

**CHAPTER II**

**POWER SHARING**

*SIGNED AT NAIVASHA, KENYA ON 26<sup>TH</sup> MAY, 2004*



## PART I

### 1. General Principles

- 1.1 In accordance with the Machakos Protocol agreed to at Machakos, Kenya, on 20<sup>th</sup> July, 2002, the following Protocol on Power Sharing forms an integral part of the overall Peace Agreement.
- 1.2 The Parties reaffirm their acceptance of the Agreed Principles (of Governance) as stipulated in the Machakos Protocol of 20<sup>th</sup> July, 2002. The modalities of implementation of these principles are the object of the present Protocol on Power Sharing.
- 1.3 In accordance with the Machakos Protocol, the structures of governments in the Sudan shall be as follows during the Interim Period:-
  - 1.3.1 The National level of Government which shall exercise authority so as to protect and promote the national sovereignty of Sudan and the welfare of its people;
  - 1.3.2 The Southern Sudan level of Government which shall exercise authority in respect of the people and States in the South;
  - 1.3.3 The States throughout Sudan which shall exercise authority at the state level and render public services through the level of government close to the people; and
  - 1.3.4 The level of local government throughout the Sudan.
- 1.4 The Parties agree that the following principles shall guide the distribution of powers and the establishment of structures:
  - 1.4.1 Recognition of both the sovereignty of the nation as vested in its people as well as the need for autonomy of the Government of Southern Sudan and States throughout the Sudan;
  - 1.4.2 Affirmation of the need for both national as well as state and Southern Sudan norms and standards so as to reflect the unity of the country and the diversity of the Sudanese people;
  - 1.4.3 Acknowledgement of the need to promote the welfare of the people and protect their human rights and fundamental freedoms;
  - 1.4.4 Recognition of the need for the involvement and participation of the people of South Sudan at all levels of government and National institutions as an expression of the national unity of the country;
  - 1.4.5 Pursuit of good governance, accountability, transparency, democracy, and the rule of law at all levels of government to achieve lasting peace;
  - 1.4.6 Recognizing the need to legitimize the arrangements agreed to herein, fair electoral laws shall be adopted, including the free

**PREAMBLE**

**PART I**

**CONSCIOUS** of the need for an expeditious termination of Sudan's protracted and costly war;

**MINDFUL AND AWARE** of the yearning of all the Sudanese for a quick, just and sustainable peace;

**ENCOURAGED** by the progress made thus far in our pursuit for realizing Comprehensive Peace Agreement in the Sudan;

**DETERMINED** to crown the valuable achievement of this Peace Process by arriving at an equitable and fair formula for sharing power in the Sudan;

**RESOLVED** to usher in an era of responsible, just, transparent, people-led and integrity based governance;

**CONVINCED** that decentralization and empowerment of all levels of government are cardinal principles of effective and fair administration of the country;

**COGNIZANT** of the fact that the smooth and successful implementation of This Agreement shall, to a large measure, hinge on rallying the majority of the Sudanese people behind it; and

**CONVINCED** that the successful implementation of this Agreement shall provide a model for good governance in Sudan that shall help to create a solid basis to make unity of the country attractive and preserve peace;

**NOW THEREFORE**, the Government of the Sudan (GOS) and the Sudan People's Liberation Movement (SPLM) hereby agree as follows:-

establishment of political parties. Elections at all levels of government shall be held by universal adult suffrage.

### 1.5 Principles of Administration and Inter-Governmental Linkages:

1.5.1 In the administration of the Government of National Unity, the following provisions shall be respected:-

1.5.1.1 There shall be a decentralized system of government with significant devolution of powers, having regard to the National, Southern Sudan, State, and Local levels of government;

1.5.1.2 The Interim National Constitution, being the legal and constitutional framework text adopted as contemplated in paragraph 2.12.6 herein, shall be the Supreme Law of the land and the Southern Sudan Constitution, state constitutions, and the laws of all levels of government must comply with it;

1.5.1.3 The linkage between the National Government and the states in the Southern Sudan shall be through the Government of Southern Sudan, subject to paragraph 1.5.1.4 below, and as provided for in the Interim National Constitution and the Southern Sudan Constitution;

1.5.1.4 In their relationships with each other or with other government organs, all levels of government and particularly National, Southern Sudan, and State Governments shall:

- (a) Respect each others' autonomy;
- (b) Collaborate rather than compete, in the task of governing and assist each other in fulfilling each others' constitutional obligations;
- (c) Perform their functions and exercise their powers so as:

(i) Not to encroach on another level's powers or functions;

(ii) Not to assume another level's powers or functions conferred upon it by the Constitution;

(iii) To promote co-operation between them;

(iv) To promote open communication between government and levels of government;

(v) To strive to render assistance and support to other levels of government;

(vi) To advance the good co-ordination of governmental functions;

(vii) To adhere to procedures of inter-governmental interaction as agreed upon;

- (viii) To promote amicable settlement of disputes before attempting litigation;
- (ix) To respect the status and institutions of other levels of government.

(d) Allow the harmonious and collaborative interaction of the different levels of government within the context of national unity and for the achievement of a better quality of life for all.

## 1.6 Human Rights and Fundamental Freedoms:

1.6.1 The Republic of the Sudan, including all levels of Government throughout the country, shall comply fully with its obligations under the international human rights treaties to which it is or becomes a party. These include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Slavery Convention of 1926, as amended, and the related Supplementary Convention, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the International Convention Against Apartheid in Sports, the Convention Relating to the Status of Refugees and the Related Protocol, and the African Charter on Human and People's Rights. The Republic of the Sudan should endeavor to ratify other human rights treaties which it has signed.

1.6.2. The rights and freedoms to be enjoyed under Sudanese law, in accordance with the provisions of the treaties referred to above, include in particular the following:-

### 1.6.2.1 Life

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his/her life;

### 1.6.2.2 Personal Liberty

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his/her liberty except on such grounds and in accordance with such procedures as are established by law;

### 1.6.2.3 Slavery

No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited. No one shall be held in servitude or be required to perform forced or compulsory labour;

### 1.6.2.4 Torture

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment;

### 1.6.2.5 Fair Trial

(a) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his/her arrest and shall be promptly informed of any charges against him/her;

(b) In the determination of any criminal charges against him/her, or of his/her rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law;

(c) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law;

(d) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed;

(e) In the determination of any criminal charge against him/her, everyone shall be entitled, in full equality, to be tried without undue delay, to be tried in his/her presence and to defend himself/herself in person or through legal assistance of his/her own choosing and to have legal assistance assigned to him/her in any case where the interests of justice so require.

