizen in Upper Nile State 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

31. (1) Education is a right for every citizen in Upper Nile State and all levels of government in the State shall provide access to education without discrimination as to religion, race, ethnicity, HIV status, gender or disability.
- (2) All levels of government in the State 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

32. (1) All levels of government in Upper Nile State 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

33. All levels of government in Upper Nile State 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 in the State.

Right of Access to Information

34. Every person in Upper Nile State has the right of access to official information and records, including electronic records in the possession of any level of government in the State 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

35. Ethnic and cultural communities in Upper Nile State 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

36. (1) All levels of government in Upper Nile State and all their organs, institutions and citizens therein 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 the State by dedicating public resources and focusing attention on the provision of gainful employment for the people, and improving their lives by building roads, schools, airstrips, community institutions, hospitals, providing clean water, electric power and telecommunication services to every part of the State.

Political Objectives

37. (1) Governance in Upper Nile State shall promote democratic principles and political pluralism, and shall be guided by the principles of decentralisation 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 the State 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 the State;
 - (c) inculcate in the people of the State a culture of reconciliation, peace, unity, cooperation, understanding, tolerance and respect for customs, traditions and beliefs of each other; and
 - (d) mobilise popular energies and resources in the State for reconstruction and development.
- (3) The security and welfare of the people of the State shall be the primary duty of all levels of government in the State.
- (4) The composition of the government in the State shall take into account ethnic, geographical and social diversity of the State in order to promote national unity and command national loyalty.
- (5) All public officers in the State 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

38. (1) The overall goals of the economic development strategy in Upper Nile State shall be the eradication of famine, hunger, and 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 the State.

- (2) All levels of government in the State shall—
- (a) develop and regulate the economy of the State in order to achieve prosperity through policies aimed at increasing production, creating an efficient and self-reliant economy and encouraging a free market and the prohibition of monopoly;
 - (b) protect and ensure the sustainable management and utilisation of natural resources including land, water, petroleum, minerals, fauna and flora for the benefit of the people;
 - (c) facilitate the development of the private sector, including self-managed enterprises, and particularly indigenous entrepreneurs, to establish and develop a viable private sector capable of participating effectively in reconstruction and development of the State;
 - (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 the State 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 the State shall ensure that the wealth of the State is equitably shared among all levels of government in the State for the welfare of its people.

Education, Science, Art and Culture

39. (1) All levels of government in Upper Nile State shall–
- (a) promote education at all levels to create the necessary qualified cadres for development;
 - (b) mobilise 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 patronisation by government institutions and citizens;
 - (d) recognise the cultural diversity of the State 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 the State, which enhance their human dignity and are consistent with the fundamental objectives and principles set out in this Chapter.
- (2) The Government of the State 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 the State 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

- 40. (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 Upper Nile State 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

- 41. All levels of government in Upper Nile State 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

42. (1) Every person or community in Upper Nile State shall have the right to a clean and healthy environment.
- (2) Every person in the State 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 the State.
- (3) All levels of government in the State 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

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

missing in action.

Saving

44. 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 Upper Nile the State shall be guided by them, especially in making policies and laws.

CHAPTER II

CITIZENSHIP, RIGHTS AND DUTIES

Citizenship and Rights

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

Duties of the Citizen

46. (1) It shall be the duty of every Sudanese citizen in the State to uphold and abide by this Constitution and

respect the laws of the State and Southern Sudan and Interim National Constitution and the National Law.

- (2) Every citizen in the State shall in particular–
- (a) defend the country and the State, and respond to the call for national service in accordance with the provisions of this Constitution, the Interim Constitution of Southern Sudan and the law;
 - (b) abhor violence and promote harmony, unity, fraternity and tolerance among all people of the State 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 the State;
 - (f) take part in general elections and referenda as stipulated in this Constitution, the Interim Constitution of Southern Sudan 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, Southern Sudan, and the State and the principles enshrined in this Constitution and the Interim Constitution of Southern Sudan;
 - (j) promote democracy, good governance and the rule of law; and
 - (k) respect the rights and freedoms of others.

CHAPTER III

THE DECENTRALISED SYSTEM OF GOVERNANCE

Levels of Government in Upper Nile State

47. The State shall have a decentralised system of government with the following levels–
- (a) the State level of government, which shall exercise authority within the State, and render public services through the level closest to the people; and
 - (b) the local government level, which is the closest level to the people and shall exercise authority and render public services.

Devolution of Powers

48. (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 Upper Nile State and local government levels that reflect the unity of the State, while recognising the diversity of its people;
 - (b) acknowledgement of the role of the Government of the State 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 the State 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 the State shall–
- (a) exercise its competences in accordance with the Comprehensive Peace Agreement, this Constitution, the Interim Constitution of Southern Sudan and the Interim National Constitution;
 - (b) devolve appropriate powers to local government pursuant to Article 47 (b) thereof; and
 - (c) respect the powers devolved to local government.

Inter-Governmental Linkages

49. (1) In the administration of the decentralised system of governance in Upper Nile State, the following principles of inter-governmental linkages shall be observed–
- (a) the linkage between the Government of Southern Sudan and the local government shall be through the relevant state organ or institution;
 - (b) in their relationships with each other or with other government organs, the Government of the State and local government shall observe the following–
 - (i) respect the powers and competences of each other; 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 the State 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 State government;
 - (iii) to promote open communication and coordination between all levels of State 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 resorting to litigation.
- (d) the harmonious and collaborative interaction of the different levels of State government shall be within the context of national unity and for the achievement of a better quality of life for all.
- (2) The State may agree with other States in Southern Sudan on mechanisms or arrangements to enhance inter-state co-ordination and co-operation.

PART FOUR

THE GOVERNMENT OF THE STATE

Establishment of the Government of Upper Nile State

50. (1) There shall be established in the State a government to be known as the Government of Upper Nile State.
- (2) The Government of the State is the institution around which the people of the State are politically, economically, socially and culturally organised.
- (3) The powers of the Government of the State emanate from the will of the people of the State, the Comprehensive Peace Agreement, this Constitution, the Interim Constitution of Southern Sudan and the Interim National Constitution.
- (4) Subject to the provisions of the National Legislation referred to in Article 177(2) of the Interim National Constitution, the town of Malakal shall be the capital of Upper Nile State and the seat of the Government of the State. Its territory and administration shall be defined and regulated by law.

Organs of the Government of the State

51. The Government of Upper Nile State shall have the following organs—
- (a) the Legislature;
 - (b) the Executive; and
 - (c) the Judiciary.

Powers and Competences of the Government of the State

52. The Government of Upper Nile State shall exercise exclusive legislative and executive authority on all functional areas in

Schedule C herein; 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 the State

53. (1) The primary responsibilities of the Government of Upper Nile State shall, *inter alia*, be—
- (a) 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 the State and local government;
 - (f) acting as the link between the Government of Southern Sudan and the Local Government;
 - (g) combating and eliminating corruption; and
 - (h) ensuring the protection of the rights and interests of the people in the State.
- (2) The Government of the State shall discharge its duties and exercise its powers as set forth in the Comprehensive Peace Agreement, this Constitution, the Interim Constitution of Southern Sudan, the Interim National Constitution, and any other agreement relating to the development and reconstruction of the State.

PART FIVE

THE STATE LEGISLATURE

CHAPTER I

ESTABLISHMENT, COMPOSITION, POWERS AND FUNCTIONS OF THE STATE LEGISLATURE

Establishment of Upper Nile State Legislative Assembly

54. (1) There shall be established in the State a legislature to be known as Upper Nile State Legislative Assembly.
- (2) The legislative competences of the State shall vest in the State Legislative Assembly in respect of all matters assigned to it in Schedules C and D read together with Schedules E and F herein.
- (3) The Assembly shall exercise its legislative powers through bills assented to by the Governor of the State in accordance with this Constitution.

Composition of the Assembly

55. (1) Upper Nile State 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 State Council of Ministers who are not members of the Assembly may participate in the deliberations of the State Legislative Assembly; but do not have the right to vote in the Assembly.

- (3) Members of the State Legislative Assembly shall be elected through universal adult suffrage in free and fair elections by secret ballot.

