Do the Challenges of Constitutionalism and Good Governance In Postcolonial sub-Saharan African Countries reflect on Sudan and Egypt?

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Dedication

In memory of my beloved father, Altayeb Greeballah, who is passed away while I am applying for this program. You will forever mean so much to me, and your advice will continue to guide me.

Although it will be a challenge to follow your outstanding path, I will do my best to make your great values and principles live with us.

May your soul rest in peace.

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Abbreviation

INC	Interim National Constitution 2005
CPA	Comprehensive Peace Agreement 2005
SPLM	Sudan People's Liberation Movement
GOSS	Government of South Sudan

INTRODUCTION

The value of a constitution with constitutionalism is that it clarifies the connection between the state and the people, which in turn helps to build the much-needed social order[1]. The cordial connection between the state and its people, as established by the constitution, is the cornerstone of any society's long-term social order.

When Mueller defines the constitution as "a kind of social contract among people specifying the rules under which the society operates[2]", he recognizes its importance. Constitutions can create an environment where people are more accepting of one another and can live peacefully together. It is a trust-based transformational agreement that provides room for people to become fully human by creating an identity based on mutual respect[3]. In this sense, any constitution that lacks constitutionalism risks creating a barrier between the state and its people, making it increasingly difficult for citizens to trust the government. Consequently, society becomes a battlefield for different disputes, and the general good suffers as a result. Actions of indiscipline, crooked government officials, political fanaticism, a lack of respect for the people's welfare, contradictory laws and regulations, and poor resource management should all be handled by the government and its agencies[4]. The government will take appropriate measures against anyone who fails to follow the rules and regulations, leading to disorderly conduct and impunity within the state.

Historically, there have been examples of constitutions lacking constitutionalism in some African countries. For example, the old Apartheid government system in South Africa was characterized by a lack of constitutionalism. In addition, Nigeria's General Sani Abacha, Uganda's Idi Amin, the Central African Empire's (now Republic) Jeane Bedel Bokassa, Equatorial Guinea's Marcias Nguema, and Togo's Gnasingbe Eyadema also had

[1] András Sajó and Renáta Uitz, *Constitutions and Constitutionalism*, *The Constitution of Freedom* (Oxford University Press),3-7.
[2] See generally, Wil Waluchow, "Constitutionalism," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Spring 2018 (Metaphysics Research Lab, Stanford University, 2018), https://plato.stanford.edu/archives/spr2018/entries/constitutionalism/.
[3] See generally, "Transformative Constitutionalism And Indian Supreme Court: A Study Of Navtej Johar's Case,".
[4] "Constitutionalism," 1, http://www.legalservicesindia.com/article/1699/Constitutionalism.html.

constitutions[5]. However, these so-called constitutions lacked constitutionalism. While some of them looked to be legal documents, they were almost certainly fabricated[6]. These constitutions were used to terrify the poor and vulnerable, legitimate governmental corruption and privatization, and rationalize the suffocation and subservience of civil society to imperialism[7].

Since independence, the Sudanese nation has been wracked by political turmoil, including a protracted civil war[8]. The nation has had three short parliamentary periods, from 1954 to 1958, 1964 to 1969, and 1985 to 1989, as well as a longer period of military rule, from 1958 to 1964, 1969 to 1985[9], and 1989 to the 2019. The country's ability to write a new constitution, which has been a long-term aim since independence, has been hindered by political uncertainty[10]. Throughout this political history Sudan can also be characterize as state with poor constitutionalism.

While in Egypt, after the constitutional monarchy was overthrown, the 1952 Constitution transformed the country into a military dictatorship that was ruled by those in charge of the 1952 revolt[11]. Due to the military's domination over the political arena through the Revolutionary Command Council, the era from 1952 and 1970 was characterized by irregular constitutional progress[12]. The military issued and repealed constitutional edicts during this time that were at best self-serving and impeded the creation of any viable multiparty democracy, which was the objective of the 1952 revolution[13]. Three constitutions were adopted and repealed during this time period. These constitutions lacked several features of constitutionalism, as will be discussed.

[5] "Constitution without Constitutionalism: Interrogating the Africa Experience," *Arts & Humanities Open Access Journal* Volume 2, no. Issue 5 (September 24, 2018), 9-11.
[6] Oda van Cranenburgh, "Restraining Executive Power in Africa: Horizontal Accountability in Africa's Hybrid Regimes," *South African Journal of International Affairs* 16, no. 1 (April 1, 2009): 49–68, https://doi.org/10.1080/10220460902986230.
[7] Cranenburgh.49-53.
[8] "5265-Contested-Constitutions-Constitutional-Development.Pdf," 1-3., ,.
[9] "5265-Contested-Constitutions-Constitutional-Development.Pdf," c. 1-3.
[10] "5265-Contested-Constitutions-Constitutional-Development.Pdf."
[11] See generally "Constitutional History of Egypt | ConstitutionNet,",.
[12] "Constitutional History of Egypt | ConstitutionNet."
[13] See generally "Constitutional History of Egypt | ConstitutionNet."

In this context, many African scholarships focus their studies in constitutional law on sub-Saharan Africa, while scholars predominately overlook countries such as Sudan and Egypt. In this sense, this thesis aims to provide a deep look at constitutionalism and good governance challenges in Sudan and Egypt.

According to Louis Henkin, constitutionalism consists of the following elements: "(1) constitutional government; (2) separation of powers; (3) people's sovereignty and democratic government; (4) constitutional review; (5) independent judiciary; (6) limited government subject to a bill of individual rights; (7) police control; (8) civilian control of the military; and (9) no foreign intervention.[14]" In this regard, this thesis examines the judicial review and Centralization as main challenges of the constitutionalism in postcolonial African countries.

The components of constitutional review and good governance (as part of the people's sovereignty and democratic government element) will be the main focus of this thesis.

Statement of the Problem

It is apparent that there are numerous, complex, and difficult-to-resolve issues in Sudan and Egypt. To reach the necessary agreement in the end, it takes time, patience, and political will among political parties. The constitution is more than just a legal document that lays out the state's institutions, how they're organized, what their jurisdictions are, and what citizens' rights are. It is, first and foremost, a political agreement between the state's various communities; it should reflect their beliefs and cultures, as well as their interests and desires to achieve freedom, peace, and justice. However, there are many challenges that faced constitutionalism in Sudan and Egypt, such as judicial review and a good governance system. The thesis intends to draw these challenges and examine to what extent the challenges of constitutionalism and good governance in postcolonial African countries are greatly reflected in both Sudan and Egypt.

[14] "Constitutionalism," 1, http://www.legalservicesindia.com/article/1699/Constitutionalism.html.

THESIS QUESTION

This thesis seeks to answer the following question: to what extent do the constitutionalism and a good governance challenges of postcolonial sub-Saharan African countries on judicial review and Centralization are reflected in Sudan and Egypt?

