

In the Name of Allah, the Most Gracious, the Most Merciful

Constitutional Court Act of 1998

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Constitutional Court Act of 1998*

(December 24, 1998)

Chapter I: Preliminary Provisions

Section 1: Title

This Act may be cited as the "**Constitutional Court Act of 1998**".

Section 2: Interpretation

In this Act, unless the context otherwise requires:

- "**President**": Means the President of the Court.
- "**Judge**": Means the President of the Court, his Deputy, or any member of the Court.
- "**Member**": Means a member of the Court.

- **"Court"**: Means the Constitutional Court established pursuant to Section 3(1).

Chapter II: The Court

Section 3: Composition and Seat of the Court

1. The Court shall consist of a President, a Deputy President, and five members, all of whom shall be appointed by the President of the Republic with the approval of the National Assembly.
2. The seat of the Court shall be in Khartoum State. The Court may hold its sittings in any other location when necessary, as determined by the President in consultation with the members.
3. The tenure of a Judge shall be five years, subject to renewal.
4. The Court shall frame regulations governing the procedures of its work.

Section 4: Sittings of the Court

1. A quorum for sittings of the Court shall be constituted by the presence of five of its members.
2. The President shall preside over the sittings of the Court; in his absence, his Deputy shall preside, followed by any of the members according to the order of precedence in the appointment decree.

Section 5: Qualifications for Appointment of Constitutional Court Judges

A Judge must fulfill the following requirements:

- **(a)** Be a Sudanese national of full legal capacity.
- **(b)** Be of high moral character and good reputation.
- **(c)** Hold a high degree in Law or Sharia from a recognized university in Sudan.
- **(d)** Have served in judicial/legal systems, practiced law, or taught law at a university in Sudan or any recognized institution in Sudan for a period of not less than twenty years.
- **(e)** Has not been convicted by a competent court of an offense involving honor or honesty by a final judgment, even if pardoned.
- **(f)** Be not less than forty years of age.

Section 6: Vacancy of Office

The office of a Judge shall become vacant by a decision of the President of the Republic in any of the following cases:

- **(a)** Loss of legal capacity.
- **(b)** Acceptance of resignation tendered to the President of the Republic.
- **(c)** Relief from duty by the President of the Republic due to medical incapacity or conviction by a competent court for an offense involving honor or honesty.
- **(d)** Death.

Section 7: Conditions of Service

The President of the Republic shall, by a decree issued by him, determine the emoluments and benefits of the Judges.

Section 8: Oath of Office

Prior to assuming their duties, Judges shall take the following oath before the President of the Republic in the presence of the Speaker of the National Assembly:

"I swear by Almighty God to respect the provisions of the Constitution and laws of the country, to observe the scales of justice with absolute impartiality, to perform my duties faithfully without fear, favor, affection, or ill will, and to discharge my obligations with integrity."

Section 9: Prohibition of Activities Incompatible with Judicial Duties

A Judge is prohibited from engaging in any activity or employment that conflicts with the duties of judicial office or the independence of the Court, as detailed in the regulations.

Section 10: Judicial Immunity

No Judge may be arrested, subjected to investigation procedures, or have criminal proceedings instituted against him without prior authorization from the President of the Republic.

Chapter III: Competencies and Powers of the Court

Section 11: Competencies of the Court

The Court shall have exclusive jurisdiction to consider and adjudicate any matter relating to the following:

- **(a)** Interpretation of constitutional and legal provisions referred to it by the President of the Republic, the National Assembly, half of the State Governors, or half of the State Councils.

- **(b)** Actions filed by any aggrieved person for the protection of rights, sanctities, or freedoms guaranteed by the Constitution, by challenging the constitutionality of a law.
- **(c)** Disputes concerning conflict of jurisdiction between federal and state bodies, ensuring no infringement upon the federal constitutional system.
- **(d)** Initiation of criminal proceedings against the President of the Republic or a Governor in accordance with the provisions of the Constitution and the law.
- **(e)** Actions filed by any aggrieved person challenging acts of the President of the Republic, the Council of Ministers, a Federal Minister, Governors, or State Ministers that infringe upon the federal constitutional system, rights, sanctities, or constitutional freedoms, after exhausting available administrative remedies before executive bodies.
- **(f)** Examination of judicial decisions, orders, and procedures to ensure their constitutional validity.