Powers and Functions of the Assembly

56. (1) Upper Nile State Legislative Assembly represents the will of the people of the State and shall foster their unity and that of the people of Southern Sudan and the Nation, exercise legislative functions, oversee the Executive, and promote the decentralised system of government in the State.
- (2) Without prejudice to the generality of sub-Article (1) above, the State 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 this Constitution, the Comprehensive Peace Agreement and the Interim Constitution of Southern Sudan;
 - (c) discuss statements by the Governor of the State and take any decisions as may be necessary;
 - (d) authorise annual allocation of resources and revenue, in accordance with the provisions of Article 84 of this Constitution;
 - (e) reconsider a bill which has been rejected by the Governor of the State under Article 82 (2) herein;
 - (f) oversee the performance of the organs of the Government of the State;
 - (g) approve appointments as required by this Constitution or the law;
 - (h) impeach the Governor or the Deputy Governor;

- (i) approve plans, programmes and policies of the Government of the State;
 - (j) approve the annual budgets of the State;
 - (k) adopt resolutions on matters of public concern;
 - (l) summon ministers to answer questions of members of the Assembly on matters related to their ministries;
 - (m) interrogate Ministers about their performance or the performance of their Ministries and may cast a vote of no confidence against any Minister;
 - (n) enact legislations to regulate the conditions and terms of service of the State Judiciary and its oversight mechanisms;
 - (o) oversee reconstruction and development activities of the Government of the State;
 - (p) make recommendations on the alteration of state boundaries, names and capitals to the Council of States through the Government of Southern Sudan;
 - (q) perform any other functions determined by this Constitution, the Interim Constitution of Southern Sudan or the law.
- (3)
- (a) the State Legislative Assembly may pass a vote of no confidence in the Governor by a three-quarters majority of all its members;
 - (b) should the State Legislative Assembly 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 a snap elections of the Governor. The President of the Republic shall act upon such a request and shall call the state electorate for snap election of the Governor to be conducted within sixty days;
 - (c) the Governor elected in the snap elections

- shall serve for the remaining period of the original term;
- (d) should the Governor who was subjected to the vote of no confidence be re-elected, the State Legislative Assembly shall be deemed to have been dissolved. A new State Legislative Assembly shall be elected within sixty days to complete the term of the dissolved Assembly; or
 - (e) a vote of no confidence in the Governor shall not be passed before he or she completes twelve months in the office.

Seat of the Assembly

57. Subject to the provisions of the National Legislation referred to in Article 177(2) of the Interim National Constitution, the State Legislative Assembly shall convene its sessions at its seat in the State Capital, Malakal, although the Speaker may call the Assembly to convene at any other place in the State.

Eligibility for Membership

58. (1) A candidate for membership of Upper Nile State 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) A member of the State Legislative Assembly shall not be a member of—
- (a) the National Legislature;
 - (b) the National Council of Ministers;

- (c) the Southern Sudan Legislative Assembly; or
- (d) the Southern Sudan Council of Ministers.

Loss of Membership of the Assembly

59. (1) Membership of Upper Nile State Legislative Assembly shall be lost in any of the following cases—
- (a) mental infirmity or physical incapacity according to the Assembly's conduct of business regulations;
 - (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's conduct of business regulations;
 - (d) announcement by a member of his or her written resignation from the Assembly;
 - (e) change of political affiliation or party on whose ticket he or she was elected to the Assembly;
 - (f) assumption of any office in the State civil service, the Government of Southern Sudan or the National Government; and
 - (g) death.
- (2) Upon vacation of the seat of a member of the State Legislative Assembly, his or her successor shall be elected in the appropriate manner prescribed by the National Electoral Law and within sixty days.

By-elections

60. (1) When a vacancy occurs in respect of any constituency, the Speaker of Upper Nile State Legislative Assembly shall, in writing, notify the National Elections Commission through the Government of Southern Sudan 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 Assembly Member

61. To assume his or her functions, every member of Upper Nile State Legislative Assembly shall take the following oath before the Assembly–

“I....., having been elected as Member of Upper Nile State Legislative Assembly, do hereby swear by Almighty God /solemnly affirm/ that I will bear faith and allegiance to Upper Nile State and its people; that I will obey and respect this Constitution, the Interim Constitution of Southern Sudan, the Interim National Constitution and abide by the law; and that I will faithfully and conscientiously discharge my duties as a member of the State Legislative Assembly and serve the people of Upper Nile State to the best of my ability; and so help me God/ God is my witness”.

Term of the Assembly

62.
 - (1) The term of Upper Nile State Legislative Assembly shall be five years, commencing from the date of its first sitting.
 - (2) General elections for the State Legislative Assembly shall be held not later than the end of the fourth year of the Interim Period.

Determination of Objections Related to Membership

63. Any objection regarding the validity of nomination or election of a member from a constituency in Upper Nile State shall be

determined by competent courts of law in the State in accordance with the provisions of the national elections law.

Immunity of Members of the Assembly

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

Sessions of the Assembly

65. (1) Upper Nile State Legislative Assembly shall hold its first sitting upon convocation by the Governor of the State 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 the provisions of Article 100 (2) (f) herein, the Assembly shall determine the commencement and closure dates of its sessions.
- (3) The Assembly may convene an emergency or an extraordinary session on the request of half of its members or upon a call from the Governor of the State.

Officers of the Assembly

66. (1) Upper Nile State Legislative 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 the State.
 - (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 conduct of business 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

- 67.
- (1) Members of the State Legislative Assembly shall be paid emoluments and provided with facilities, as shall be determined by law.
 - (2) A member of the State Legislative Assembly may hold any other office for remuneration or engage in any profit making business provided that such office business does not compromise his or her duty as a member.

Leader of the Opposition

- 68.
- (1) The largest party or coalition of parties in Upper Nile State 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 Governor and the Deputy Governor of the State, 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 Governor of the State.
- (3) The conduct of business regulations of the Assembly shall provide for the effective participation of the Leader of the Opposition in the Assembly.

Committees of the Assembly

69. (1) Upper Nile State Legislative Assembly shall have standing specialised committees and may establish ad hoc committees for the efficient discharge of its functions.
- (2) The functions of the standing specialised and ad hoc committees shall be determined by conduct of business regulations of the Assembly.

Conduct of Business Regulations of the Assembly

70. (1) Upper Nile State Legislative Assembly, on the initiative of its Speaker, shall make conduct of business regulations for the conduct of its business.
- (2) The Speaker shall ensure that the conduct of business regulations of the Assembly are respected and enforced.

Quorum

71. (1) The quorum for ordinary sittings of the Assembly shall be more than half of the members; but the conduct of

business regulations may provide for a reduced quorum. A reduced quorum may not apply to—

- (a) the final presentation of bills; and
 - (b) recommendations concerning the boundaries, name and capital of the State.
- (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 considered lost.

Publicity of Sittings of the Assembly

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

Passing Assembly Resolutions

73. 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

74. Members of the Assembly shall freely and responsibly express their opinions, subject only to the provisions of the conduct of business regulations. 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 Governor of the State

75. The Governor of Upper Nile State may, personally or by a message, address the State Legislative Assembly. The Assembly shall accord priority to such request over any other business. The Governor may also request the opinion of the Assembly on any subject.

Address by the Deputy Governor and Statements by Ministers

76. (1) The Deputy Governor of Upper Nile State may request to address the Assembly. The Assembly shall provide an opportunity for hearing such address as promptly as possible.
- (2) A minister may request to deliver a statement before the Assembly and the Assembly shall give due consideration to such a request.

Questions addressed to Ministers by Assembly Members

77. Members of the Assembly may, within the competence of the Assembly and subject to its regulations, address questions to a Minister on any subject relating to his or her duties; the Minister shall provide the Assembly with a prompt reply.

Request of Statements

78. The Assembly may request a Minister of the Government of Upper Nile State to deliver before it a statement on any matter of public concern.

General Summons

79. (1) The Assembly or any of its committees may summon any public official or any person within the State, other than the Governor and the Deputy Governor of the State to testify or give opinion before it.
- (2) Inquiry on any matter that falls within the direct

responsibility of the Government of Upper Nile State may only be made after notifying the Governor of the State.

- (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

80. (1) The Governor or Upper Nile State Council of Ministers 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

81. (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 Governor of the State

82. (1) Any bill approved by the Assembly shall not become law unless the Governor of the State assents to it and signs it into law. If the Governor withholds assent for thirty days without giving reasons, the bill shall be deemed to have been so signed.
- (2) Should the Governor of the State 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 Governor.
- (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 Governor of the State shall not be required for that bill to come into force.