### 1.6.2.6 Privacy

No one shall be subjected to arbitrary or unlawful interference with his/her privacy, family, home or correspondence;

### 1.6.2.7 Freedom of Thought, Conscience and Religion

Everyone shall have the right to freedom of thought, conscience and religion;

### 1.6.2.8 Freedom of Expression

Everyone shall have the right to freedom of expression;

### 1.6.2.9 Freedom of Assembly and Association

The right of peaceful assembly shall be recognized. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his/her interests;

### 1.6.2.10 Family and Marriage

(a) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State;

(b) The right of men and women of marriageable age to marry and to found a family shall be recognized, according to their respective family laws.

### 1.6.2.11 Right to Vote

Every citizen shall have the right and the opportunity, without distinctions and unreasonable restrictions, to vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

### 1.6.2.12 Equality Before the Law

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law;

### 1.6.2.13 Freedom from Discrimination

The law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

### 1.6.2.14 Freedom of Movement

Everyone has the right to liberty of movement and freedom to choose his/her residence;

### 1.6.2.15 The Rights of Children

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his/her status as a minor.;

### 1.6.2.16 Equal Rights of Men and Women

- (a) The equal right of men and women to the enjoyment of all civil and political rights set forth in the International Covenant on Civil and Political Rights and all economic, social, and cultural rights set forth in the International Covenant on Economic, Social and Cultural Rights shall be ensured;
- (b) The human rights and fundamental freedoms embodied in the International Covenant on Civil and Political Rights (ICCPR) shall also be reflected in the Interim National Constitution. No derogation from these rights and freedoms shall be made under the Constitution or under the ICCPR except in accordance with the provisions thereof and only with the approval of the Presidency and the National Legislature, as required by Section 2.3.14 herein;
- (c) These human rights and fundamental freedoms shall be monitored by the Human Rights Commission specified in paragraph 2.10.1.2 herein.

### 1.7 Reconciliation:

The Parties agree to initiate a comprehensive process of national reconciliation and healing throughout the country as part of the peace building process. Its mechanisms and forms shall be worked out by the Government of National Unity.

### 1.8 Population Census, Elections and Representation:

- 1.8.1 Population census throughout the Sudan shall be conducted and completed by the end of the second year of the Interim Period;
- 1.8.2 The preparation, planning and organization for the census shall commence as soon as the Peace Agreement is signed;
- 1.8.3 General Elections at all levels of government shall be completed by the end of the third year of the Interim Period;
- 1.8.4 Six months before the end of the periods referred to in Sub-Paragraphs 1.8.1 and 1.8.3 the Parties shall meet and review the feasibility of the dates set out in the above-mentioned sub-Paragraphs.

1.8.5 Certain considerations, while not conditional upon their completion, should be taken into account with respect to the timing of the elections (including, *inter alia*, resettlement, rehabilitation, reconstruction, repatriation, building of structures and institutions, and consolidation of the Peace Agreement);

1.8.6 Whoever runs in any election must respect, abide by, and enforce the Peace Agreement;

1.8.7 International observers shall participate in the observation of elections;

1.8.8 Representation of the north and the south at the National level shall be based on population ratio;

1.8.9 The percentages agreed herein are temporary and shall either be confirmed or adjusted on the basis of the census results.

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## PART II

### 2. Institutions at the National Level

2.1 During the Interim Period, the Institutions at the National level shall consist of:-

2.1.1 The Legislature;

2.1.2 The Executive;

2.1.3 The Judiciary; and

2.1.4 The Institutions and Commissions specified in this Agreement and the Interim National Constitution.

2.2 The National Legislature:

2.2.1 There shall be a bicameral National Legislature comprised of:-

2.2.1.1 A National Assembly; and

2.2.1.2 A Council of States.

2.2.2 In the establishment of the National Legislature, the following principles shall apply:-

2.2.2.1 There shall be equitable representation of the people of South Sudan in both legislative chambers; and

2.2.2.2 Relevant considerations shall be taken into account in determining what constitutes equitable representation.

2.2.3 The National Legislature shall be structured and operate as follows:-

2.2.3.1 The National Assembly shall be elected in accordance with the procedures set forth by an impartial and representative Electoral Commission and in accordance with fair electoral laws;

2.2.3.2 There shall be a Council of States comprised of two representatives from each state;

2.2.3.3 Free and fair elections for the National Assembly shall be conducted in accordance with the Interim National Constitution governing the Interim Period. The date shall be determined by the Parties signatory to this Agreement, after consulting with the Electoral Commission.

2.2.4 Pending the elections referred to above, the National Assembly shall consist of such members representing the Parties to the Agreement, and other forces in the North and South so as to promote inclusiveness and stability, in such proportions to be determined by the parties prior to the conclusion of the Peace Agreement.

- 2.2.5 Prior to the Parliamentary elections, the seats of the National Assembly shall be allocated as follows:
- (a) The National Congress Party (NCP) shall be represented by Fifty-Two Percent (52%);
  - (b) Sudan People's Liberation Movement (SPLM) shall be represented by Twenty-Eight Percent (28%);
  - (c) Other Northern political forces shall be represented by Fourteen Percent (14%);
  - (d) Other Southern political forces shall be represented by Six Percent (6%);
- 2.2.6 Both Chambers of the National Legislature shall approve the allocation of resources and revenues, in accordance with the agreement of Wealth Sharing. The National Assembly shall approve the annual National budget.
- 2.2.7 Amendments to the National Constitution shall require:-
- 2.2.7.1 The approval of three-quarters (75%) of all the members of each chamber, both chambers sitting separately, and only after introduction of the draft amendment at least two (2) months prior to debate;
  - 2.2.7.2 Amendments to the Interim National Constitution affecting the provisions of the Peace Agreement may be introduced only with the approval of both Parties signatory to this Agreement;
  - 2.2.7.3 A sixty-six and two-thirds percent (66.6%) majority in the Council of States is required to pass legislation that affects the interests of the states and a simple majority vote of both chambers is required to pass all other legislation.
- 2.2.8 Any bill duly approved by the National Legislature shall be signed into law by the President within thirty (30) days, failing which it shall be deemed to have been so signed. Where the President withholds his/her signature, he/she must present reasons for his/her refusal to so sign when re-introducing the bill to the National Legislature within the 30-day period stated herein. The Bill shall become law if the National Legislature again passes the bill by a two-thirds ( $\frac{2}{3}$ ) majority of all the members of the respective house or houses and the assent of the President shall not be required.
- 2.2.9 The exclusive legislative powers of the National Legislature shall be in respect of the matters set forth in Schedule A, annexed hereto.
- 2.2.10 The concurrent legislative powers of the National Legislature shall be those matters as set forth in Schedule D, read together with Schedule F, annexed hereto.
- 2.2.11 The residual legislative powers shall be exercised in accordance with Schedule E annexed hereto.