To answer this question, the following sub-questions will be addressed:

1- What are the main challenges of constitutionalism and a good governance in postcolonial sub-Saharan Africa countries?
2- To what extent has the weak judicial review and centralization harmed the notion of constitutionalism and a good governance in postcolonial Sub-Saharan Africa?
3- Does Sudan have an effective judicial review system? If not, why not?
4- What is the system of good governance in Sudan, and to what extent is it effective?
5- What is the nature of judicial review in Egypt?
6- How did Egypt manage to build a good governance system?

THSIS STRUCERT

The structure of the thesis is as follows: It begins with an introduction chapter that offers an outline of the African, Sudanese, and Egyptian constitutionalism dilemmas. It also includes a summary of the thesis problem, key questions, and thesis statement. The second chapter defines the concepts of constitution and constitutionalism, as well as giving an outline of the notion of "constitution without constitutionalism" from an African standpoint. The chapter also discusses the difficulties that faced constitutionalism in postcolonial Africa. The third chapter focuses mainly on the challenges of constitutionalism in Sudan. It specifically looks at the concerns of judicial review and the federal system (decentralization). Chapter four analyses the nature of judicial review and the governance system in Egypt.

CHAPTER: 1 CHALLENGES OF CONSTITUTIONALISM IN POSTCOLONIAL AFRICA

1.1 INTRODUCTION

As mentioned above, most postcolonial African countries suffer from a lack of constitutionalism and a good governance system, as discussed in this chapter. In order to explore these two-element, the chapter will mainly focus on judicial review as an essential task of constitutionalism and centralization as a reflection of the colonial period.

On the one hand, judicial review is a procedure in which the Court examines executive and legislative acts. A court with judicial review power can invalidate rules, acts, and government activities that are incompatible with a higher authority: for example, an executive decision can be invalidated for being unconstitutional, or a statute can be invalidated for breaching the provisions of a constitution[15]. When they exceed their authority, the judiciary's power to supervise the legislative and executive branches is one of the checks and balances in the division of powers[16]. Since the doctrine differs from jurisdiction to jurisdiction, judicial review's process and nature can vary between countries.

On the other hand, in the context of African history, the emergence of a powerful central state, as described in the following section, is unusual. Although governments did develop in pre-colonial Africa, such as around the Niger bend in the late Middle Ages and various West, Central, and East-Central Africa regions after the 17th century[17]. The slow pace of political Centralization in Africa is a critical factor in the continent's lack of a good governance system.

From a constitutionalism and good governance perspective, this chapter aims to explore the judicial review dilemma in postcolonial Africa by examining the role of the judiciaries and the impact of the intervening of the executives' branch in the judicial jobs. In addition, to examine the impacted of centralization on postcolonial African countries

[15] "Judicial Review," Oxford Constitutions, https://doi.org/10.1093/law-mpeccol/e334.013.334.
[16] "Judicial Review." P. 6.
[17] Alem Habtu, "Ethnic Diversity and Federalism: Constitution Making in South Africa and Ethiopia, by Yonatan Tesfaye Fessha.," *Publius: The Journal of Federalism* 42, no. 4 (October 1, 2012): e3–e3, https://doi.org/10.1093/publius/pjr028.

1.2 JUDICIAL REVIEW IN POSTCOLOINAL AFRICAN COUNTRIES

Africa is a fascinating collection of countries since it has been subjected to its colonizers' laws for most of its history and has traditionally followed the parliamentary sovereignty model. On the other hand, postcolonial Africa seems to be interested in liberal democratization, acknowledging (at least in theory) the doctrine of separation of powers, constitutional sovereignty, and the need for checks and balances[18]. Since judicial review can implement these values, constitutionalism has given our continent's judiciaries more strength. Although judicial review is not a new phenomenon on the African continent, its nature, foundation, and vigor have changed in some countries[19]. Most African countries have historically been affiliated with either the common law (English influence) or civil law (French influence) legal systems[20]. While both systems accepted some sort of judicial review, the French model was thought to be more cautious and restricted than the common law model[21].

In Africa's so-called common law countries (such as Ghana, Nigeria, and the Gambia), a Supreme Court model of lifetime tenure for selected judges is widely recognized[22]. Former French colonies in Africa, such as Senegal and Côte d'Ivoire, have constitutional councils that function outside of the usual court hierarchy, and judges are named for a limited period[23]. These two models are very different, and they would affect the judiciary's independence, which in turn affects the Court's capacity and power to review. Since the constitutional councils in France work in tandem with the regular judicial system, problems such as authority, res judicata, access, power, and order compliance have been contention

[18] T. Wood, "Constitutions without Constitutionalism: Reflections on an African Political Paradox, 4-7.
[19] See generally, Markus Böckenförde, *Judicial Review Systems in West Africa*.
[20] See generally, "An Overview of Judicial Review in Parts of Africa," www.hoganlovells.com, http://www.hoganlovells.com/en/publications/an-overview-of-judicial-review-in-parts-of-africa.
[21] Christina Murray, "Constitution-Making in Anglophone Africa: We the People? From Imposition to Participation in Constitution-Making," accessed March 31, 2021, https://www.academia.edu/6026889/Constitution_Making_in_Anglophone_Africa_We_the_People_From_Imposition_to_Participation_in_Constitution_Making.
[22] Wood, "Constitutions without Constitutionalism." 5-7.
[23] "An Overview of Judicial Review in Parts of Africa."

sources in the past[24]. These common-law/civil law models, on the other hand, were designed for use in a government that respects the supremacy of the Constitution[25].

In Africa, the use of judicial review has been excruciatingly slow, inconsistent, and lengthy, frustrating many policymakers and around the world[26]. Despite many years of judicial review experimentation across Africa, many countries still have "constitutions without constitutionalism," where the lack of judicial review has allowed new forms of authoritarianism to emerge as regimes attempt to prolong their stay by repealing constitutional term limits[27], and intimidating nor enticing judges. Malawi and Zambia are good examples of this. The fact that courts have maintained some assertiveness toward governments demonstrates governments' limited capacity to regulate these institutions rather than the intransigence of power holders in judicial independence[28]

When we compare governments' strategies to administer their judicgovernments' strategies and control techniques that have been effective in other contexts, they were inaccessible or unviable in these countries[29]. Attempts to reform systemic frameworks in a way that weakens the judiciary have failed. Using the power of dismissal and appointment to foster judicial loyalty has its own set of issues[30]. The neopatrimonialism nature of these policies accounts for much of the inefficacy of these techniques[31]. It's important to ask at this stage what distinguishes these policies. Possible answer lie in high levels of donor dependency, personal law traditions, and a proclivity for changing political allegiances? These techniques' application and effectiveness have been ruled out[32]. The mechanisms used by

[24] Wood, "Constitutions without Constitutionalism." 5-7.
[25] Murray, "Constitution-Making in Anglophone Africa." 2-4.
[26] H. Kwasi Prempeh, "Marbury in Africa: Judicial Review and the Challenge of Constitutionalism in Contemporary Africa," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, October 3, 2007) 27-31.
[27] Prempeh.18-20.
[28] "An Overview of Judicial Review in Parts of Africa." 12-21.
[29] Wood, "Constitutions without Constitutionalism." 7-10.
[30] Prempeh, "Marbury in Africa." 12-21.
[31] Landry Signé and Koiffi Korha, "Horizontal Accountability and the Challenges for Democratic Consolidation in Africa: Evidence from Liberia," *Democratization* 23, no. 7 (November 9, 2016): 1254–71.
[32] Oda van Cranenburgh, "Restraining Executive Power in Africa: Horizontal Accountability in Africa's Hybrid Regimes," *South African Journal of International Affairs* 16, no. 1 (April 1, 2009): 49–68.

these governments to influence judges, in turn, fail to adequately form the incentive systems that face justices who make political decisions.