Provisional Orders

83. (1) Should the Assembly not be in session, the Governor of the State 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 the provisions of sub-Article (1) above, the Governor of the State shall not make any provisional order on matters affecting the Comprehensive Peace Agreement, the Bill of Rights, the decentralised system of government, general elections, annual allocation of resources and financial revenue, penal legislations or alteration of administrative boundaries of the Counties of the State.
- (3) Any law which was repealed or amended pursuant to a provisional order that later lapsed, shall revive into force as it was, starting from the date when the provisional order lapsed.
- (4) The Assembly may delegate to the Governor of the State the power to approve internal and external borrowing of money on the sole credit worthiness of the State within the macro-economic framework while the Assembly is not in session; however, such

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

Bills Pertaining to Allocation of Resources and Revenues

84. (1) The Governor of Upper Nile State shall cause to be presented to the Assembly, before the beginning of the financial year, a bill of the allocation of State 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 1st January, and ending on 31st December each year.

General Budget Proposal, Estimates and Related Bills

85. (1) The Governor of Upper Nile State shall cause to be presented to the State Legislative Assembly before the beginning of the financial year, the bill on the general budget of the State, 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 State Government in the financial and economic affairs within the framework of the general budget.
- (2) The Governor of the State 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 after its presentation to the Assembly, the Governor of the State shall issue a 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

86. (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 State Council of Ministers.
- (2) The Minister in charge of Finance in the State, 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

87. (1) Notwithstanding the provisions of Article **83 (2)** herein, the Governor of Upper Nile State may, in the public interest, make an 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 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 Governor of the State 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 85 (3) herein the following expenditures shall be paid out of the consolidated reserve funds–

- (a) emoluments of the Governor of the State;
- (b) expenses of the State House;
- (c) emoluments of the Judiciary of the State;
- (d) State Government contractual financial obligations;
- (e) repayment of the State Government external debts under any loan agreements;
- (f) payment of any money the State Government 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

88. The Governor of Upper Nile State shall cause to be presented to the State 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 Southern Sudan Audit Chamber shall audit the accounts as required by Article 195 of the Interim Constitution of Southern Sudan and present the audit report to the State Assembly.

Delegation of Powers of Subsidiary Legislation

89. The Assembly may, by law, delegate to the Governor of the State, 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

90. No court or any other authority shall call into question the validity of any proceedings of the Upper Nile State

Legislative Assembly on the basis of violation of its conduct of business regulations. A certificate duly signed by the Speaker shall be deemed to be conclusive evidence of the validity of the proceedings of the Upper Nile State Legislative Assembly on the basis of violation of its conduct of business regulations. A certificate duly signed by the Speaker shall be deemed to be conclusive evidence of the validity of the proceedings.

CHAPTER II

INTERIM PROVISIONS FOR THE STATE LEGISLATIVE ASSEMBLY

Interim Provisions for Upper Nile State Legislative Assembly

91. (1) Prior to elections, there shall be constituted a Upper Nile State Transitional Legislative Assembly to adopt this Constitution; it shall thereafter reconstitute itself into Upper Nile Legislative Assembly.
- (2) The Transitional Legislative Assembly shall be an inclusive Constituent Legislature composed of forty-eight members nominated by their respective constituencies and confirmed by the Governor of the State 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) twenty percent representing the other Southern Sudan political forces; and
 - (c) ten percent representing the National Congress Party.
- (3) If the member of the Assembly changes his or her political affiliation or party on whose ticket he or she was appointed to the Assembly, he or she shall lose the

membership and the political party concerned shall fill the vacant seat.

PART SIX

THE STATE EXECUTIVE

CHAPTER I

THE STATE EXECUTIVE AND ITS POWERS

Composition of the Executive

92. Upper Nile State Executive shall consist of the Governor, Deputy Governor and a Council of Ministers.

Powers and Competences of the Executive

93. Upper Nile State Executive shall exercise the executive powers on all matters as set forth in Schedules C 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 and the Interim Constitution of Southern Sudan.

CHAPTER II

THE GOVERNOR OF THE STATE

The Governor

94. There shall be a Governor for Upper Nile State who shall be directly elected by the people of the State in general elections according to this Constitution and the Interim Constitution of Southern Sudan and the provisions set forth by the National Elections Commission in accordance with the electoral law.

Eligibility for the Office the Governor

95. A candidate for the office of the Governor of Upper Nile State 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 Governor

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

Postponement of Election of the Governor

97. (1) Where Upper Nile State 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 the State, the State Legislative Assembly may, by a resolution adopted by a three-quarters majority vote of all members, recommend to the National Elections Commission, through the Government of Southern Sudan, the postponement of elections for the office of the

Governor for a period of not more than sixty days at any one time.

- (2) Pending the holding of the postponed elections, the incumbent Governor of the State shall continue as a caretaker Governor; his or her tenure shall be extended until the Governor elect takes the oath of office.

Oath of the Governor

98. To assume office, the Governor elect of Upper Nile State shall take the following oath before the State Legislative Assembly–

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

Tenure of the Office of the Governor

99. The tenure of the office the elected Governor of the State shall be five years, commencing from the date of assumption of office, and the same Governor may be re-elected for one more term only.

Functions of the Governor

100. (1) The Governor is the head of the Government of Upper

Nile State. He or she represents the will of the people, and shall exercise the powers vested in the office the Governor by the Comprehensive Peace Agreement, this Constitution and the Interim Constitution of Southern Sudan.

- (2) The Governor of the State shall, *inter alia*, perform the following functions–
- (a) appoint the Deputy Governor, State ministers, other holders of constitutional, judicial posts and top civil servants in the State in accordance with this Constitution and the law;
 - (b) preserve the security of the State and protect its territorial integrity;
 - (c) supervise constitutional executive institutions and provide exemplary leadership in public affairs in the State;
 - (d) preside over the State Council of Ministers;
 - (e) initiate constitutional amendments and legislations and assent to bills passed by the State Legislative Assembly by signing such bills into law;
 - (f) summon, adjourn or prorogue the State Legislative Assembly with the agreement of the Speaker;
 - (g) appoint his or her advisors;
 - (h) appoint ad-hoc committees and commissions;
 - (i) confer honours;
 - (j) generally represent the Government and the people of the State; and
 - (k) perform any other function as may be prescribed by law.

Vacancy of Office of the Governor

101. (1) The office of the Governor of Upper Nile State shall fall vacant in any of the following case–

- (a) expiration of the term of office;
 - (b) acceptance of his or her written resignation by the Upper Nile State 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 three-quarters majority of all members of the State Legislative Assembly; and
 - (e) death.
- (2) Should the office of the elected Governor of the State fall vacant, the post shall be assumed by the Deputy Governor pending elections that shall be conducted within sixty days from the date of occurrence of the vacancy and in accordance with the provisions of Article 96 of this Constitution.

Immunity and Impeachment of the Governor and Deputy Governor

102. (1) The Governor and Deputy Governor of Upper Nile State shall be immune from any legal proceedings and shall not be charged or sued before any court of law during their tenure of office.
- (2) Notwithstanding the provisions of sub-Article (1) above and in case of high treason, gross violation of this Constitution or gross misconduct in relation to State affairs, the Governor or Deputy Governor of the State may be charged before a special tribunal established by the President of the Supreme Court of Southern Sudan upon an impeachment resolution passed by a three-quarters majority of all the members of the Assembly, in case of the Governor, or a two-thirds majority of all members of the Assembly in case of the Deputy Governor.

- (3) The President of the Supreme Court of Southern Sudan shall, within seven days after receipt of the impeachment notice referred to under sub-Article (2) above, constitute a special tribunal to investigate the allegation in the notice and to report and submit its findings to the constitutional panel of the Supreme Court comprising all the Justices of the Court, for trial.
- (4) The Governor or Deputy Governor shall be entitled to appear before the constitutional panel and to be represented by a lawyer or any other person of his or her choice
- (5) If the constitutional panel of the Supreme Court of Southern Sudan convicts the Governor or his or her Deputy, it shall communicate its final verdict to the State Assembly, and he or she shall be deemed to have forfeited the office.
- (6) If the notice for the removal of the Governor or his or her Deputy is on the ground of mental infirmity or physical incapacity, the head of the State Medical Commission and any other five qualified and eminent medical specialists shall constitute a medical board to examine the Governor or the Deputy Governor in respect of the alleged incapacity and present their findings to the State Assembly.
- (7) The Governor or his or her Deputy, 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 Governor or his or her Deputy, by reason of mental infirmity or physical incapacity, is unable to perform the functions of the office of the Governor or Deputy Governor, and the Assembly passes a resolution for the removal of either of them supported by not less than three-quarters in case of the Governor and two-thirds in case

of the Deputy Governor of all members of the State Assembly, the Governor or Deputy Governor shall cease to hold office.