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2.2.12 Both chambers of the National Legislature shall elect their respective Speakers, Deputy Speakers and other officers at their first sitting. The two Parties shall be adequately represented in these offices.

2.2.13 Both Chambers of the National Legislature shall respectively determine their own rules, procedures, committees, and other matters of a similar nature.

### 2.3. The National Executive

2.3.1 The National Executive shall consist of the Presidency and a Council of Ministers.

2.3.2 There shall be established the Institution of the Presidency consisting of the President and two Vice Presidents.

2.3.3 The functions of the two Vice Presidents shall be clearly defined by the parties to this Agreement.

2.3.4 There shall be a partnership and collegial decision-making process within the Institution of the Presidency in order to safeguard the Peace Agreement.

2.3.5 Until such time as elections are held, the current incumbent President (or his successor) shall be the President and Commander-in-Chief of the Sudan Armed Forces (SAF). The current SPLM Chairman (or his successor) shall be the First Vice President and shall at the same time hold the posts of President of the Government of Southern Sudan (GOSS) and Commander-in-Chief of the Sudan People's Liberation Army (SPLA).

2.3.6 In respect of the following matters, the President shall take decisions with the consent of the First Vice President, namely:-

2.3.6.1 Declaration and termination of a state of emergency;

2.3.6.2 Declaration of war;

2.3.6.3 Appointments that the President is required to make according to the Peace Agreement, (to be specified); and

2.3.6.4 Summoning, adjourning, or proroguing the National Legislature.

2.3.7 The President shall be elected in national elections, the timing of which shall be subject to the agreement of the two parties. The President elect shall appoint two Vice Presidents, one from the South and the other from the North. If the President-elect is from the North, the position of the First Vice President shall be filled by the person who has been elected to the post of President of the Government of Southern Sudan, as the President's appointee to the said position. In the event that a person from the South wins the Presidential elections, the President-elect shall appoint the First Vice President from the North. All the other provisions in this Agreement relating to the presidency shall continue to apply.



- 2.3.8 Should the post of the President fall vacant, the functions of the President shall be assumed by a Presidential Council comprising of the Speaker of the National Assembly, the First Vice President and the Vice President.
- 2.3.8.1 The Speaker of the National Assembly shall be Chairperson of the Council in the period prior to elections, after elections the First Vice President shall be the chairperson of the Council;
- 2.3.8.2 The Presidential Council shall take its decision by consensus;
- 2.3.8.3 The Vice President shall be Commander-in-Chief of the Sudan Armed Forces (SAF).
- 2.3.9 Should the post of the President fall vacant in the period prior to elections, the Office of the President shall be filled by the nominee of the National Congress Party within two weeks.
- 2.3.10 Should the post of the President fall vacant in the period after the elections, the post shall be filled through presidential elections which shall be held within sixty (60) days.
- 2.3.11 Should the post of the First Vice President fall vacant:-
- 2.3.11.1 Prior to elections, the office of the First Vice President shall be filled by the nominee of the SPLM within two(2) weeks;
- 2.3.11.2 After the elections, the President shall appoint a First Vice President in accordance with the Interim National Constitution and the provisions of this Peace Agreement.
- 2.3.12 The President shall, within Thirty (30) days of the entry into force of the Peace Agreement, and in consultation with the First Vice President, establish a Council of Ministers, having due regard to the need for inclusiveness and diversity in the establishment of a Government of National Unity. The Cabinet Ministers shall be accountable to the President and the National Assembly in the performance of their functions and may be removed by a resolution supported by two-thirds ( $\frac{2}{3}$ ) of all the members of the National Assembly.
- 2.3.13 The President, the First Vice President and the Vice President shall be members of the Council of Ministers.
- 2.3.14 The National Legislature shall be required to approve declarations of war or state of emergency, but in either event, there shall be no derogation from the provisions of the Peace Agreement, except as may be provided herein.
- 2.3.15 Any Executive Orders or other legal acts by the President of the Republic shall be discussed with, and adopted by the Council of Ministers.

## 2.4 National Capital

- 2.4.1 Khartoum shall be the Capital of the Republic of the Sudan. The National Capital shall be a symbol of national unity that reflects the diversity of Sudan.
- 2.4.2 The Administration of the National Capital shall be representative; and during the Interim Period the two Parties shall be adequately represented in the administration of the National Capital.
- 2.4.3 Human rights and fundamental freedoms as specified in the Machakos Protocol, and in the Agreement herein, including respect for all religions, beliefs and customs, shall be guaranteed and enforced in the National Capital, as well as throughout the whole of Sudan, and shall be enshrined in the Interim National Constitution.
- 2.4.4 Law enforcement agencies of the Capital shall be representative of the population of Sudan and shall be adequately trained and made sensitive to the cultural, religious and social diversity of all Sudanese.
- 2.4.5 Without prejudice to the competency of any National Institution to promulgate laws, judges and law enforcement agents shall, in dispensing justice and enforcing current laws in the National Capital be guided by the following:-
- 2.4.5.1 Tolerance shall be the basis of coexistence between the Sudanese people of different cultures, religions and traditions;
- 2.4.5.2 Behavior based on cultural practices and traditions which does not disturb public order, is not disdainful of other traditions, and not in flagrant disregard of the law or disturbing public order shall be deemed in the eyes of the law as an exercise of personal freedoms;
- 2.4.5.3 Personal privacy is inviolable and evidence obtained in violation of such privacy shall not be admissible in the court of law;
- 2.4.5.4 The judicial discretion of courts to impose penalties on non-Muslims shall observe the long-established legal {Sharia} principle that non-Muslims are not subject to prescribed penalties, and therefore remitted penalties shall apply;
- 2.4.5.5 Leniency and granting the accused the benefit of doubt are legal principles of universal application, especially in the circumstances of a poor society like the Sudan, which is just emerging from war, characterized by prevalent poverty and subject to massive displacement of people.
- 2.4.6 A special commission shall be appointed by the Presidency to ensure that the rights of non-Muslims are protected in accordance with the aforementioned guidelines and not adversely affected by the application of Sharia Law in the Capital. The said commission shall make its observations and recommendations to the Presidency.