However, judicial power is not exclusively due to the restricted control mechanisms available to elected officials. Not only do state leaders' activities influence judicial growth, but so make justices' decisions. Indeed, evidence shows that even in countries with strong systems for policing the judiciary, judges can be surprising assertive in their dealings with other branches[33]. Furthermore, even though the means of regulation do not change, judges' conduct does. The question is why such actions would differ depending on the situation.

While there are many possible answers to this question, the more convincing viewpoints suggest that considering judges as strategic actors can yield considerable insight[34]. Their actions are thought to represent logical considerations on how to best maintain institutional vi usefulness and their careers in this regard. A variety of variables may influence such measurements[35]. Since these form the sanctioning and rewarding powers that elected officials have vis-à-vis judiciaries, the structures structuring judicial ties with other branches may significantly influence.

These viewpoints shed light on the behavior of African judges. When we consider the incentives, threats, and rewards they faced, it becomes clear that there are disincentives for them to follow the rules in the cases they face[36]. Judges are encouraged to take impartial positions in their decision-making by the conditions in their political and professional environments[37]. The relative degree of ambiguity in the political system is one of the most important issues. Overtly political or deferential conduct is a suboptimal tactic for career security in this situation.

In conclusion, courts cannot be regarded merely as a check on power; rather, they must be viewed as an integral part of current democratic systems. Institutions of the rule of law must be regarded as political institutions, completely incorporated into the political logic.

[33] H. Kwasi Prempeh, "Neither 'Timorous Souls' nor 'Bold Spirits': Courts and the Politics of Judicial Review in Post-Colonial Africa," *Verfassung in Recht Und Übersee* 45, no. 2 (2012): 157–77,
[34] Prempeh, "Marbury in Africa." 40-42.
[35] Prempeh, "Neither 'Timorous Souls' nor 'Bold Spirits.'" 17-23.
[36] Prempeh, "Marbury in Africa." 40-42.
[37] Prempeh.44-45.

Elite calculations affect courts, but they also influence their institutional authority and control. In hybrid systems, politics is a confusing combination of formal constitutional laws and informal clienteles' logic.

1.3 CENERALIZATION IN POSTCOLONIAL AFRICA

In Africa, a half-century of power centralization has failed to offer political stability[38]. Indeed, it has sparked violent retaliation from a variety of political movements and organizations. The coerced nation-building project, which used a highly centralized state as its primary vehicle, is often blamed for the rise of ethnic-based independence movements in many African states[39]. However, the central government's inability to provide political stability has not generally resulted in widespread demand for federalism or subnational autonomy in any form[40]. While ethnicity has played and continues to play an essential role in political mobilization in most African states, many political formations on the continent do not prioritize subnational autonomy[41]. This is partly due to the specific position of race in postcolonial Africa, which determined the essence of ethnic-based arguments that characterized African states to a large extent[42]. This is about the essence of nation-building programs, which have preoccupied most African states for the last half-century, and the consequences for political mobilization[43].

On one end of the continuum, African countries attempted to create a country by adopting a shared language, culture, and history by attempting to diffuse the predominant or dominant group's language and culture[44]. Sudan's decision to construct the state's identity around the language and culture of northern Muslim Arab Sudanese and force the culture on the predominantly black and Christian south is a model of this form of nation-building[45]. The attempt to spread the Amhara language, culture, and history to the rest of Ethiopia's

[38] Habtu, "Ethnic Diversity and Federalism." 17-18.
[39] Yonatan Tesfaye Fessha, "Federalism, Territorial Autonomy and the Management of Ethnic Diversity in Africa: Reading the Balance Sheet," *L'Europe En Formation* n° 363, no. 1 (September 19, 2012): 265–268.
[40] Fessha 21- 24.
[41] Fessha 21-24.
[42] Fessha 21-24.
[43] Habtu, "Ethnic Diversity and Federalism." 346-349.
[44] DEBORAH KASPIN, "TRIBES, REGIONS, AND NATIONALISM IN DEMOCRATIC MALAWI," *Nomos* 39 (1997): 464–503.
[45] See generally, Anna Reder, "'Overcoming the Past: War and Peace in Sudan and South Sudan,'.

population was central to the country's effort to create a nation[46]. The Chewa's elevation is the embodiment of the "national community" in Malawi was used to try to forge a shared national identity (an ethnic group whose language was considered the sole national language)[47]. Chewa culture was considered "the foundation of nationhood and the root of its political iconography[48]." Similarly, Botswana's nation-building project focused on creating a nation based on the Tswana language and culture[49]. The government tried to create a nation by instilling Tswana language and culture in the rest of the population, based on the slogan "we are all Tswana."[50]

On the other hand, other African nations followed the same goal of establishing a nation-state but on non-ethnic grounds[51]. They attempted to forge a shared national identity by appealing to non-ethnic bases for affiliation with the state rather than homogenizing their population along ethnic lines[52][53][54][55]. They announced a pledge to create a "popular national identity, establishing common public institutions, and a common public sphere functioning in a common language[56]," which was the culturally neutral colonial language (i.e. English, French, or Portuguese).

The nation-building project in many of these African states did not succeed in establishing a supra-ethnic national identity, even though the language and culture of a specific ethnic group were not used as a means to establish a shared national identity[57]. Many of these African states ended up establishing a state in which a small number of people had an

[46] Martin Doornbos, "Ethnicity and Democracy in Africa Edited by Bruce Berman, Dickson Eyoh and Will Kymlicka. Rights and the Politics of Recognition in Africa Edited by Harri Englund and Francis B. Nyamnjoh," *Development and Change* 38, no. 2 (2007): 346–49.
[47] Doornbos 348.
[48] Habtu, "Ethnic Diversity and Federalism."
[49] Doornbos, "Ethnicity and Democracy in Africa Edited by Bruce Berman, Dickson Eyoh and Will Kymlicka. Rights and the Politics of Recognition in Africa Edited by Harri Englund and Francis B. Nyamnjoh."347-349.
[50] Doornbos 347-349.
[51] Habtu, "Ethnic Diversity and Federalism." 20-23.
[52] Doornbos, "Ethnicity and Democracy in Africa Edited by Bruce Berman, Dickson Eyoh and Will Kymlicka. Rights and the Politics of Recognition in Africa Edited by Harri Englund and Francis B. Nyamnjoh."348-349.
[53] Wood, "Constitutions without Constitutionalism."11-13.
[54] Wood.
[55] Wood.
[56] Fessha, "Federalism, Territorial Autonomy and the Management of Ethnic Diversity in Africa." 25-26.
[57] Habtu, "Ethnic Diversity and Federalism." 19-21.

advantage over the rest[58]. Access to state power is ethnocide, according to successive regimes' strategy of using state resources to support members of their ethnic group[59]. The hegemony of the Kikuyu was established in Kenya under Jomo Kenyatta, the country's first president, it was Kalenjin's 'time to eat' when Daniel Arup Moi was elected President[60]. Moi made sure that Kalenjins dominated key cabinet, civil service, and army positions, marginalizing the Kikuyus in particular[61]. With the restoration of Kikuyu hegemony, Kenya embraced a multiparty structure, and Mwai Kibaki, a Kikuyu, was elected President. The Chewa dominated Malawi for 30 years under Banda Hastings' rule, the Muslim Arabs in Sudan, and the Hutus and Tutsi in pre-1994 Rwanda and Burundi[62].