Contesting Acts of the Governor

103. Any person aggrieved by an act of the Governor of Upper Nile State may contest such act—
- (a) before the Supreme Court of Southern Sudan, if the alleged act involves a violation of this Constitution, the Interim Constitution of Southern Sudan, the Bill of Rights, the decentralised 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 Deputy Governor

104. (1) The Deputy Governor of Upper Nile State shall be appointed by the Governor of the State subject to approval by a two-thirds majority of all members of the Assembly.
- (2) The Deputy Governor of the State may be removed by the Governor of the State or by a resolution passed by two-thirds majority of all members of the Assembly.
- (3) Should the post of the Deputy Governor of the State fall vacant for any reason, the Governor of the State shall appoint a replacement subject to approval by a two-thirds majority of all members of the Assembly.
- (4) The Deputy Governor of the State shall fulfil the same conditions of eligibility for the office of the Governor of the State as provided for in Article 96 herein.

- (5) To assume office, the Deputy Governor of the State shall take, before the Governor of the State, the same oath taken by the Governor of the State as prescribed by this Constitution.

Functions of the Deputy Governor

105. The Deputy Governor of the State shall, *inter alia*, perform the following functions—
- (a) act as the Governor in the absence of the Governor of the State;
 - (b) be a member of the State Council of Ministers;
 - (c) be a member of the State Security Committee; and
 - (d) perform any other functions or duties that may be assigned to him or her by the Governor of the State.

Vacancy of Office the Deputy Governor

106. The office of the Deputy Governor shall fall vacant in any of the following cases—
- (a) relief from office in accordance with the provisions of Article 104 (2) herein;
 - (b) acceptance of his or her written resignation by the Governor of the State;
 - (c) mental infirmity or physical incapacity based on an official report of the medical board approved by a two-thirds majority of all members of the Assembly; and
 - (d) death.

Advisors to the Governor

107. (1) The Governor of Upper Nile State may appoint up to three experienced and professional advisors and define their functions.

- (2) To assume office, an advisor shall take, before the Governor of the State, the same oath taken by a minister of the State as prescribed by this Constitution.

CHAPTER III

INTERIM PROVISIONS FOR THE GOVERNOR AND DEPUTY GOVERNOR

The Office the Governor, Deputy Governor and Vacancy before Elections

108. (1) Prior to the elections that shall be held during the Interim Period, the appointed Governor of the State shall continue to perform his or her duties as the Governor of the State in accordance with this Constitution. As soon as possible after this Constitution comes into force, the Governor shall take the oath prescribed in article 98 before the Assembly. The Deputy Governor shall then take the same oath, pursuant to article 104 (5).
- (2) Should the office the Governor of the State fall vacant prior to elections, the office shall be filled by the nominee of Sudan People's Liberation Movement (SPLM) within two weeks of the occurrence of that vacancy.
- (3) Should the office the Governor of the State fall vacant prior to elections, and before the selection of the nominee of Sudan People's Liberation Movement (SPLM), the functions of the Governor of the State shall be assumed by the Deputy Governor.

CHAPTER IV

THE STATE COUNCIL OF MINISTERS

Establishment of the Council of Ministers

109. (1) There shall be established a Upper Nile State Council of Ministers to be appointed by the Governor of the State, and approved by a simple majority of all members of the State Legislative Assembly in accordance with this Constitution. The Council shall be established with due regard to the need for inclusiveness in recognition of competence, integrity, gender and ethnic diversity in the State.
- (2) The Governor and his or her Deputy shall be members of the State Council of Ministers.
- (3) The Governor of the State shall ensure that at least twenty-five percent of members of the Council of Ministers are women.

Composition and Competences of the State Council of Ministers

110. (1) The Council of Ministers shall consist of the Governor, Deputy Governor and Ministers of the State.
- (2) The State Council of Ministers shall be the highest executive authority in the State.
- (3) Without prejudice to the powers conferred upon the Governor of the State 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 State Council of Ministers shall

be confidential.

- (5) Membership of the State Council of Ministers shall not be combined with membership of the National or Southern Sudan Executive or Legislature.

Oath of a Minister

111. To assume office, a Minister of the State shall take the following oath before the Governor of the State–

“I....., do hereby swear by the Almighty God/solemnly affirm, that as a Minister in the Government of Upper Nile State, I shall be faithful and bear true allegiance to the State 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, the Interim Constitution of Southern Sudan, the Interim National Constitution and abide by the law; and that I shall protect and promote the unity of the people of the State and consolidate the democratic and decentralised system of government and preserve the integrity and dignity of the people of the State; so help me God/and God is my witness.”

Functions of the State Council of Ministers

112. Upper Nile State Council of Ministers shall have the following functions–
 - (a) general planning and administration of the State 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) receiving reports from county commissioners

- about executive and administrative performance in their counties;
- (e) receiving reports on matters that are concurrent or residual and deciding whether it is competent to exercise such power in accordance with Schedules D, E and F herein. If it so decides, it shall notify the government of Southern Sudan or, if appropriate, notify the National Government through the Government of Southern Sudan, of its intention to exercise such power. If the Government of Southern Sudan or the National Government object thereto, a committee shall be set up by the Governments concerned to amicably resolve the matter before resorting to the Supreme Court of Southern Sudan;
 - (f) keeping the State Assembly informed about the progress of the implementation of the Comprehensive Peace Agreement;
 - (g) acting as a link between the Government of Southern Sudan on the one hand and the institutions of the State and local government on the other;
 - (h) receiving requests originating from the Government of Southern Sudan to the institutions of the State and the counties therein in connection with matters of mutual interest;
 - (i) providing reports upon the request of the Assembly;
 - (j) formulating internal rules, procedures and regulations for the conduct of its business;
 - (k) mobilising the public to achieve the objectives of government policy and promote public life;
 - (l) implementing the State legislations and applicable National and Southern Sudan legislations in the State;

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

Functions of a Minister of the State

113. (1) A minister in the Government of Upper Nile State shall be the head of his or her ministry and his or her decisions shall prevail therein. However, the State Council of Ministers may review, amend or cancel such decisions; the Governor of the State may suspend the decision of a minister pending such review or cancellation.
- (2) The State ministers shall–
- (a) collaborate and establish good working relations with corresponding ministers of other states and ministers in the Government of Southern Sudan 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 the State; and
 - (c) perform any other functions or powers assigned to them by law or delegation.

Appointment and Removal of Ministers of the State

114. (1) Ministers of the Government of Upper Nile State shall be appointed and removed from office by the

Governor of the State, in consultation with the Deputy Governor.

- (2) Appointment of the Council of Ministers of the Government of the State shall be confirmed by a resolution of the Assembly adopted by a simple majority vote of all members.
- (3) Ministers of the Government of the State shall be selected with due regard to the need for inclusiveness in recognition of competence, integrity, gender and ethnic diversity in the State.

Collective and Individual Responsibility of Ministers

115. (1) A Minister of the State shall be individually answerable to the Governor of Upper Nile State, the State Council of Ministers and the State Legislative Assembly for the performance of his or her ministry.
- (2) The State Council of Ministers shall be collectively answerable to the Governor of the State and the State Legislative Assembly in the performance of its functions.
- (3) Ministers of the State shall be bound by collective decisions of the State Council of Ministers.

Vacancy of the Office of a Minister

116. The office of a minister of Upper Nile State shall fall vacant in any of the following cases—
- (a) acceptance of his or her written resignation by the Governor of the State;
 - (b) removal from office by the Governor of the State after consultation with the Deputy Governor;
 - (c) removal from office by the Governor of the State on the ground of mental infirmity or

- physical incapacity based on an official medical report;
- (d) resolution of the Assembly, as set forth in Article 117 (2) of this Constitution; and
- (e) death.

Vote of No Confidence against a Minister

117. (1) The State 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 Governor of the State.
- (3) Proceedings for a vote of no confidence against a minister shall be regulated by the conduct of business regulations of the State Legislative Assembly.