Section 12: Powers of the Court

1. In exercising its jurisdiction under Section 11, the Court shall possess all powers to consider and adjudicate the invalidation of any law or act found unconstitutional, to restore rights to aggrieved parties, or to award compensation for damages.
2. Without prejudice to the generality of paragraph (1) above, the Court shall have the following powers:
 - **(a)** To issue orders to any entity to produce documents or files before the Court to verify their constitutional validity.
 - **(b)** To issue orders to any person or authority to produce any detainee or prisoner before the Court to review the constitutionality of the detention or imprisonment.
 - **(c)** To exercise the procedural powers of a criminal court in trials involving the President of the Republic or a Governor.
3. Filing an appeal under Section 11 shall not automatically stay the execution of the challenged decision or act; however, upon application by the aggrieved party, the Court may order a stay of execution if it appears that execution would cause irreparable damage or damage difficult to remedy through financial or in-kind compensation, provided that staying execution does not cause harm to the opposing party.
4. Any person who disobeys an order issued under the powers of the Court specified herein shall be held personally liable for such disobedience.

Chapter IV: Procedures of the Court

Section 13: Procedures for Requesting Interpretation of Constitutional and Legal Provisions

1. A request for interpretation of constitutional or legal provisions shall be submitted to the Court by petition from:
 - **(a)** The President of the Republic;
 - **(b)** The Speaker of the National Assembly;
 - **(c)** Half of the State Governors;
 - **(d)** Half of the State Councils;
 - **(e)** The Minister of Justice.
2. The request specified in paragraph (1) shall include:
 - **(a)** The name of the person or entity submitting the request;
 - **(b)** The specific provision to be interpreted, along with the grounds and justifications requiring interpretation;
 - **(c)** Any additional information that aids in the interpretation.
3. The Court shall review and decide on the request based on the case file and supporting documents; it may request any written submissions it deems necessary.

Section 14: Amendment of the Petition

1. If a petition is not submitted in writing in the prescribed manner, the Court may refuse it and return it for amendment within a timeframe determined by the Court.
2. If the petition is not amended within the timeframe set by the Court under paragraph (1), it shall be rejected.

Section 15: Procedures for Actions Challenging the Constitutionality of Laws and Acts

1. Actions challenging the constitutionality of any law, legal provision, or act under Section 11 shall be submitted to the Court by petition.
2. The petition must contain:
 - **(a)** The name and address of the plaintiff;
 - **(b)** The specific interest of the plaintiff that has been harmed;

- (c) The subject matter of the action and the grounds for unconstitutionality of the law or act.
- 3. The Court shall adjudicate the action based on the submitted documents; it may hear the parties whenever it deems it necessary in the interest of justice.

Section 16: Summary Dismissal of the Petition

The Court shall summarily dismiss a petition and record its reasons if it finds that:

- (a) The petitioner lacks a direct right or standing in bringing the action;
- (b) The petition does not raise a triable issue fit for determination;
- (c) The petition does not involve an infringement upon a freedom, sanctity, or right guaranteed by the Constitution, or an infringement upon the federal constitutional system;
- (d) The petitioner challenging acts under Section 11 has not exhausted all available administrative grievance mechanisms.

Section 17: Admissibility of the Action

1. Where the aggrieved person or entity is required to exhaust grievance channels prior to resorting to the Court, and the administrative body fails to respond within a maximum of thirty days from the date of receiving the grievance, the Court may proceed directly to hear the case or take whatever action it deems appropriate.
2. If the petition meets formal requirements, the Court shall order the registration of the action and payment of fees, unless the petitioner is exempted from fees by a decision of the Court.

Section 18: Actions for Resolving Conflicts of Jurisdiction

1. An action to resolve a jurisdictional dispute within the federal constitutional system shall be submitted by any federal or state entity, or through the Minister of Justice or the Bureau of Federal Governance, as the case may be.
2. The petition mentioned in paragraph (1) shall specify the matter in dispute, the grounds supporting each party's claim to jurisdiction, and attached supporting documents.
3. The Court may hear both parties to the dispute, receive their arguments, or issue its judgment or order accordingly.

Section 19: Actions by Aggrieved Persons for Violations of Freedoms, Sanctities, and Rights

1. An action filed by a person aggrieved by a violation of a freedom, sanctity, or right guaranteed by the Constitution shall include:
 - **(a)** The plaintiff's name, occupation, and address;
 - **(b)** The defendant's name and official capacity;
 - **(c)** The direct harm suffered by the plaintiff;
 - **(d)** The relief sought by the plaintiff.
2. The Court shall decide the case based on the submitted documents and may hear the parties whenever it deems appropriate in the interest of justice.