That is not generally the case in many African states that have attempted to create a supra-ethnic/non-ethnic national identity but have struggled because the nexus of ethnicity and state power remains deeply entrenched. The demand is for access to state power rather than cultural or political autonomy[63]y. They will demand that barriers to accessing state power be removed, criticizing the current situation in which "some ethnic groups will have much better access routes to the state, while other ethnic groups are excluded.[64]" For this party of political contenders, federalism, focusing on subnational autonomy, is not inherently appealing[65]. Such groups call for an institutional response that guarantees that diverse groups are represented at the national level, ensuring a share of state power. Their main aim is to secure a power-sharing arrangement, emphasizing mutual rule rather than self-rule[66].

In conclusion, of course, this isn't to assume that ethnic groups with political clout aren't placated by subnational autonomy. By definition, subnational autonomy increases access to political and economic influence[67]. It promotes political engagement and representation

[58] Habtu.
[59] Habtu 19-21.
[60] Habtu 19-21.
[61] Habtu 19-21.
[62] KASPIN, "TRIBES, REGIONS, AND NATIONALISM IN DEMOCRATIC MALAWI." 6-10.
[63] Habtu, "Ethnic Diversity and Federalism." 23-26.
[64] Fessha, "Federalism, Territorial Autonomy and the Management of Ethnic Diversity in Africa." 21-22.
[65] Habtu, "Ethnic Diversity and Federalism." 23-26.
[66] Habtu 28-30.
[67] Habtu 28-30.

by providing ethnic groups with an area where they are the majority[68]. It allows ethnic/regional elites to participate in politics and be included in their respective subnational governments' leadership structures, fostering community self-management. The lack of federalism and sub-national sovereignty on man's agendas, therefore, the political movements, is not simply due to the system's failure to answer these political s' concerns[69]. The lack of interest in federalism and territorial autonomy may be due to the essence of the nation-building project championed by many African countries.

1.4 CONCLUSION

In sub-Saharan Africa, judicial review has been poor, weak, unequal, and protracted, frustrating many policymakers in the continent and worldwide. Despite many years of judicial review experimentation along through Africa, the norm in many countries remains 'constitutions without constitutionalism,' where the lack of judicial review has allowed new forms of authoritarianism to emerge as regimes attempt to extend their stay eliminating constitutional term limits.

As has been seen, the highly centralized type of territorial administration that prevailed in Africa before the late 1980s and early 1990s, it becomes easy to appreciate the popularity of decentralization in Africa. The system was built on several different types of hierarchical deconcentrating, all of which were linked to an authoritarian/dictatorial political state. In most cases, the combination of administrative Centralization with a non-democratic political framework resulted in a system that became progressively unaccountable and corrupt.

As we will see in the following chapters, the infection of poor constitutionalism and good governance system also extends to other countries like Sudan and Egypt, which suffer from a lack of constitutionalism and remains under authoritarianism since gain independents.

[68] Habtu 28-30.
[69] Fessha, "Federalism, Territorial Autonomy and the Management of Ethnic Diversity in Africa." 21-25.

CHAPTER: 2 CONSTITUTIONALISM AND GOOD GOVERNANCE DILEMMAS IN SUDAN

2.1 INTRODUCTION

As previously mentioned in the introductory chapter, judicial review and Centralization were the most prominent dilemmas that affect constitutionalism and good governance throughout the postcolonial period in the Sub-Saharan Africa countries. Accordingly, this chapter analyses the application of judicial review and centralization in Sudan in all consecutive governmental regimes, from declaring independence in 1956 to the separation of South Sudan 2011.

The first section of this chapter includes a historical overview of the Sudanese Constitutional Court with judicial oversight authority is included in the first section to explore how the lack of judicial review affected constitutionalism in Sudan. In addition, it presents guidance on how the Constitutional Court can fulfil its position and become a beacon of protecting human rights and a crucial tool for ensuring the rule of law.

The second section examines the application of federalism in Sudan to find to what extent it can contribute to parting the state's unity without doubting its capability of minimizing conflicts within the state and achieving a good governance system. In this context, the section study application of federalism that was implemented in South Sudan on two occasions. The first was in 1972 by virtue of the Addis Ababa Agreement to 1983, while the second took place from 2006 to 2011 under the Comprehensive Peace Agreement 2005**.**

2.2 JUDICIAL REVIEW IN SUDAN

The lack of a durable constitution has marked the growth of Sudan's legal system, which has reflected frequent political changes to a large extent[70]. As a result, the judiciary's position has been subjected to the whims of transitional or short-lived constitutions, as well as new judiciary acts enacted by new regimes in power.

The Supreme Court was the highest in the country from 1956 to 1998[71]. However, due to its lack of independence, its review powers were often restricted, and the exercise of its

[70] Ali Suleiman Fadlall, "Constitution – Making in the Sudan: Past Experiences," 73-79.
[71] See generally, "An Overview of the Sudanese Legal System and Legal Research - GlobaLex,", https://www.nyulawglobal.org/globalex/Sudan.html.

jurisprudence was generally deferential to the executive[72]. The Self-Government Law, which was adopted in 1953, just before Sudan's independence, created a judiciary with the power to hear and settle any case concerning the interpretation or enforcement of fundamental rights[73]. In the 1956 Transitional Constitution, the Supreme Court was given public judicial review authority as the Constitution's guardian[74]. However, due to a lack of politically sensitive cases brought before the Court in the immediate post-independence period, the judiciary's independence was not put to the test. Following that, during Abboud's military government (1958-1963), the Transitional Constitution was repealed, and the Judiciary Act of 1959 was enacted, requiring the Minister of Justice to represent the judiciary in the Council of Ministers (Cabinet)[75]. The Supreme Council of the Armed Forces was to select the Chief Justice, and the judges on the prime minister's advice, who was expected to consult the representatives of the judiciary[76]. In short, that decision was the first intervene from the executive branch in the judicial independence that violated the separation of powers system in Sudan.