Declaration of Wealth and Prohibition of Private Business

118. (1) All executive and legislative constitutional office holders, and judges, and senior civil service officials at all levels of government in Upper Nile State 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 Governor, Deputy Governor, Ministers, Advisors, County Commissioners in the government of the State 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 State Government

Emoluments and Remuneration

119. The Governor and Deputy Governor of Upper Nile State, Ministers, Advisors, County Commissioners in the government of the State, 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

120. Deliberations of the State Council of Ministers shall be confidential; no minister and/or any other person shall disclose, communicate or reveal such deliberations save by permission of the Council of Ministers.

Contesting Ministerial Acts

121. Any person aggrieved by an act of the State Council of Ministers or a Minister of State may contest such act—
- (a) before the Supreme Court of Southern Sudan, if the alleged act involves a violation of this Constitution, the Interim Constitution of Southern Sudan 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 STATE COUNCIL OF MINISTERS

Council of Ministers before Elections

122. (1) Prior to elections, there shall be constituted an inclusive Upper Nile State 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) twenty percent representing other Southern Sudan political forces; and
 - (c) ten percent representing the National Congress Party.
- (2) Ministers of the State shall take the oath prescribed in article 111 before the Governor as soon as this constitution comes into force.

PART SEVEN

THE JUDICIARY OF UPPER NILE STATE

The Judiciary of the State

123. (1) Judicial power in the State 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, the Interim Constitution of Southern Sudan and the law.
- (2) Judicial competence in Upper Nile State shall be vested in an independent institution to be known as the Judiciary of Upper Nile State.
- (3) The Judiciary of the State shall have Judicial competence to adjudicate on disputes and render judgments in accordance with this Constitution, the Interim Constitution of Southern Sudan and the law.
- (4) 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 neither be delayed nor denied;
 - (c) adequate compensation shall be awarded to victims of wrongs;
 - (d) voluntary reconciliation agreements between parties shall be recognised and enforced; and
 - (e) substantive justice shall be administered without undue regard to technicalities.
- (5) There shall be a substantial representation of women in the Judiciary of the State having regard to competence, integrity, credibility and impartiality.

- (6) All organs and institutions at all levels of government in the State shall obey and execute the judgments and orders of the courts.
- (7) The President of the High Court of the State, as the head of the Judiciary of the State, shall be answerable to the Governor of the State for the administration of the Judiciary and to the President of the Supreme Court on Judicial matters.
- (8) The overall management of the Judiciary of the State, its composition and functions shall be prescribed by law, in accordance with the provisions of this Constitution.

Establishment and Structure of the Judiciary of the State

124. The Judiciary of the State shall be established and structured as follows–
- (a) High Court;
 - (b) County Courts;
 - (c) Payam Courts; and
 - (d) 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

125. (1) The Judiciary of Upper Nile State 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 the State 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 the State shall respect and protect the independence of the Judiciary.

Competences of the State Courts

126. Upper Nile 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 in this Constitution and the Interim Constitution of Southern Sudan wherever applicable. However, Southern Sudan legislation or national legislation shall determine the civil and criminal procedure in respect of litigation or prosecution under Southern Sudan or national laws.

Composition of the High Court

127. (1) The High Court shall be the highest court at the level of Upper Nile State and its establishment, competence, jurisdiction and procedures shall be determined by law.
- (2) The High Court shall consist of the President and a number of Judges.
- (3) Decisions of the High Court shall be appealed against before the relevant Court of Appeal.

County, Payam and Other Courts

128. (1) The establishment, competences and procedures of County Courts, Payam and other courts in the State shall be regulated by law.
- (2) The State legislature shall provide for the establishment of traditional courts at the level of local government.
- (3) Terms and conditions of establishment, jurisdiction

and procedures of traditional or customary courts shall be regulated by law at the State level.

Independence of Judges and Magistrates

129. (1) Judges and Magistrates of Upper Nile State are independent and shall perform their functions without interference. The provisions of this Constitution and the law shall protect their independence.
- (2) Judges and Magistrates 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 regulated by law.
- (3) The tenure of office for Judges and Magistrates shall not be affected by their judicial decisions.

State Judicial Service Committee.

130. (1) The Governor shall establish State Judicial Service Committee consisting of–
- (a) the President of the High Court, subject to sub-article (2);
 - (b) the Minister of the State in charge of legal Affairs; and
 - (c) a member of the Bar Association in the State.
- (2) When the position of the President of the High Court and Chairperson of the Judicial Service Committee falls vacant, the most senior High Court Judge in the State shall take the position of the President of the High Court and Chairperson of the State Judicial Service Committee.
- (3) The Governor shall appoint the President, Judges of the High Court, other Judges and Magistrates on the recommendation of the State Judicial Service

Committee.

- (4) In making a recommendation to the Governor, the State Judicial Service Committee shall have regard to competence, integrity, credibility and Impartiality.
- (5) The appointment of the President and Judges of the High Court shall be subject to approval by a two-thirds majority of all members of the State Legislative Assembly.
- (6) The State Legislative Assembly shall enact a law to provide for the appointment, terms and conditions of service and removal of Judges and Magistrates of the State.
- (7) Before assuming their duties, all Judges and Magistrates shall take and subscribe to the judicial oath of allegiance prescribed by law.

Discipline of Judges and Magistrates

131. (1) The powers to discipline Judges and Magistrates shall be exercised by the President of the High Court of the State in accordance with the law.
- (2) Judges of the High Court may be removed only by an order of the Governor of the State for gross misconduct, incompetence or incapacity, and upon the recommendation of the President of the High Court in accordance with the law and subject to approval by two-thirds majority of all members of the State Legislative Assembly.

Interim Provisions

132. (1) Notwithstanding the provisions of Article 130 herein, during the first four years of the Interim period, Upper Nile State Judges and Magistrates shall be employees

of the Judiciary of Southern Sudan, appointed by the President of the Government of Southern Sudan on the recommendation of the President of the Supreme Court of Southern Sudan. State Judges and Magistrates shall be subject to the terms and condition of service provided for in any law enacted under article 135(3) of the interim Constitution of Southern Sudan.

- (2) Notwithstanding the provisions of Article 127(3) herein, during the first four years of the Interim period, the President of the high court shall be answerable to the Governor of the State on administrative matters and to the President of the Supreme Court on Judicial and administrative matters as well.

PART EIGHT

PUBLIC ATTORNEYS AND ADVOCACY IN THE STATE

Public Attorneys and Legal Advisors

133. (1) The services of Upper Nile State public attorneys and legal advisors shall be rendered by legal personnel employed by the State Government.
- (2) The State Minister in charge of legal affairs shall be the chief legal advisor of the State Government. The Minister shall be the prosecuting authority at the level of the State Government for matters within the competence of the State and may perform such other functions of legal nature as may be prescribed by law.
- (3) Public attorneys and legal advisors shall advise all levels of government in the State, 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 the State 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 in charge of legal affairs in the State shall, *inter alia*, be responsible for—
- (a) drawing up, perusing and recommending approval or otherwise, of such agreements, contracts, and documents to which the Government of the State is an interested party;
 - (b) representing State Government in court or any

- other legal proceedings to which any level of the government in the State is a party; and
- (c) drafting legislation, including subsidiary legislation, for the State Government.
- (6) All executive institutions and organs of the State Government shall comply with legal opinion and advice duly rendered by the Ministry in charge of Legal Affairs in the State.
- (7) The functions, immunities, emoluments, terms and conditions of service of the public attorneys and legal advisors at all levels of government in the State shall be prescribed by law.
- (8) In the interest of justice and effectiveness in the execution of their legal duties, the Southern Sudan Ministry of Legal Affairs and Constitutional Development and the Ministry in charge of Legal Affairs in the State 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

134. (1) Notwithstanding the provisions of Article 133(2) herein, the public attorneys and legal advisors of Upper Nile State 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. The head of legal administration in the State shall be the chief legal advisor and the prosecuting authority of the State.
- (2) The Head of Legal Administration in the State shall discharge his or her duties under the supervision of the Governor of the State and shall be answerable to the Southern Sudan Minister of Legal Affairs and

Constitutional Development for the legal performance.

- (3) At the end of the four-year period, as mentioned in sub-Article (1) above, the Southern Sudan 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 Ministry in charge of Legal Affairs. Thereafter, the terms and conditions of service of public attorneys and legal advisors in the State shall be regulated by State law.