2.4.7 Additionally, a system of mechanisms of guarantees shall be established to operationalize the above points, which includes:-

- 2.4.7.1 Judicial circulars to guide the courts as to how to observe the foregoing principles;
- 2.4.7.2 Establishment of specialized courts; and
- 2.4.7.3 Establishment of specialized Attorney General circuits to conduct investigations and pre-trial proceedings related to offences involving these principles.

## 2.5. The Government of National Unity

- 2.5.1 During the Interim Period, there shall be a Government of National Unity reflecting the need for inclusiveness, the promotion of national unity, and the defense of national sovereignty, and the respect and implementation of Peace Agreement.
- 2.5.2 The Presidency and Council of Ministers shall exercise the Executive powers and competencies in respect of the matters in Schedules A and D, read together with Schedules E and F, and as conferred upon it by this Agreement and the Interim National Constitution.
- 2.5.3 Cabinet posts and portfolios in all clusters, including the National Sovereignty Ministries, shall be shared equitably and qualitatively by the two Parties. The Parties agree to cluster the National ministries under the implementation modalities.
- 2.5.4 Representation of the SPLM and other political forces from the South in each of the clusters shall be determined by the Parties Signatory to Agreement prior to the conclusion of the Peace Agreement.
- 2.5.5 Prior to elections, the seats of the National Executive shall be allocated as follows:-
  - (a) The National Congress Party shall be represented by Fifty-Two Percent (52%);
  - (b) Sudan People's Liberation Movement (SPLM) shall be represented by Twenty-Eight Percent (28%);
  - (c) Other Northern political forces shall be represented by Fourteen Percent (14%);
  - (d) Other Southern political forces shall be represented by Six Percent (6%);
- 2.5.6 The Government of National Unity shall be responsible for the administration and functioning of the State and the formulation and implementation of national policies in accordance with the Interim National Constitution.

2.5.6 The Government of National Unity shall be responsible for establishing recruitment systems and admission policies to national universities, national institutes, and other institutions of higher education based on fair competition, giving equal opportunity to all citizens.

2.5.8 The Government of National Unity shall make decisions related to the ongoing or future activities of the organizations of the United Nations, bilateral, national, or international governmental and non-governmental organizations (NGOs), with a view toward ensuring equitable and transparent distribution of projects, activities, and employment of personnel in the whole of Sudan and especially the reconstruction of the war affected areas. There is to be an equivalent obligation on all levels of Government.

2.5.9. The Government of National Unity shall implement an information campaign throughout Sudan in all national languages in Sudan to popularize the Peace Agreement, and to foster national unity, reconciliation and mutual understanding.

## 2.6 Civil Service:-

2.6.1 The Government of National Unity shall also ensure that the National Civil Service, notably at the senior and middle-levels, is representative of the people of Sudan. In so doing, the following principles shall be recognized:-

2.6.1.1 Imbalances and disadvantages which exist must be redressed;

2.6.1.2 Merit is important and training is necessary;

2.6.1.3 There must be fair competition for jobs in the National Civil Service;

2.6.1.4 No level of government shall discriminate against any qualified Sudanese citizen on the basis of religion, ethnicity, region, gender, or political beliefs;

2.6.1.5 The National Civil Service will fairly represent all the people of the Sudan and will utilize affirmative action and job training to achieve equitable targets for representation within an agreed time frame;

2.6.1.6 Additional educational opportunities shall be created for war- affected people.

2.6.2 In order to create a sense of national belonging and address imbalances in the National Civil Service, a National Civil Service Commission shall be established with the task of:-

2.6.2.1 Formulating policies for training and recruitment into the civil service, targeting between Twenty–Thirty Percent (20% - 30%) of the positions, confirmed upon the outcome of the census referred to herein, for people of South Sudan who qualify;

2.6.2.2 Ensuring that not less than Twenty Percent (20%) of the middle and upper level positions in the National Civil Service (including the

positions of Under Secretaries) are filled with qualified persons from the South within the first three years and achieving Twenty-Five Percent (25%) in five (5) years and the final target figure referred to in sub-paragraph 2.6.2.1 above, within six (6) years; and

2.6.2.3 Reviewing, after the first three (3) years of the beginning of the Interim Period the progress made as a result of the policies and setting new goals and targets as necessary, taking into account the census results.

## **2.7 National Security**

### **2.7.1 The National Security Council**

2.7.1.1 There shall be at the National level a National Security Council, the composition and functions of which shall be determined by the law;

2.7.1.2 The National Security Council shall define the new national security strategy based on the analysis of the new security threats.

### **2.7.2 National Security Service**

2.7.2.1 There shall be one National Security Service. The details of its establishment shall be worked out under the implementation modalities;

2.7.2.2 The National Security Service shall be representative of the population and reflect the partnership of the negotiating Parties;

2.7.2.3 The South shall be equitably represented in the National Security Service;

2.7.2.4 The National Security Service shall be professional and its mandate shall be advisory and focused on information gathering and analysis;

2.7.2.5 There shall be established security committees at the Government of Southern Sudan and State levels, their composition and functions shall be determined by the law;

2.7.2.6 The National Security Service shall be anchored in the Presidency;

2.7.2.7 There shall be a National Security Act that shall reflect the mandate of the National Security Service and the provisions of this Agreement relating to the National Security;

2.7.2.8 That all the assets of the respective security organs of the two Parties shall accrue to the National Security Service.

## **2.8 Language**

2.8.1 All the indigenous languages are national languages which shall be respected, developed and promoted.

2.8.2 Arabic language is the widely spoken national language in the Sudan.

- 2.8.3 Arabic, as a major language at the national level, and English shall be the official working languages of the National Government business and languages of instruction for higher education.
- 2.8.4 In addition to Arabic and English, the legislature of any sub-national level of government may adopt any other national language(s) as additional official working language(s) at its level.
- 2.8.5 The use of either language at any level of government or education shall not be discriminated against.