Following a popular revolution in 1964, the Supreme Court was given constitutional review power under article 99 of the amended Transitional Constitution[77]. Islamist legislators successfully campaigned to change the Constitution in 1967 to remove the Communist Party from the legislature[78]. The Communist Party brought a constitutional suit to this amendment before the Supreme Court, which ruled it unconstitutional[79]. In 1968, the then-government, the Sovereignty Council, disbanded Parliament by pressuring ninety of its

[72] Fadlall, "Constitution – Making in the Sudan: Past Experiences." 77-79.
[73] See generally, "An Overview of the Sudanese Legal System and Legal Research - GlobaLex."
[74] Sudan, "The Transitional Constitution of Sudan, January 1, 1956.," *Constitutional and Parliamentary Information.* 1956, no. 28 (1956): Art.87.
[75] "An Overview of the Sudanese Legal System and Legal Research - GlobaLex."
[76] Noha Ibrahim Abdelgabar, "Constitutional Reform as a Means for Democratic Transformation in Sudan," 2014, 212-215.
[77] "5265-Contested-Constitutions-Constitutional-Development., https://www.cmi.no/publications/file/5265-contested-constitutions-constitutional-development.pdf 30-32.
[78] Mohamed Mahgoub, "The Case Of JOSEPH A. GARANG & OTHERS V. THE SUDANESE CONSTITUENT ASSEMBLY," The Lawyer's Den, June 7, 2020, https://www.thelawyersden.com/post/the-case-of-joseph-a-garang-others-v-the-sudanese-constituent-assembly.
[79] Mohamed Mahgoub, "The Case Of JOSEPH A. GARANG & OTHERS V. THE SUDANESE CONSTITUENT ASSEMBLY,"

members to resign in order to avoid a proposed two-thirds majority no-confidence vote[80]. This decision was challenged in the Supreme Court, but the dissolution of Parliament was upheld[81]. Although the Supreme Court upheld the amendment the government did not comply with the courts' decision, which effected the effectiveness and efficiency of court' decision. Ironically, it was the second democratic government in Sudan notably the government decision to ignore the Supreme Court decision led the country to the second military coup.

In 1969, following Nimeiri's coup, a new Judiciary Act was passed[82]. The Act established an "independent judiciary" that was directly accountable to the Revolutionary Council for the execution of its duties, with the Minister of Justice serving as the judiciary's representative in the Council of Ministers[83]. On the advice of the Prime Minister, the Council of the Revolution appointed the judiciary, including the Chief Justice and the Grand Gadi[84]. During Nimeiri's reign, the judiciary's independence was seriously curtailed in practice; as has been seen, there was no separation of powers nor checks and balances, constitutionalism concept notably absent. Surprisingly, the Supreme Court ruled in the Sol Nasr case, following the 1973 Constitution's ratification, that "the trial of civilians before military tribunals, using a penal law that had a retroactive effect, offended against the letter and spirit of that Constitution[85]" the weakness of judicial review power throughout this period make the Sol Nasr case a landmark case, which the first case that the Court restricted or upheld executive action.

Soon after, constitutional amendments 'greatly enhanced[d] the president's powers, assuring the constitutionality of preventive detention and special courts[86].' Nimeiri began the process of establishing special emergency courts with the authority to prosecute

[80] Mahgoub.
[81] Mahgoub.
[82] Abdelgabar, "Constitutional Reform as a Means for Democratic Transformation in Sudan." 212-215.
[83] Abdelgabar 214.
[84] Abdelgabar 214.
[85] "The Sudan Judiciary: Journal of Judicial Judgments," no. 1974 (n.d.): 26.
[86] Abdelgabar, "Constitutional Reform as a Means for Democratic Transformation in Sudan."214.

political opponents[87]. The special courts formed a parallel legal structure, consisting of judges from outside the judiciary who served without the Chief Justice's oversight[88].

Surprisingly, an analysis of judicial procedure from 1973 to 1985 found that the courts did not strike down any legislation[89]. The Supreme Court upheld constitutional amendments allowing for arrests without a trial in 1975[90]. In other cases, the Supreme Court ruled that the President's declaration of emergency and dissolution of Parliament were no justiciable sovereign acts that could not be challenged in the Court, regardless of their constitutional consequences[91].

In 1985, after Nimeiri's rule ended, a new Transitional Constitution was adopted[92]. Article 11 of the Constitution, for example, subjected all state activities to judicial scrutiny. However, following the transitional government's assumption of power in 1987, the Constitution was changed to exclude such laws from judicial review[93]. A law was passed soon after that, exempting a long list of officials from criminal and civil proceedings[94]. The Supreme Court of Sudan's jurisprudence reflected this change toward the executive. It considered the declaration of a state of emergency in 1987, for example, to be a non-justiciable political issue, even though the declaration of the state of emergency resulted in the suspension of constitutional rights[95].

The 1998 constitution created a Constitutional Court to rule on constitutional matters for the first time in Sudan's history[96]. The Administrative Act of 1998, which established relevant procedures, gave all courts the authority to conduct constitutional review during their adjudication and refer cases to the Constitutional Court to decide on the

[87] "An Overview of the Sudanese Legal System and Legal Research - GlobaLex."
[88] "An Overview of the Sudanese Legal System and Legal Research - GlobaLex."
[89] Abdelgabar, "Constitutional Reform as a Means for Democratic Transformation in Sudan."215.
[90] See generally, Ahmed el-Tayeb el-Gaili, "The Politics of Judicial Independence in Sudan: The Equilibrium," n.d.
[91] George Gretton, "The Law and the Constitution in the Sudan,"314-323.
[92] "5265-Contested-Constitutions-Constitutional-Development.Pdf."24-32.
[93] "An Overview of the Sudanese Legal System and Legal Research - GlobaLex."
[94] Abdelgabar, "Constitutional Reform as a Means for Democratic Transformation in Sudan."216.
[95] See generally, Ahmed el-Tayeb el-Gaili, "The Politics of Judicial Independence in Sudan: The Equilibrium."
[96] "Sudan: The Constitution of 1998," ConstitutionNet, n.d., https://constitutionnet.org/vl/item/sudan-constitution-1998. Art.108.

constitutionality of laws[97]. The 1998 Constitutional Court Act also granted the Court the right to review Supreme Court decisions[98]. Defense attorneys brought many cases to the Constitutional Court, claiming that murder convictions were illegal because they were a violation of the right to life[99]. The Constitutional Court consistently agreed with this understanding, resulting in abolishing the death penalty for those convicted, a circumstance that caused much friction between the Supreme Court and the Constitutional Court[100]. It's no coincidence, then, that the Constitutional Court Act of 2005 lacks a similar clause, depriving the Constitutional Court of a significant direct review feature concerning the Supreme Court.