Advocacy in the State

135. (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 STATE CIVIL SERVICE INDEPENDENT INSTITUTIONS AND COMMISSIONS

CHAPTER I THE STATE CIVIL SERVICE

Establishment of the Civil Service in the State

136. (1) The Government of the State 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 State.

Basic Values and Guidelines for Civil Service

137. (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) the 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, geographical diversity, 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) the 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) the Civil Service shall be broadly representative of the people of the State, 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 specialised 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 in office shall resign from the Civil Service;
 - (m) all levels of government in the State 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; and
- (2) The terms and conditions of employment in the State Civil Service shall be regulated by law.

The State Civil Service Office

138. (1) A state civil service office, to be known as Upper Nile State Civil Service Office, shall be established. It shall consist of a chairperson and members of proven

competence, experience, integrity and impartiality.

- (2) The State Civil Service Office shall advise the Government of the State on the formulation and execution of policies related to public service, employment and employees.
- (3) The State Civil Service Office 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 of the State Civil Service Office, and terms and conditions of service of its members, shall be regulated by law.

The State Employees Justice Office

- 139.
- (1) There may be established a State Employees Justice Office, to be known as Upper Nile State Employees Justice Office, which shall be composed of a chairperson and members of proven competence, experience, integrity and impartiality.
 - (2) The State Employees Justice Office shall, without prejudice to the right of resorting to the courts or exhausting the proceedings of the State Civil Service Office, be competent to consider and determine grievances from the State civil service employees.
 - (3) The Office shall present to the Government of the State any recommendations or proposed remedies it deems appropriate to ensure justice.
 - (4) The law shall regulate the composition, functions, procedures and terms and conditions of service of the members and employees of the office.

- (5) The State Employees Justice office and Southern Sudan Employees Justice Chamber shall coordinate, cooperate and assist each other in the fulfilment of their functions.

CHAPTER II

OTHER STATE INSTITUTIONS

140. (1) The State Government may establish such institutions compatible with its powers as it deems necessary to promote the welfare of its people, good governance and justice. Such institutions shall perform their functions and duties impartially and without interference from any person or body.
- (2) The State Government shall ensure that at least twenty-five percent of the membership of each of such institutions shall be women.

CHAPTER III

THE STATE ANTI-CORRUPTION OFFICE

Establishment of the State Anti-Corruption Office

141. (1) A State Anti-Corruption Office, to be known as Upper Nile State Anti-Corruption Office, may be established. It shall consist of a chairperson and members of proven competence, experience, integrity and impartiality.
- (2) Without prejudice to the powers of the Ministry office of Legal Affairs in the State, the State Anti-Corruption Office shall discharge its functions as those that are discharged by the Southern Sudan Anti-Corruption Commission discharges under Article 148 (1) of the Interim Constitution of Southern Sudan and any other functions prescribed by law.

- (3) The State Anti-Corruption Office shall work in close cooperation with the Southern Sudan Anti Corruption Commission.
- (4) The composition of the State Anti-Corruption Office, and the terms and conditions of service of its members, shall be regulated by law.

CHAPTER IV

THE STATE HUMAN RIGHTS OFFICE

Establishment of the State Human Rights Office

- 142.
- (1) A State Human Rights Office, to be known as Upper Nile State Human Rights Office, may be established. It shall consist of a chairperson and members of proven competence, experience, integrity and impartiality.
 - (2) The State Human Rights Office shall discharge in the State the same functions as those that are discharged by the Southern Sudan Human Rights Commission under Article 150 of the Interim Constitution of Southern Sudan and any other functions prescribed by law.
 - (3) The State Human Rights Office shall work in close cooperation with the Southern Sudan Human Rights Commission.
 - (4) The law shall regulate the composition, procedures and terms and conditions of service of the members and employees of the Office.

CHAPTER V

THE STATE PUBLIC GRIEVANCES OFFICE

Establishment of the State Public Grievances Office

143. (1) There may be established in the State an independent body, to be known as Upper Nile State Public Grievances Chamber. Its chairperson and members shall be appointed by the Governor of the State from among persons of competence and integrity and approved by the State Legislative Assembly by a simple majority. The Chamber shall periodically report to the Governor of the State and The state Legislative Assembly on 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 state government institutions. The Office shall consider grievances only after exhausting all means and stages of litigation by the complainant.
- (3) The Office shall make recommendations or propose remedies to the Governor of the State. The Office may, on its own motion, recommend to the State Assembly any measures it deems appropriate to ensure efficiency, justice or probity in the performance of the State governmental institutions.
- (4) The law shall regulate the composition, functions, procedures, terms and conditions of service of the members and employees of the Office.

CHAPTER VI

THE STATE RELIEF AND REHABILITATION OFFICE

Establishment of the State Relief and Rehabilitation Office

144. (1) A State Relief and Rehabilitation Office, to be known as the Upper Nile State Relief and Rehabilitation Office, may be established. It shall consist of a chairperson and members of proven competence, experience, integrity and impartiality.
- (2) The functions of the State Relief and Rehabilitation Office shall be to facilitate and coordinate repatriation, relief, resettlement, and rehabilitation, reintegration of returnees and internally displaced persons and facilitation of the reconstruction of the conflict-affected areas in the State and any other functions prescribed by law.
- (3) The State Relief and Rehabilitation Office shall work in close cooperation with the Southern Sudan Relief and Rehabilitation Commission.
- (4) The law shall regulate the composition, functions, procedures and terms and conditions of service of the members and employees of the Office.

PART TEN

THE STATE LAW ENFORCEMENT AGENCIES AND SECURITY

CHAPTER I THE STATE LAW ENFORCEMENT AGENCIES AND SECURITY SERVICE

The State Police Service

145. (1) There shall be established a State Police Service, to be known as the Upper Nile State Police which shall be a professional service force whose mission is to prevent, combat and investigate crime, maintain law and public order, protect the people in the State and their properties, and uphold and enforce this Constitution and the law.
- (2) The State Police Service shall be organized at the level of the State; its organization, structure, functions, powers, terms and conditions of service shall be regulated by law.
- (3) The State Police Service shall be headed by a Commissioner of Police to be appointed by the Governor of the State on the recommendation of the Minister in charge of Police and approval of the State Council of Ministers.
- (4) The State Police 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.
- (5) The State Police and their counterparts at the Southern Sudan levels, and in other States, shall coordinate, cooperate and assist each other in the discharge of their functions. To that end, the State Police shall recommend, through the Minister in charge of Police,

the establishment of any necessary mechanisms to the Government of Southern Sudan.

The State Prisons Service

146. (1) There shall be established a State prisons service, to be known as Upper Nile State Prisons Service and it shall be a 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 State Prisons Service shall be organised at the level of the State.
- (3) The State Prisons Service shall be headed by a Commissioner to be appointed by the Governor of the State on the recommendation of the Minister in charge of police and approval of the State Council of Ministers.
- (4) The functions of the State Prisons shall, *inter alia*, be to manage, operate and maintain the prisons of the State, and to administer the internment and care for the health of prisoners and inmates.
- (5) The State 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) The State Prisons Service shall coordinate and cooperate with its counterparts in other Southern States and with the Prisons Services of Southern Sudan. To that end, the State Prisons Service shall recommend, through the Minister in charge of prisons, the establishment of any necessary mechanisms to the Government of Southern Sudan or the governments of

other Southern States.

- (7) The organisation, powers, terms and conditions of service of the State Prisons Service shall be prescribed by law.

The State Wildlife Service

147. (1) There may be established a State wildlife service, to be known as Upper Nile State Wildlife Service and it shall be a professional service; its mission is to protect the wildlife and to preserve and conserve the natural habitat of flora and fauna of the State.
- (2) The State Wildlife Service shall be organised at the level of the State.
- (3) The State Wildlife Service shall be headed by a Commissioner of Wildlife to be appointed by the Governor of the State on the recommendation of the Minister in charge and approval of the State Council of Ministers.
- (4) The State Wildlife Service shall coordinate and cooperate with local communities on the protection and management of wildlife within their areas.
- (5) The State 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 international standards and obligations.

- (6) The organisation, functions, powers and terms and conditions of service of the State 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 State Fire Brigade Service

148. (1) There shall be established a State Fire Brigade service, to be known as Upper Nile State Fire Brigade Service and it shall be a professional service, whose mission is to prevent and protect the people of the State and their property from fire.
- (2) The State Fire Brigade Service shall be organised at all levels of the government in the State.
- (3) The State Fire Brigade Service shall be headed by a State Commissioner of Fire Brigade to be appointed by the Governor of the State on the recommendation of the Minister in charge and approval of the Council of Ministers.
- (4) The functions, organisation and terms and conditions of service of the State Fire Brigade Service shall be regulated by law.