## 2.9 Foreign Policy

- 2.9.1 During the Interim Period, as a matter of principle Sudan's Foreign Policy shall serve first and foremost Sudan's national interests to achieve the following objectives:-
  - 2.9.1.1 Promotion of international cooperation, especially within the UN and other International and Regional Organizations for the consolidation of universal peace, respect of international law and treaty obligations and the promotion of a just world economic order;
  - 2.9.1.2 To achieve the latter, enhancement of South-South and international cooperation;
  - 2.9.1.3 Striving to achieve African and Arab integration, each within the ongoing regional plans and forums as well as promoting African and Arab Unity and Afro-Arab cooperation;
  - 2.9.1.4 Non-interference in the affairs of other states and promotion of good-neighborliness and mutual cooperation among all Sudan's neighbors;
  - 2.9.1.5 Combating international and transnational organized crimes and terrorism.

## 2.10 Other Independent and/or National Institutions to be Established in Accordance with the Peace Agreement:

- 2.10.1 The National Constitutional Review Commission, as detailed in Section 2.12 herein, shall also detail the mandate and provide for the appointment and other mechanisms to ensure the independence of the following institutions:-
  - 2.10.1.1 An impartial and representative National Electoral Commission;
  - 2.10.1.2 A Human Rights Commission;
  - 2.10.1.3 A National Judicial Service Commission;
  - 2.10.1.4 A National Civil Service Commission;
  - 2.10.1.5 An ad-hoc Commission to monitor and ensure accuracy, legitimacy, and transparency of the Referendum as mentioned in the Machakos Protocol on Self-Determination for the People of South Sudan, which shall also include international experts;
  - 2.10.1.6 A Fiscal and Financial Allocation and Monitoring Commission;

2.10.1.7 Any other independent commission/institution set forth in the Peace Agreement or as agreed upon by the Parties.

## 2.11 **The National Judiciary**

2.11.1 The powers of the Judiciary shall be exercised by Courts and other tribunals. The Judiciary shall be independent of the Legislature and the Executive. Its independence shall be guaranteed in the Interim National Constitution.

2.11.2. There shall be established at the National Level:-

- 2.11.2.1. A Constitutional Court;
- 2.11.2.2. A National Supreme Court;
- 2.11.2.3. National Courts of Appeal; and
- 2.11.2.4. Any other National Courts or tribunals as deemed necessary to be established by law.

## 2.11.3. **The Constitutional Court**

2.11.3.1 There shall be established a Constitutional Court in accordance with the provisions of this Peace Agreement and the Interim National Constitution.

2.11.3.2. The Constitutional Court shall:-

- (i) Be independent from the Judiciary and any other courts in the country. It shall be headed by the President of the Constitutional Court, duly appointed by the President with the consent of the First Vice President, and shall be answerable to the Presidency;
- (ii) Uphold the Interim National, Southern Sudan, and State Constitutions and its composition shall be representative;
- (iii) Have original jurisdiction to decide disputes that arise under the National Interim Constitution and the constitutions of Northern States at the instance of individuals, juridical entities or of government;
- (iv) Adjudicate on the constitutionality of laws and set aside or strike down laws or provisions of laws that do not comply with the National, Southern Sudan, or the relevant State constitutions;
- (v) Have appellate jurisdiction on appeals against the decisions of Southern Sudan Supreme Court on the Constitution of Southern Sudan and the constitutions of Southern Sudan states;
- (vi) Adjudicate on constitutional disputes between organs and levels of government, with respect to areas of exclusive or concurrent competencies;
- (vii) Protect human rights and fundamental freedoms;
- (viii) Have criminal jurisdiction over the President, the two (2) Vice Presidents of the Republic, the two (2) Speakers of the National

Legislature, and the Justices of the National and Southern Sudan Supreme Courts.

2. 11.3.3. Decisions of the Constitutional Court shall be final and binding.

## 2. 11.4. The National Supreme Court

2. 11.4.1 The National Supreme Court shall:-

- (i) Be a court of review and cassation in respect of any criminal or civil matter arising out of or under national laws;
- (ii) Have criminal jurisdiction over the Justices of the Constitutional Court;
- (iii) Review death sentences imposed by any Court in respect to matters arising out of or under National Laws; and
- (iv) Have such other jurisdiction as determined by the Interim National Constitution, the Peace Agreement, and law.

2. 11.4.2. The National Supreme Court may establish panels for the purposes of considering and deciding appeals on matters requiring special expertise including commercial, personal, or labour matters.

2. 11.4.3. The Justices of the Constitutional and National Supreme Courts and all the judges of other National Courts shall perform their functions without political interference; they shall be independent, and shall administer justice without fear or favour. The Interim National Constitution and the law shall protect their independence.

2. 11.4.4. Judges other than the Justices referred to in Section 2.11.4.6 herein shall be appointed by the Presidency on the recommendation of the National Judicial Service Commission.

2. 11.4.5. The National Judicial Service Commission shall be chaired by the Chief Justice. Amongst others, representatives of academia, judges, members of the legal profession, members of the National Legislature, and the Minister of Justice shall sit on this Commission. The National Judicial Service Commission shall be as determined in the Interim National Constitution referred to in paragraph 2.12 herein and shall reflect the need for appropriate representation, inclusiveness, and diversity.

2. 11.4.6. (i) All Justices of the Constitutional Court shall be appointed by the Presidency on the recommendation of the National Judicial Service Commission, subject to approval by two-thirds (( $\frac{2}{3}$ )) majority of all the members of the Council of States, having regard to competence, credibility and the need for fair representation.

(ii) All Justices of the National Supreme Court shall be appointed by the Presidency on the recommendation of the National Judicial Service Commission, having regard to competence and credibility.

(iii) Southern Sudan shall be adequately represented in the Constitutional Court, the National Supreme Court and other national courts that are situated in the National Capital, by qualified lawyers having regard to competence and credibility;

2. 11.4.7. The tenure of Judges shall not be affected by their judicial decisions. Judges may only be removed for gross misconduct, incompetence, incapacity, or otherwise in accordance with the law, and only on the recommendation of the National Judicial Service Commission.