The Constitutional Court, which sits at the pinnacle of a centralized legal structure, was retained by the Interim National Constitution (INC) the Court "shall be separate from the National Judiciary and independent of the Legislature and Executive.[101]" It is made up of 'nine members, to be appointed by the President of the Republic, on the National Judicial Service Commission's advice, and with the consent of two-thirds of all representatives present at the Council of States'[102]. It exercises its control functions as the highest Court in constitutional matters and has exclusive jurisdiction to adjudicate cases involving: protection of human rights and fundamental freedoms; resolution of disputes between different levels of government; complaints against any act of the Presidency or the National Council of Ministers if the Act involves a violation of the decentralized system of government; and complaints against any act of the Presidency or the National Council of Ministers if the Act involves a violation of the decentralized system of government[103].

Person grievances, cases concerning the constitutionality of norms, jurisdictional disputes between government organs and between government levels, impeachment of the President and other state officials, prohibition of political parties, and inspection and ratification of elections or referenda can all be heard by the Constitutional Court[104]. Furthermore, the

[97] "Sudan - The Constitutional and Administrative Law Act of 1998.
[98] "Sudan - The Constitutional and Administrative Law Act of 1996."
[99] Ahmed el-Tayeb el-Gaili, "The Politics of Judicial Independence in Sudan: The Equilibrium."
[100] Ahmed el-Tayeb el-Gaili,.
[101] "Sudan_2005.Pdf," Art.119, , https://www.constituteproject.org/constitution/Sudan_2005.pdf.
[102] "Sudan_2005.Pdf."
[103] "Sudan_2005.Pdf," Art.120.
[104] "Sudan_2005.Pdf," Art.120, , https://www.constituteproject.org/constitution/Sudan_2005.pdf.

Constitutional Court has the authority to "interpret constitutional and legal provisions" under article 122(1) (a) of the INC. For example, in 2009, it heard a petition from then-Minister of Justice Abdelbasit Sabdrat about article 133 of the INC and article 58 of the 1991 Criminal Procedure Act, which dealt with the Minister of Justice's right to stay a lawsuit[105]. The Court determined that the Minister of Justice's decisions in this matter were definitive and not subject to judicial review, except for Islamic punishments such as hudud and guises[106].

The INC's Article 58(1) (i) empowers the President of the Republic to "seek the opinion of the constitutional court on any matter in conflict with the Constitution.[107]" These procedures are restricted to specific candidates because they primarily act as a consultative function for those involved in the political process.

The INC chose a robust judicial review system. This means that the ordinary judiciary is limited to adjudicating "disputes and making decisions in compliance with the statute[108]" rather than ruling on laws' constitutionality. The Constitutional Court is the only Court with a constitutional review feature, which it can use either as "abstract" power or hearing individual constitutional complaints. Article 122(1) (e) of the INC does not provide an explicit method for concrete constitutional analysis, i.e. how the Court will decide on laws' constitutionality. The Constitutional Court Act of 2005, unlike the Constitutional and Administrative Act of 1998, is silent on this subject[109]. As previously stated, there is no mechanism for referring cases from lower courts to the Constitutional Court, which make accessibility to judicial review more difficult.

[105] See generally, Ahmed el-Tayeb el-Gaili, "The Politics of Judicial Independence in Sudan: The Equilibrium."
[106] Abdelgabar, "Constitutional Reform as a Means for Democratic Transformation in Sudan."121-123
[107] "Sudan_2005.Pdf," Art.58.
[108] Maude Fournier, "A Comprehensive Overview of Sudan's Legal Framework in Light of the Darfur Crisis," 16.
[109] Abdelgabar, "Constitutional Reform as a Means for Democratic Transformation in Sudan." 122.

2.2.1 ACCESS TO JUDICIAL REVIEW

Adequate access to justice has a dual purpose: it is a right for those whose rights have been violated and it also serves as a measure of how well justice is administered[110]. In this sense, legislative remedies serve as an essential layer of security for human rights and a way of ensuring that legislation adheres to the Constitution and international standards. Effective access to a solution ensures that it is accessible and can be used without difficulty. However, some prominent factors, including limited standing, costs, lawyer credentials, remoteness, and delays, make it difficult to seek an effective constitutional remedy before Sudan's Constitutional Court[111]. Standing, that is, demonstrating damage, is a standard requirement.

On the other hand, the Court has applied a narrow interpretation of the criterion and rejected summarily many concerns that would have merited a thorough review of the argument made[112]. In these situations, ensuring adequate access may have been accomplished by focusing on the interference with the right and the need for effective defense in the perception of harm. Furthermore, access could be expanded by allowing action popular is, which would allow anybody to file a complaint alleging a breach of the public interest[113]. This would be a valuable tool in a system where many victims are unaware of their rights or lack access to them, as it allows others to bring issues to the Court's attention and allows the Court to fulfil its position as Constitutional guardian. In India, the Supreme Court, in particular, has made a remarkable and sustained effort through public interest litigation to uphold the fundamental rights of the poor, marginalized, and disadvantaged segments of society[114]. It has done so by loosening the locus standi conditions for filing writ petitions for fundamental rights violations. This method essentially eliminates the presumption of standing, which demanded that action be brought by an aggrieved party and allowed others to represent the aggrieved party in Court. While its jurisprudence has not always been

[110] "Access to Justice - United Nations and the Rule of Law," https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/.
[111] Abdelgabar, "Constitutional Reform as a Means for Democratic Transformation in Sudan." 121-124.
[112] Ali Khalil, "The Direct Application of the Constitution by Ordinary Courts and the Concept of Shari'a as a Source of Legislation: A Review of the Sudanese Supreme Court's Decision in Sudan Government v ASK," *African Human Rights Law Journal* 17 (January 1, 2017): 460–72.
[113] "Access to Justice - United Nations and the Rule of Law."
[114] Tanuja Singh and A N College, "THE SUPREME COURT : POWERS & JURISDICTIONS," 6.

consistent and has met with opposition in some cases, public interest litigation has empowered the Court to serve as a "positive legislator" and play a more prominent role in the advancement, defense, and enforcement of human rights[115].

The fees for filing a complaint with the Constitutional Court are very high, i.e. $1,000, which serves as a deterrent to would-be complainants[116]. This is particularly true for members of oppressed communities, who are often subjected to human rights abuses but cannot protect their civil rights[117]. The clause authorizing the Court to waive fees in case of insolvency is inadequate in the absence of legal assistance since many prospective litigants may not be legally viable but lack the financial resources to bring a case. As a result, the only possible option will be to cancel all expenses, as is currently the case.

A further stumbling block is a provision in Article 29 of the Constitutional Court Act that a constitutional suit is pursued by a lawyer with at least ten years of experience[118]. While the goal of ensuring the standard of submissions is admirable, the mandate essentially forces a litigant to hire a senior lawyer. Unless an outstanding lawyer agrees to bring a case pro bono, anyone considering bringing a case to the Constitutional Court faces the risk of having to pay significant attorneys' fees in addition to court fees. Since the ultimate purpose of proceedings is to uphold the rights guaranteed by the constitution or human rights treaty, other constitutional courts and international human rights treaty bodies often allow anyone to bring a case, even though they do not have legal representation[119]. Article 29 of the Constitutional Court Act is too burdensome, and the provision of legal representation should be reconsidered if not eliminated.