The State Security Service

149. There shall be established Security Committees at all levels of government in the State; their composition and functions shall be determined by the National Security Act.

PART ELEVEN

LOCAL GOVERNMENT AND TRADITIONAL AUTHORITY

CHAPTER I THE STATE LOCAL GOVERNMENT

Local Government

150. (1) Pursuant to Article 47 (b) of this Constitution, State Assembly shall enact laws for the establishment of a system of local government based on urban and rural councils, for which it 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 organisation of local government, the Government of Southern Sudan shall enact the necessary legislation.
- (3) 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.
- (4) Pursuant to the provisions of Article 173 (4) of the Interim Constitution of Southern Sudan, local Council 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) The objectives 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 government in the State shall have powers to

levy charge and collect appropriate fees and taxes in accordance with the law.

- (7) The State Government may pay grants-in-aid to local government councils in support of delivery of basic social services and their budgetary deficits.
- (8) If the State Government receives a grant-in-aid from the Government of Southern Sudan for local government, The State Government shall pay that grant-in-aid to the appropriate local government.

CHAPTER II

COUNTY COMMISSIONERS

The County Commissioner

151. (1) There shall be a County Commissioner in each county, appointed by the Governor of the State in accordance with procedures set out in the law.
- (2) The powers, competences and terms and conditions of service of the County Commissioners shall be regulated by law, in accordance with the provisions of this constitution and the Interim Constitution of Southern Sudan.

CHAPTER III

TRADITIONAL AUTHORITY

Traditional Authority

152. (1) The institution, status and role of traditional authority, according to customary law, are recognised under this Constitution and the Interim Constitution of Southern Sudan.
- (2) Traditional authority shall function in accordance

with this Constitution, the Interim Constitution of Southern Sudan and the law.

- (3) The courts shall apply customary law subject to this Constitution, the Interim Constitution of Southern Sudan and the law.
- (4) The Boma, as the basic administrative unit of the local government, shall be the domain of the traditional authority.

Role of Traditional Authority

153. (1) The State Assembly shall provide for the role of traditional authority as an institution at local government level on matters affecting local communities.
- (2) The State Assembly shall provide for the establishment, composition, function and duties of the Councils of Traditional Authority Leaders.

PART TWELVE
FINANCE AND ECONOMIC MATTERS IN THE STATE
CHAPTER I

**GUIDING PRINCIPLES FOR DEVELOPMENT AND
EQUITABLE SHARING OF**

COMMON WEALTH

Guiding Principles

154. (1) The Government of Upper Nile State shall support and encourage a participatory economic development based on the principle of subsidiary 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 economic development in the State 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 the State shall promote and encourage the participation of the people of the State in the formulation of its development policies and programmes.
- (4) The Government of the State shall endeavour to build institutional, human, social and economic capacity, develop infrastructure and social services, and raise the standard of public services in the State to attain the Millennium Development Goals.
- (5) The sharing and allocation of resources and common wealth of the State shall be based on the premise that all levels of the State, communities and localities are

entitled to development without discrimination.

- (6) Resources and common wealth of the State shall be allocated in a manner that will enable each level of government to discharge its legal and constitutional responsibilities and duties and ensure that the quality of life and dignity of all the people in the State are promoted without discrimination on grounds of gender, religion, political affiliation, ethnicity, language or locality.
- (7) The Government of the State shall fulfil its obligations to provide financial transfers to all levels of government in the State, and shall, except as otherwise provided herein, apportion revenue equitably among all levels of government in the State.
- (8) The Government of the State shall ensure release of allotted funds of the State Ministries and the State Assembly Institutions as passed in the annual budget allocations.
- (9) Revenue sharing shall reflect a commitment to devolution of powers and decision-making in regard to development, service delivery and governance.
- (10) Counties shall be allowed autonomy in the management of their budgets so as to foster a sense of project ownership
- (11) 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.
- (12) No level of government in the State 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 THE STATE

Regulation of Land and Natural Resources

155. (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 the State and Southern Sudan.
- (2) Rights in land owned by the Government of the State shall be exercised through the appropriate or designated level of government in the State, which shall recognise customary land rights under customary land law.
- (3) All levels of government in the State shall institute a process to progressively develop and amend the relevant laws to incorporate customary laws, practices, local heritage.
- (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 the State.
- (5) Customary seasonal access rights to land shall be respected, provided that these access rights shall be regulated by the respective level of the State 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 areas, 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.

CHAPTER III

FRAMEWORK FOR PETROLEUM DEVELOPMENT AND MANAGEMENT IN THE STATE

156. (1) If the State becomes an oil producing State, the State shall be represented in the National Petroleum Commission, in accordance with Article 183 of the Interim National Constitution.
- (2) The Government of the State shall participate in development and management of the various stages of petroleum development in the State in consultation with the relevant communities, within the overall framework of petroleum development during the Interim Period.
- (3) The Government of the State shall prioritise areas of petroleum development and make recommendations that are consistent with such priorities to the National Petroleum Commission through the Government of Southern Sudan, 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

- (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 in the State;
- (c) formulating strategies and programmes for the development of the necessary technical cadres from the State; and
- (d) requiring that all petroleum projects be subjected to environmental impact assessment before approval and implementation.

CHAPTER IV

SOURCES OF REVENUE IN THE STATE

157. (1) The State 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) Should it become an oil producing state, at least two percent of net oil revenue produced in the State;
 - (g) State Government projects.
 - (h) stamp duties;
 - (i) agricultural taxes;
 - (j) grants-in-aid and foreign aid;
 - (k) excise duties;
 - (l) border trade charges or levies as shall be regulated by law.
 - (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 of the Interim Constitution of

- Southern Sudan and the provisions of this Constitution; and
- (o) any other tax as may be determined by law.
- (2) All funds and special accounts referred to in this Constitution and future accounts shall be on-budget operations in accordance with the public budget.

CHAPTER V

FISCAL AND FINANCIAL INSTITUTIONS IN THE STATE

The State Fiscal Allocation and Monitoring Office

158. (1) A State Fiscal Allocation and Monitoring Office shall be to ensure transparency and fairness in regard to allocation of fund collected in the State.
- (2) The organization, functions and powers of the State Fiscal and Monitoring Office shall be in accordance with the provisions of Article 188 of the Interim Constitution of Southern Sudan and the law.

State Revenue Fund

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

The State Reconstruction and Development Fund

160. (1) There shall be established State Reconstruction and Development Fund to solicit, raise and collect funds from domestic and external donors and disburse such funds for the rehabilitation and reconstruction of the infrastructure, the resettlement and reintegration of internally displaced persons and returnees to address any geographical imbalances in development and infrastructure.
- (2) The Government of the State shall be office of expenditure from the fund and shall be entitled to raise additional funds by way of donation from internal and external sources for the purposes of the reconstruction and development of the State.
- (3) The Fund shall be transparently administered and professionally managed by a body established by the Government of the State, which shall also appoint an oversight committee having on it representatives of the Government of Southern Sudan Ministry of Finance and of the Southern Sudan Audit Office of the State Assembly shall supervise the performance of the Fund.
- (4) A monitoring and evaluation system shall be established to ensure accountability, transparency, efficiency, effectiveness, equity and fairness in the utilisation of resources.

State Tender Board

161. (1) There shall be established in the State an independent body to be known as Upper Nile State Tender Board. It shall award the State Government contracts.
- (2) The organization , functions, powers and duties of

the State Tender Board shall be determined by law.

Borrowing

162. (1) The Government of the State may borrow money within Government of Southern Sudan macro-economic framework and with the approval of the State Assembly. The State Assembly may by law exempt any category 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. The Government of the State shall be required to guarantee borrowing.
- (2) The Government of the State shall report financial and fiscal data relating to such loans to the relevant institutions in the Government of Southern Sudan for statistical purposes.

CHAPTER VI

ACCOUNTING STANDARDS

State Accounting Procedures, Standards and Fiscal Accountability

163. (1) All levels of government in the State 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 the State 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 the State shall be regulated by law.

Audits

164. All State Government institutions shall be required to establish and operate internal audit units to ensure that proper auditing and budgeting procedures are complied with.