## 2.12 Constitutional Review Process

2.12.1 The Peace Agreement shall be signed by the leaders of the two Parties.

2.12.2 Upon signature, the Parties shall be bound by the Agreement and shall assume the obligations arising therefrom, more especially the obligations to implement the Agreement and to give legal and constitutional effect to the arrangements agreed therein.

2.12.3 Upon signature the Parties commit themselves to ensure that all the organs, committees and structures under their control, including their members, shall observe the terms of the Agreement.

2.12.4 After the Agreement has been signed:-

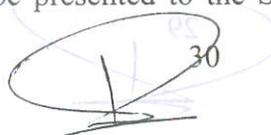
2.12.4.1 The text thereof shall be forwarded to the National Assembly and the SPLM National Liberation Council for approval as is;

2.12.4.2 A representative National Constitutional Review Commission shall be established, as is more fully described below, which shall within six (6) weeks of receipt of the Agreement prepare a Legal and Constitutional Framework ("The Constitutional Text");

2.12.4.3 The National Constitutional Review Commission shall be comprised of the NCP, SPLM and representatives of such other political forces and civil society as agreed by the Parties. Such composition shall be reflected in the final Peace Agreement.

2.12.5 The National Constitutional Review Commission shall have as its first task the preparation of a Legal and Constitutional Framework text in the constitutionally appropriate form, based on the Peace Agreement and the current Sudan Constitution, for adoption by the National Assembly. The same text shall be presented to the SPLM National Liberation Council for

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adoption. In the event of a contradiction, the terms of the Peace Agreement shall prevail in so far as that contradiction exists.

- 2.12.6 Without prejudice to the provisions of 2.12.5 above, the National Constitutional Review Commission in the preparation of the Legal and Constitutional Framework Text, shall draw upon relevant experiences and documents as may be presented by the Parties.
- 2.12.7 Upon adoption by the National Assembly and the SPLM National Liberation Council, the Constitutional Text shall become the Interim National Constitution for the Sudan during the Interim Period.
- 2.12.8 Pending the adoption of the Constitutional Text, the Parties agree that the legal status quo in their respective areas shall remain in force.
- 2.12.9 The National Constitutional Review Commission shall also be required to prepare such other legal instruments as is required to give effect to the Peace Agreement. It shall provide in such draft statutes or in the Constitutional Text for the appointment and other mechanisms to ensure the independence of such National Institutions as are referred to in Section 2.10 herein.
- 2.12.10 Without prejudice to the provisions of the Peace Agreement, as a subsequent task and during the course of the six-year Interim Period, the National Constitutional Review Commission shall be responsible for organizing an inclusive Constitutional Review Process. The process must provide for political inclusiveness and public participation.
- 2.12.11 Without prejudice to the functions of the State Legislatures, the National Constitutional Review Commission shall prepare model Constitutions for the States, subject to compliance with the National Constitution, and, as relevant, the Constitution of Southern Sudan.
- 2.12.12 The National Ministry of Justice shall, with the assistance of concerned attorneys, declare the compatibility of the constitution of Southern Sudan with the Interim National Constitution, and also declare the compatibility of the constitutions of the States with the Interim National Constitution and, as appropriate, with the constitution of Southern Sudan. Upon such declaration, the same constitutions shall be signed by the head of the appropriate level of government.

## PART III

### 3. Government of Southern Sudan

- 3.1 In respect of the Southern Sudan, there shall be a Government of Southern Sudan (GOSS), as per the borders of 1/1/56, which shall consist of:-
- 3.1.1 The Legislature of Southern Sudan;
  - 3.1.2 The Executive of Southern Sudan;
  - 3.1.3 The Judiciary of Southern Sudan;
- 3.2 The Government of Southern Sudan shall function in accordance with a Southern Sudan Constitution, which shall be drafted by an inclusive Southern Sudan Constitutional Drafting Committee and adopted by the Transitional Assembly of Southern Sudan by a two-thirds ( $\frac{2}{3}$ ) majority of all members. It shall conform with the Interim National Constitution.
- 3.3 The powers of the Government of Southern Sudan shall be as set forth in Schedules B and D, read together with Schedules E and F, the Interim National Constitution, Southern Sudan Constitution, and the Peace Agreement.
- 3.4 A primary responsibility of the Government of Southern Sudan will be to act as an authority in respect of the States of Southern Sudan, to act as a link with the National Government and to ensure that the rights and interests of the people of Southern Sudan are safeguarded during the Interim Period.

### 3.5 Legislature of Southern Sudan

- 3.5.1 Pending the elections, the First Southern Sudan Assembly shall be an inclusive, constituent legislature comprised of:-
- 3.5.1.1 The SPLM shall be represented by Seventy Percent (70%);
  - 3.5.1.2 The NCP shall be represented by Fifteen Percent (15%);
  - 3.5.1.3 The other Southern political forces shall be represented by Fifteen Percent (15%).
- 3.5.2 The Southern Sudan Assembly shall, in accordance with the Constitution adopted by it, provide for the election of its Speaker and other office holders.
- 3.5.3 When enacting the Constitution of Southern Sudan, the Assembly of Southern Sudan shall be empowered to assign such powers as set forth in Schedules B and D, read together with Schedules E and F, to the Government of Southern Sudan.
- 3.5.4 The Southern Sudan Constitution shall make provision for the Assembly of Southern Sudan to be re-constituted through elections in accordance with the

provisions herein related to the timing of general elections. The Constitution of the Southern Sudan shall also make provision for the election of the President and appointment of the Vice President of the Government of Southern Sudan. Such elections shall be in accordance with the provisions set forth by the National Electoral Commission specified in sub-paragraph 2.10.1.1 herein.

3.5.5 The Assembly of Southern Sudan may amend the Constitution of the Southern Sudan by a two-thirds ( $\frac{2}{3}$ ) majority vote of all members.

3.5.6 Apart from applicable national legislation, legislative authority in Southern Sudan shall be vested in the Assembly of Southern Sudan. It shall establish its own offices, committees and rules of procedure. It shall elect a Speaker and Deputy Speaker and other officers at its first meeting.