In a country, the size of Sudan, where travel can be difficult, particularly from remote areas – some of which have experienced some of the most heinous abuses, such as Darfur and Southern Kordofan – Khartoum, the seat of the Constitutional Court, can be far away, if not completely out of reach. It is customary for a constitutional court to be based in either

[115] Singh and College 6-11.
[116] See generally, Ahmed el-Tayeb el-Gaili, "The Politics of Judicial Independence in Sudan: The Equilibrium."
[117] Ahmed el-Tayeb el-Gaili,.
[118] "Sudan - The Constitutional court Act.," Art.25.
[119] See generally,Ahmed el-Tayeb el-Gaili, "The Politics of Judicial Independence in Sudan: The Equilibrium."

the capital or a single city. However, distance provides an obstacle when a court refuses to accept basic processes, such as writing a message simultaneously. This activity, which is not permitted before Sudan's Constitutional Court, makes it easier for those who cannot appear in person to participate.

2.2.2 COURT INDEPENDENCE

Under the INC, the Constitutional Court was composed of nine members appointed by the President based on the National Judicial Service Commission's recommendation and two-thirds of the Council of States representatives' consent[120]. In practice, this formula has failed to ensure the Court's effective independence, which applies to both the status of judges, including appointment, tenure, and protections against intervention and the Court's institutional independence from the executive and legislature.

The National Judicial Service Commission, which took over from the High Judicial Council, is generally regarded as having failed to provide successful judicial oversight[121]. It was organized along party lines and lacked a specific mandate to preserve the judiciary's independence, with only the authority to implement the judiciary's budget and make recommendations to the executive[122]. As a result, the President of the Republic and elected bodies wield absolute control, as shown by the Constitutional Court judges' appointment process. Given the history of summary judicial dismissals following the 1989 coup and the legacy of a politicized judiciary, the CPA procedures failed to create a clear break to ensure the judiciary's independence[123]. An independent judiciary necessitates establishing effective appointment procedures and general respect for the rule of law and institutions, which has been missing in Sudan since 1989, a situation that has not significantly improved during the CPA interim period.

In conclusion, As the analysis shows, the only times the Supreme Court had both a degree of freedom and judicial review authority were during the transitional periods of 1964-1969 and 1985-1989, respectively. Also, during these years, when the Supreme Court sometimes ruled against the then-Government, its status was shaky, as demonstrated by the 1987

[120] "Sudan_2005.Pdf," Art.120.
[121] Abdelgabar, "Constitutional Reform as a Means for Democratic Transformation in Sudan."149-155.
[122] Ahmed el-Tayeb el-Gaili, "The Politics of Judicial Independence in Sudan: The Equilibrium."
[123] Fadlall, "Constitution – Making in the Sudan: Past Experiences." 77-79.

curtailment of review powers. In terms of reviewing the Supreme Court's jurisprudence in murder cases, the Constitutional Court's jurisprudence from 1998 is probably the most notable. On the other hand, the Constitutional Court based its decision on the jurisprudence of lower court. It did not analyze executive action, in the same way, restricting its overall position in providing adequate human rights protection, whether by requiring or triggering legislative changes.

The Constitutional Courts' and judges' independence should benefit from wider judicial reform, in which a reformed judicial body is in charge of recommending Constitutional Court judges who should represent Sudan's ethnic diversity, gender equality, and political independence, especially in terms of a lack of political party affiliations. Additionally, The Constitutional Court should be given the authority to hear individual grievances and conduct abstract and concrete reviews of bills and laws' constitutionality. Additionally, it should not be appropriate for applicants to pay a fee to file constitutional charges. Any person or group of individuals should be able to file a constitutional lawsuit without a lawyer's assistance.

2.3 DECENTERLAIZATION IN SUDAN

In Sudan, national dialogues, transitional justice, democratic system modernization, and institutional amendments are usually at the forefront of lawmakers' minds during periods of democratic change. However, Decentralization reforms, on the other hand, are crucial to consolidating democratic transition on the street, regardless of macro political developments. Many times, the complexities of reorganizing power relationships among government tiers are complicated political and economic transformations in countries are inextricably linked. Accordingly, this section aim to explore the decentralization in Sudan from historical perspective.

The British depended on indigenous administration to administer local governments in rural areas for most of the Anglo-Egyptian Condominium era (1899–1955)[124]. Traditional tribal and village leaders were in charge of administrative and judicial duties in their areas

[124] John Ryle, ed., *The Sudan Handbook*, 1. publ (Oxford: James Currey, 2011) 185-191.

under this arrangement, and the central authorities provided financial and, when required, military support[125]. In 1951, the British replaced this arrangement with a system of local government councils, the minister of local government was in charge of the councils, while the minister of the interior was in charge of the regional governors and district commissioners[126]. Many issues arose as a result of the split.

The Local Government Act of 1961 established a structure where the central government named provincial commissioners to serve as chairmen of the provincial authorities, an administrative body of officials representing Khartoum[127]. Following the military coup of 1969, the new government abolished local and regional government systems, replacing them with a pyramidal system in 1971, with local community councils at the bottom and increasing authority levels up to the executive councils of the ten provinces[128]. The second tier of local government systems, including rural and urban councils, existed above the city councils. Sub-provincial district councils made up the third tier. The provincial commissions were presided over by a provincial governor appointed by Khartoum at the top[129]. The RCC established a federal system in 1991, dividing the country into nine states, 66 provinces, and 218 local government districts. The RCC appoints each state's governor, deputy governor, and council of ministers[130].

The country was divided into 25 states, each with its capital, under the 1998 constitution, which called for a federal government form. Each state had a governor, known in the North as a Wali, and a legislature[131]. National security, international and state borders, foreign affairs and commerce, immigration, elections, the judiciary, currency, federal taxes, land and natural resources, water, ways and national energy, and interstate transportation were all under the federal government's control[132]. State administration, taxes and fees, commerce, property, water, electric power, and road maintenance were all under state

[125] Ryle.
[126] Ryle.
[127] Noha Ibrahim Abdelgabar, "Constitutional Reform as a Means for Democratic Transformation in Sudan | Ediss.Sub.Hamburg," 57-60.
[128] Noha Ibrahim Abdelgabar 57-60.
[129] Abdelgabar, "Constitutional Reform as a Means for Democratic Transformation in Sudan."
[130] Noha Ibrahim Abdelgabar 57-60.
[131] "The System of Governance Reform in Sudan: Challenges and Opportunities.
[132] "The System of Governance Reform in Sudan: Challenges and Opportunities"

control. Civil service, municipal government, media, education, health, economic policy, business, social services, climate, and tourism were all areas where the federal and state governments had concurrent authority[133]. Customs duties, seaport and airport income, corporate taxes, revenues from national ventures, and taxes received from Sudanese working abroad were the primary revenue sources for the federal government[134]. Company revenues, some of which went to local governments, a portion of the tax on state agricultural activity, state licenses, taxes and duties, and profits from state programs were all revenue sources for the states[135].