Section 20: Procedures for Impeaching/Accusing the President of the Republic or a Governor

1. No criminal proceedings may be taken against the President of the Republic or any Governor except after obtaining written permission from the National Assembly or the State Council, as the case may be.
2. If permission to initiate criminal proceedings against the President of the Republic or a Governor is received from the National Assembly or the State Council, the Court shall take the following procedures:
 - **(a)** Delegate one of its members to investigate the President of the Republic or the Governor (which shall not prevent that member from participating in the trial);
 - **(b)** The investigating member shall submit the investigation findings to the Court;
 - **(c)** The Court shall submit any decision of conviction or acquittal of the President of the Republic or Governor to the National Assembly or the State Council, as the case may be.

Chapter V: Judgments and Decisions

Section 21: Rendering of Judgments

1. The Court shall issue its judgments unanimously or by majority vote.
2. In cases where judgments are rendered by majority, dissenting opinions shall be recorded in the decision.
3. The Court shall adjudicate all interlocutory/preliminary matters.
4. Judgments and decisions of the Court are final and not subject to appeal.

5. Judgments and decisions of the Court shall be published in the Official Gazette.

Section 22: Binding Nature of Judgments

1. Judgments and decisions of the Court shall be binding on all state bodies and all persons immediately upon issuance.
2. A judgment ruling a legal provision or law unconstitutional—or ruling an act or subsidiary measure unconstitutional—shall render that provision or act unenforceable. If the ruling pertains to a criminal provision, convictions based on that provision shall be deemed null and void *ab initio*. The President shall notify the Minister of Justice or the Chief Justice, as the case may be, immediately upon pronouncement for necessary action.
3. If a ruling of unconstitutionality pertains to a civil provision, it shall not affect legal rights that were settled prior to the rendering of the judgment.

Section 23: Execution of Judgments Awarding Compensation

Judgments of the Court awarding compensation shall be executed through the competent Civil Court.

Chapter VI: Financial and Administrative Affairs

Section 24: Annual Budget

1. The Court shall have an independent annual budget prepared in accordance with the principles governing the state budget.
2. The President shall prepare the draft budget for submission to the competent authority following the approval of the other members. The President shall be responsible for all financial execution matters in accordance with regulations issued under this Act.
3. Provisions of public finance laws shall apply to the final accounts and budget of the Court.

Section 25: Administrative Affairs

The Court shall have a Secretary-General and an adequate number of staff, all under the supervision of the President.

Section 26: Applicability of Public Service Laws

Conditions of service applicable to staff of the Judiciary shall apply to employees of the Court.

Chapter VII: Transitional and General Provisions

Section 27: Transitional Provisions

1. The provisions of this Act shall apply to pending constitutional cases that have not been decided and to procedural steps not completed prior to the effective date of this Act.
2. All constitutional actions pending before the Supreme Court shall be transferred to the Constitutional Court upon its establishment under this Act.
3. The Court shall not consider any judgment, order, or decision issued by a competent court, administrative body, or executive authority where all legally available appeal avenues were exhausted prior to the promulgation of the Constitution.

Section 28: Conduct of Constitutional Proceedings

1. Constitutional actions before the Court may only be conducted through legal counsel or an advocate with not less than twenty years of legal experience.
2. Subject to paragraph (1), if the plaintiff's indigence is established, the Minister of Justice shall appoint legal counsel or an advocate to conduct the case.

Section 29: Imposition of Fees

The Court may, in consultation with the Minister of Finance and National Economy, issue rules regulating court fees.

Section 30: Application of Governing Principles

The Court shall be guided by principles of evidence, rules of statutory interpretation, and the provisions of the Civil Procedure Act of 1983 (excluding the statutory notice requirement under Section 33(4)) and the Criminal Procedure Act of 1991, in matters not explicitly provided for in this Act.

Section 31: Power to Issue Regulations and Rules

The Court may issue regulations and rules necessary for the execution of the provisions of this Act.

Footnotes & Statutory Annotations:

1. Act No. 41 of 1974.
2. Act No. 41 of 1974.
3. The Act itself.
4. Act No. 41 of 1974.

5. Act No. 41 of 1974.
6. The Act itself.
7. Act No. 41 of 1974.