### 3.6 The Southern Sudan Executive

3.6.1 An Executive Council of Ministers appointed by the President of the Government of Southern Sudan, in consultation with his/her Vice President and approved by the Assembly of Southern Sudan, shall be established in accordance with the Southern Sudan Constitution. The Executive Council of Ministers shall be accountable to the President of the Government of Southern Sudan and the Southern Sudan Assembly in the performance of their functions and may be removed by a motion supported by two-thirds ( $\frac{2}{3}$ ) of all the members of the Southern Sudan Assembly.

3.6.2 The Executive Authority of Southern Sudan shall establish such independent institutions as the Peace Agreement, the Interim National Constitution and the Southern Sudan Constitution contemplate. It shall be empowered to establish such further commissions and institutions compatible with its powers as it deems necessary to promote the welfare of its people, good governance and justice.

3.6.3 The Government of Southern Sudan shall be established with due regard to the need for inclusiveness.

3.6.4 Prior to elections, the Government of Southern Sudan shall be allocated as follows:-

3.6.4.1 The SPLM shall be represented by Seventy Percent (70%);

3.6.4.2 The NCP shall be represented by Fifteen Percent (15%);

3.6.4.3 The other Southern political forces shall be represented by Fifteen Percent (15%).

3.6.5 The Government of Southern Sudan shall discharge its obligations and exercise such rights and powers in regard to administration, security, financial, and development issues as is set forth in the Southern Sudan Constitution, the Interim National Constitution, the Peace Agreement and

any other agreement relating to the reconstruction and development of the Southern Sudan.

- 3.6.6 (a) Should the post of the President of GOSS fall vacant, and pending the nomination and swearing in of the new President, the functions of the President shall be assumed by the Vice President of GOSS;
- (b) Should the post of the President of GOSS fall vacant in the period prior to elections, the Office of the President of GOSS shall be filled by a nominee of the SPLM within two (2) weeks;
- (c) Should the post of the President fall vacant in the period after the elections, the post shall be filled through elections which shall be held within sixty (60) days.

### 3.7 The Judiciary of Southern Sudan

3.7.1 There shall be at the Southern Sudan Level:-

- 3.7.1.1 A Supreme Court of Southern Sudan;
- 3.7.1.2 Courts of Appeal; and
- 3.7.1.3 Any such other courts or tribunals as deemed necessary to be established in accordance with the Southern Sudan Constitution and the law.

3.7.2 The Constitution of Southern Sudan shall provide for a Supreme Court for Southern Sudan which shall be the highest court in the South and to which appeals may lie from Southern state courts or other Courts of Southern Sudan on matters brought under or relating to Southern state, Southern Sudan or National law, as may be determined by the Constitution of Southern Sudan.

3.7.3 The Southern Sudan Supreme Court shall:-

- 3.7.3.1 Be the court of final judicial instance in respect of any litigation or prosecution under Southern State or Southern Sudan law, including statutory and customary law, save that any decisions arising under National Laws shall be subject to review and decision by the National Supreme Court;
- 3.7.3.2 Have original jurisdiction to decide on disputes that arise under the Constitution of Southern Sudan and the constitutions of Southern Sudan states at the instance of individuals, juridical entities or of government;
- 3.7.3.3 Adjudicate on the constitutionality of laws and set aside or strike down laws or provisions of laws that contradict the Constitution of Southern Sudan or the constitutions of Southern Sudan states;
- 3.7.3.4 Be a court of review and cassation in respect of any criminal or civil matter arising out or under Southern Sudan Laws;

- 3.7.3.5 Have criminal jurisdiction over the President and Vice President of the Government of Southern Sudan and the Speaker of Southern Sudan Legislature;
- 3.7.3.6 Review death sentences imposed by Southern Sudan courts in respect of matters arising out of or under Southern Sudan Laws;
- 3.7.3.7 Have such other jurisdictions as determined by Southern Sudan Constitution, the Peace Agreement and the Law.

3.7.4 Judges of the Courts of Southern Sudan shall perform their functions without political interference, shall be independent, and shall administer the law without fear or favour. The provisions of the Southern Sudan Constitution and the Law shall protect their independence.

3.7.5 Without prejudice to Sub-paragraph 2.11.4.4, the Legislature of Southern Sudan shall provide for appointments, terms of service and dismissal of Southern Sudan appointed Judges.

## PART IV

### 4. Institutions at the State level

4.1 The Institutions at the State level shall consist of:-

4.1.1 The State Legislature;

4.1.2 The State Executive; and

4.1.3 The State Judiciary.

4.2 There shall be legislative, executive, and judicial institutions at state level which shall function in accordance with this Agreement, the Interim National Constitution and, in respect of the states of Southern Sudan, also with the Constitution of Southern Sudan.

4.3 Local Government is an important level of Government and its election, organization and proper functioning shall be the responsibility of the states, in accordance with the relevant state constitution.

### 4.4 The State Legislature

4.4.1 There shall be a State Legislature comprised of members elected in accordance with the electoral provisions herein and as set forth by the National Electoral Commission referred to in sub-paragraph 2.10.1.1 herein.

4.4.2 Pending the elections referred to in sub-article 4.4.1 herein, the composition of the state legislatures shall be comprised as follows:-

4.4.2.1. The NCP is to hold Seventy Percent (70%) in the Northern states, and the SPLM Seventy Percent (70%) in the Southern states;

4.4.2.2. The remaining Thirty Percent (30%) in the Northern and the Southern states shall be allocated as follows:-

(i) Ten Percent (10%) in the Southern states to be filled by the NCP;

(ii) Ten Percent (10%) in the Northern states to be filled by the SPLM; and

(iii) Twenty Percent (20%) in the Northern and Southern states to be filled by representatives of other Northern and Southern political forces respectively.

4.4.3. The elections referred to in sub-article 4.4.1. herein shall take place on the same date as the elections for the National Assembly referred to in Section 1.8.3.

4.4.4. The state legislatures shall prepare and adopt state constitutions provided that they are in conformity with the National Constitution, the Peace Agreement,

and for Southern States, also in conformity with the Constitution of Southern Sudan.

4.4.5. The State Legislature shall have law-making competency in respect of the functional areas listed in Schedules C and D, read together with Schedules E and F.

4.4.6. Members of the State Legislature and the State Council of Ministers, including the Governor, shall have such immunities as are provided by law.

4.4.7. The State Legislature shall decide its own rules, procedures, and committees, and elect its Speaker and other officers.