CHAPTER VII

INTERSTATE TRADE AND COMMERCE

Interstate Trade and Commerce

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

CHAPTER VIII

TRANSITIONAL PROVISIONS FOR FINANCE

Government Liabilities and Assets

166. (1) Any debt or liability incurred by any level of government of the State shall be the responsibility of that level of government.
- (2) There shall be a fair and equitable division of government assets in the State. An asset shall in the first instance be allocated to the level of government office of 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 on the parties in dispute.

PART THIRTEEN

NATURAL AND MAN-MADE DISASTERS

Natural and Man-Made Disasters

167. (1) The Governor of the State, in consultation with the State Assembly may, upon the occurrence of any natural disaster or epidemic which may threaten the civil life of the people of the State, 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 Governor of the State shall recommend the declaration of a state of emergency to the President of the Government of Southern Sudan.

PART FOURTEEN
ELECTIONS AND STATISTICAL EVALUATION

CHAPTER I

ELECTIONS IN THE STATE

Time of Elections in the State

168. General Elections at the level of the State shall be held not later than the end of the fourth year of the Interim Period.

Referenda in the State

169. (1) Pursuant to Schedule C (29) herein, the Governor of the State, or the State 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 the State.
- (2) Any matter submitted for a referendum shall be deemed to have been approved by the people of the State if it obtained more than half of the number of votes cast.
- (3) Any matter which has been approved by the people of the State in a referendum shall have authority above any legislation. It shall not be annulled save by another referendum.

Running for Elections in the State

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

CHAPTER II

STATISTICS

The State Centre for Statistics

171. (1) A State Centre for Statistics, to be known as the Upper Nile State Centre for Statistics shall be established by law.
- (2) The State Centre for Statistics shall be authorised, *inter alia*, to—
- (a) collect, compile, analyse and publish official statistical information on economic, social, demographic, environmental and general activities and conditions of the people of the State;
 - (b) conduct surveys throughout the State;
 - (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 the State.
- (3) The State Centre for Statistics shall work in close cooperation with the Southern Sudan Centre for Census, Statistics and Evaluation.

PART FIFTEEN

INTERIM AND MISCELLANEOUS PROVISIONS

Coming into Force

172. (1) This Constitution shall be cited as the Interim Constitution of Upper Nile State, 2008; 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) Pursuant to the provisions of Article 26 (1) (a) of the Interim National Constitution and upon the adoption of this Constitution by the State Assembly, this Constitution shall be presented to the Ministry of Legal Affairs and Constitutional Development, Government of Southern Sudan to assess its compatibility with the Interim Constitution of Southern Sudan and the Interim National Constitution.
- (3) This Constitution shall come into force on the date of its signature by the Governor of the State.

Amendment of the Constitution

173. This Constitution shall not be amended unless the proposed amendment is approved by two-thirds of all members of the State Assembly and only after the introduction of the draft amendment at least two months prior to the deliberations. Any amendment must be consistent with the Comprehensive Peace Agreement, the Interim National Constitution and the Interim Constitution of Southern Sudan.

Incorporation of the Comprehensive Peace Agreement in this Constitution

174. 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.

Miscellaneous Provisions

175. (1) The Constitution of Upper Nile State, 2006, is hereby repealed provided that all actions taken or orders issued in accordance with the provisions of the repealed Constitution shall remain in force until they are amended or repealed in accordance with the provisions of this Constitution.
- (2) This Constitution derives its authority from the will of the people of the State, the Comprehensive Peace Agreement, the Interim Constitution of Southern Sudan and the Interim National Constitution.
- (3) 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 Governor of the State pursuant to the Comprehensive Peace Agreement, the Interim Constitution of Southern Sudan 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.
- (4) All current laws in the State 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.
- (5) This Constitution shall govern the Interim Period in

the State, subject to any amendment or review in accordance with Article 172 herein.

- (6) 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 168 of this Constitution.
- (7) 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 State Constitution is promulgated.
- (8) If the outcome of the referendum on self-determination favours secession of Southern Sudan, this Constitution shall remain in force as the Constitution of the State, 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

6. Southern Sudan within the national macro-economic policy; 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 office of 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.



GOVERNMENT OF SOUTHERN SUDAN (GoSS)
Upper Nile State Government
Governor Office



Ref: UNS/UNLA/_____/2008

Date: _____, 2008

CERTIFICATE

I hereby certify that the Upper Nile State Legislative Assembly has passed the Interim Constitution of Upper Nile State, 2008 on their _____ sitting of the _____ session of convention dated _____, 2008.

Hon. Mr. Santino Ajang Ahan
Speaker,
Upper Nile State Legislative Assembly,
Malakal

UPPER NILE STATE



الجمهورية السودانية
وزارة العدل

MINISTRY OF JUSTICE



جمهورية السودان
Republic Of Sudan

الكتابة الوزير

Date : 14/2/2008

COMPATIBILITY CERTIFICATE

In accordance with Article 226(8) of the Interim National Constitution of the Republic of the Sudan 2005, the Minister of Justice hereby certifies that the Interim Constitution of Upper Nile State 2008, is compatible with the Interim National Constitution 2005 and the Interim Constitution of Southern Sudan 2005.

Given under my signature and seal of the Ministry this 7th Day of Safar 1429 AH, being the 14th Day of February 2008 AD.

MOHAMMED ALI ALMARDI
MINISTER OF JUSTICE



Government Of Southern Sudan
Upper Nile State - Malakal
Governor of Upper Nile State
Governor's Office



Ref: UNS/UNGO/———/2008

Date: ———, 2008

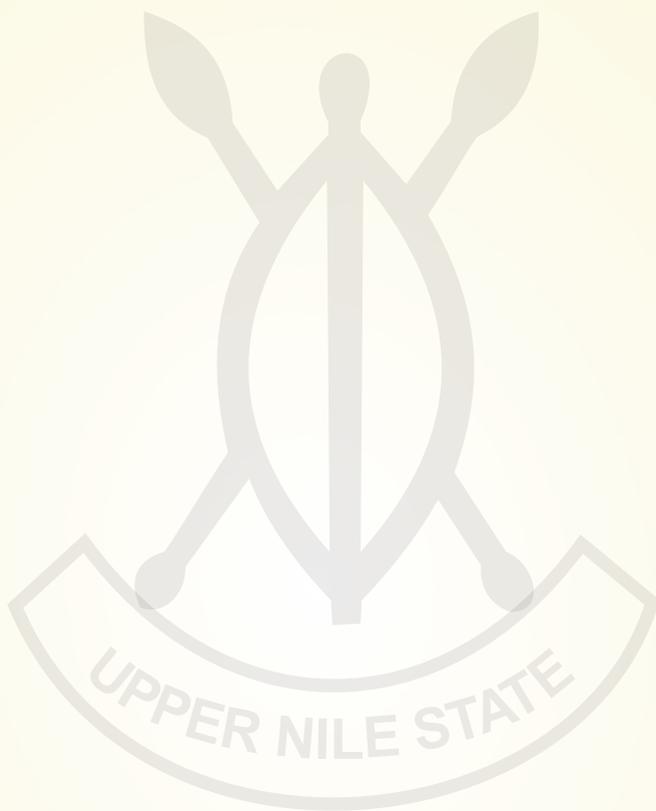
After Perusal of:

1. The certificate of the speaker of Upper Nile State Legislative Assembly. evidencing the adoption of the English version of the Interim Constitution of Upper Nile State. 2008, by Upper Nile State Legislative Assembly in the ___ th sitting of its _____ session dated ___/ ____, 2008.
2. Certificate of the national Ministry of Justice affirming the compatibility of the Interim Constitution of Upper Nile State. 2008.
3. Article 2.12.12 of the Comprehensive Peace Agreement concerning the procedural requirements for the adoption of the Interim Constitution of Upper Nile State.

I, Brig (Rid) Galuak Deng Garang, Governor of Upper Nile State, hereby affirm and de M.G. PSC/ie interim Constitution of Upper Nile State, 2008, has satisfied all procedural requirements under the Comprehensive Peace Agreement, Interim National Constitution and the Interim Constitution of Southern Sudan, 2005 and accordingly. I do herewith give my assent and sign in into law.

Made Under my hand thisDay of2008.

**Major General PSC/
Galuak Deng Garang
Governor,
Upper Nile State
Malakal**



Interim Constitution for
Upper Nile State

2008