#### 4.5 The State Executive

4.5.1 Prior to elections the state executives shall be allocated as follows:-

4.5.1.1 The NCP is to hold Seventy Percent (70%) in the Northern states, and the SPLM Seventy Percent (70%) in the Southern states;

4.5.1.2 The remaining Thirty Percent (30%) in the Northern and the Southern states shall be allocated as follows:-

- (i) Ten Percent (10%) in the Southern states to be filled by the NCP;
- (ii) Ten Percent (10%) in the Northern states to be filled by the SPLM; and

(iii) Twenty Percent (20%) in the Northern and Southern states to be filled by representatives of other Northern and Southern political forces, respectively.

4.5.2 As part of the Ten Percent (10%) share of the NCP in Southern states the two Parties agreed as follows:-

- (i) The Governor of one Southern State shall be a nominee of the NCP;
- (ii) One Deputy Governor in a different Southern State shall be a nominee of the NCP.

4.5.3 The States' Council of Ministers shall be appointed by the Governor in accordance with the State Constitution, having regard to the need for inclusiveness. The State Ministers shall be accountable to the Governor and the State Legislature in the performance of their functions and may be removed by the Governor on a motion supported by two-thirds ( $\frac{2}{3}$ ) of all the members of the State Legislature.

4.5.4 The Governor shall, together with the States' Council of Ministers appointed by him/her, exercise the executive powers of the state which shall be in respect of the functional areas listed in Schedules C and D, read together with Schedules E and F, and such other executive competencies as are conferred upon the State by

the Interim National Constitution, the Southern Sudan Constitutions, the State Constitutions, and the Peace Agreement.

4.5.5 State Governors must sign any law duly approved by the State Legislature, failing which, after thirty (30) days it shall be deemed to have been signed into law by the State Governor. Where the State Governor withholds his/her signature, he/she must present reasons for his/her refusal to so sign when re-introducing the bill to the State Legislature within the 30-day period stated within. The Bill shall become law if the State Legislature again passes the bill by two-thirds ( $\frac{2}{3}$ ) majority of all the members and the assent of the Governor shall not be required.

#### 4.6 State Judicial Institutions

4.6.1 The State Constitutions shall provide for the establishment of such state courts by the State Judiciary as necessary.

4.6.2 State legislation must provide for:-

4.6.2.1 The appointment and dismissal of State-appointed judges (lay magistrates); and

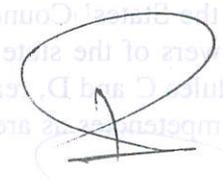
4.6.2.2 Guarantees of the independence and impartiality of the judiciary and ensure that judges shall not be subject to political or other interference.

4.6.3 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 Agreement.

4.6.4 Notwithstanding sub-paragraph 4.6.3, the National Legislature shall determine the civil and criminal procedures to be followed in respect of litigation or prosecution under National laws in accordance with the Interim National Constitution.

4.6.5 The structures and powers of the Courts of the States of Southern Sudan shall be subject to the provisions of this Agreement and the Constitution of Southern Sudan.

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## PART V: SCHEDULES

### Schedule A: National Powers

Exclusive competencies (Legislative and Executive Powers) of the National Government.

1. National Defense and 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 such National Courts responsible for enforcing or applying National laws;
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 the Interim National 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 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, transboundary 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 Electoral Commission;
38. Issuance of National ID Card.

### **Schedule B: Powers of the Government of Southern Sudan**

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

1. The adoption and amendment of the Constitution of the Government of Southern Sudan (subject to compliance with the Interim National Constitution);
2. Police, Prisons and Wildlife Services;
3. Security and military forces during the Interim Period (subject to Agreement on Security Arrangements);
4. Legislation relating to the Government of Southern Sudan structures for the delivery of services at all levels of Government of Southern Sudan;
5. Borrowing of money on the sole credit of the Government of Southern Sudan within the national macro-economic policy;
6. Planning for Southern Sudan Government services including health, education, and welfare, etc;
7. The appointment, tenure and payment of Government of Southern Sudan (GOSS) officers and civil servants;
8. Development of financial resources for the Government of Southern Sudan;
9. The co-ordination of Southern Sudan services or the establishment of minimum Southern Sudan standards or the establishment of Southern Sudan uniform norms in respect of any matter or service referred to in Schedule C or Schedule D, read together with Schedule E, with the exception of Item 1 of Schedule C, including but not limited to, education, health, welfare, police (without prejudice to the National Standards and Regulations), prisons, state public services, such authority over civil and criminal laws and judicial institutions as is specified in the Schedules, 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, animal control 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 it 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 as a whole within the competencies of Southern Sudan Government;
12. Taxation and revenue raising in Southern Sudan as a whole;

13. Southern Sudan Budget, subject to the agreement on Wealth Sharing;
14. GOSS Public utilities;
15. GOSS flag, emblem;
16. Reconstruction and development of the Southern Sudan as a whole, subject to the provisions of the Wealth Sharing Agreement;
17. GOSS 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 GOSS legislation or intervention including, but not limited to the following:-
  - 19.1. Matters relating to businesses, trade licenses and conditions of operation;
  - 19.2. Natural resources and forestry;
  - 19.3. Town and rural planning;
  - 19.4. Disputes arising from the management of interstate waters strictly within Southern Sudan;
  - 19.5. Fire fighting and ambulance services;
  - 19.6. GOSS reformatory institutions;
  - 19.7. Firearm licenses within Southern Sudan; and
  - 19.8. GOSS recreation and sports.
20. Such matters relating to taxation, royalties and economic planning as is specified in the Agreement on Wealth Sharing as a matter or matters in regard to which the Government of Southern Sudan is accorded exclusive authority;
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 other appropriate documentation.

#### **Schedule C: Powers of States**

Exclusive executive and legislative competencies of the individual States of Sudan shall be as set out hereunder:-

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 subject to the National Constitution and the Peace Agreement;
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, (subject to the Agreement on Wealth Sharing);
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;
45. Flag and emblem.

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## 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 during the Interim Period:-

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 GOSS 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 Southern Sudan Government, 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. Animal and livestock control, animal diseases, pastures and veterinary services;
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 as specified in the Agreement on Wealth Sharing;
29. Southern Sudan and State Courts responsible for enforcing or applying National laws;
30. Such matters relating to taxation, royalties and economic planning as is specified in the Agreement on Wealth Sharing 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.

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