The 2005 Interim National Constitution, which adopted the CPA provisions and drew several concepts from the 1998 constitution, established a national government to preserve and promote Sudan's national sovereignty[136]. It allowed for the establishment of a government in South Sudan that would have jurisdiction over the country's citizens and states. State and local governments were formed in Sudan as part of the decentralized governance structure. The Government of South Sudan was the connection between the national government and the states in South Sudan. All government levels had to respect one another's sovereignty and work together to meet their constitutional obligations. The constitution guaranteed religious freedom and stated that all indigenous languages should be promoted and created[137]. It developed Arabic and English as the official working languages at the national level. South Sudan passed the Local Government Act in 2009[138], which defined the various types of local government.

A comprehensive bill of rights was included in the Interim National Constitution. It outlined the national governments, South Sudan's and states' forces, and parallel powers[139]. Safety, protection, foreign relations, nationality and naturalization, currency, national police, civil aviation, central banks, customs, national debt, national states of emergency,

[133] "The System of Governance Reform in Sudan: Challenges and Opportunities | ConstitutionNet."
[134] "Amin Salih Yasin, How Effective Fiscal Federalism in Conflict Resolution in Sudan,7-12.
[135] "Amin Salih Yasin, How Effective Fiscal Federalism in Conflict Resolution in Sudan."7-12
[136] Steve Odero Ouma, "Federalism as a Peacemaking Device in Sudan's Interim National Constitution," 16 -22.
[137] "SUDAN: Diversity, Federalism Recognised 23105.
[138] Noha Ibrahim Abdelgabar, "Constitutional Reform as a Means for Democratic Transformation in Sudan |"57-60.
[139] "Sudan_2005.Pdf," Art.29.

interstate transportation, and national taxation and budget matters were all responsibilities of the national government[140]. As a branch of Sudan's national bank, the South founded the Bank of South Sudan. Within the context of a single national monetary policy, it provided traditional banking services[141]. During the interim period, Government of South Sudan (hereinafter GOSS) was in charge of its police, military, legislation, borrowing, planning, and civil service relating to South Sudan's administration. GOSS was also given several minor duties under the Interim National Constitution. Other Sudanese states had a lower level of responsibility. Control of the police, municipal government, the state civil service, social welfare, cultural matters, religious regulation, and various other concerns were among them[142]. The national government held various concurrent powers, the Government of South Sudan, and state governments, including tertiary education, health policy, commerce, public service delivery, banking and insurance, traffic regulations, and gender policy.

Sudanese governance has long been viewed as a North-South problem. However, by the 1980s, it was clear that nationalist sentiments were not limited to the South. Tensions in Darfur, in the west, and the Beja, in the east, threatened to split the region[143]. The Nubians of the northern Nile and the Nuba of South Kordofan had severe grievances as well. Separatist sentiments started to emerge in South Sudan after Southerners assumed control of their government. Separatist sentiments had long existed among ethnic groups in Equatorial's far South, especially between the Dinka and the Nuer[144].

The agreement between Khartoum and the SPLM offered an opportunity to resolve disagreements between the North and the South, but it also posed significant challenges as Sudanese in both parts of the world attempted to put the CPA into effect. The agreement shifted the focus to the periphery, especially Western and Eastern Sudan, which demanded new agreements with Khartoum. It raised the issue of whether federalism could keep Sudan

[140] Steve Odero Ouma, "Federalism as a Peacemaking Device in Sudan's Interim National Constitution."18-22.
[141] "Amin Salih Yasin, How Effective Fiscal Federalism in Conflict Resolution in Sudan."14-16
[142] "Amin Salih Yasin, How Effective Fiscal Federalism in Conflict Resolution in Sudan."14-16.
[143]See generally, "SUDAN: Diversity, Federalism Recognised - 2021 - Africa Research Bulletin: Political, Social and Cultural Series - Wiley Online Library."
[144] Noha Ibrahim Abdelgabar, "Constitutional Reform as a Means for Democratic Transformation in Sudan | Ediss.Sub.Hamburg." 54-56.

from fragmenting into multiple independent states. In 2006, a key Darfur rebel group signed a shoddy peace deal with Khartoum that did not end the bloodshed[145]. There were also more political factions in Darfur by late 2010. The peace agreement in Eastern Sudan in 2006 was more fruitful[146], but it was still precarious.

In terms of the Sudanese situation, the southerners desired self-rule for the Southern Sudan while still participating at the national level[147]. The CPA Power Sharing Protocol has now given effect to the southerners' wishes. However, one may contend that the Addis Ababa Agreement was formulated in the spirit of federalism, granting self-rule to the Southern Sudan while failing to avert a return to war.

As a result of the Addis Agreement, the south saw a decade of relative stability within a single Sudan[148]. As previously said, the Addis Ababa Agreement failed to maintain stability between the north and the south due to inherent uncertainty in the clauses dealing with power sharing between the national level and the level of Southern Sudan, which did not fulfil the conditions of a truly federal system[149]. Previously, under the INC, the governing structure resembles a true federal system, with administrative and legislative authority devolved to the states, including significant powers to Southern Sudan.

As previously stated, the implementation of a federal government would not automatically end violent communal violence. However, since federalism, by practice, requires regions to share authority and services with the central government, the comparatively low frequency of intercommunal violence in federal states leads one to believe that federalism necessarily reduces tension in segregated societies. However, as Ghai points out, "whether political recognition of diversity is desirable depends on the context, the interests and desires of different groups, and the forms that political recognition takes[150]."

[145] Steve Odero Ouma, "Federalism as a Peacemaking Device in Sudan's Interim National Constitution."22-24.
[146] Noha Ibrahim Abdelgabar, "Constitutional Reform as a Means for Democratic Transformation in Sudan |."57-61.
[147] Wal Duany, "The Problem of Centralization in the Sudan," *Northeast African Studies* 1, no. 2/3 (1994): 75–102.
[148] Duany.
[149] Duany.
[150] Yash Ghai, *Read "International Conflict Resolution After the Cold War* 22-25.

As outlined by McGarry, conditions that might increase the likelihood of a federal system alleviating tensions include 'some sense of loyalty to the entire state as well as its minorities, and this requirement is only likely to happen if the majority party still agrees that their state is a multi-racial state and that the existence of the minority national community should be supported[151].' The federal structure's ability to achieve its goal of ending tensions could be hampered by a lack of an atmosphere conducive to nurturing these conditions.

In the case of Sudan, the constitutional asymmetry in the distribution of powers and resources between the national and Southern Sudan levels could well represent a means of meeting the demands of the Southern Sudan based on past injustices while still preserving and promoting the citizens of the Southern Sudan's distinct identities, an important consideration.

While the INC structure, on the whole, meets the needs of Southern Sudan, there is some question as to whether the INC's governance system is capable of uniting the various ethnic and cultural groups in Sudan's various regions[152]. This is because the completion of other peace agreements, such as the Darfur Peace Agreement and the Eastern Sudan Peace Agreement, bring the issue of how to maintain the CPA's power-sharing protocol equilibrium formula.

This will necessitate amending the INC to incorporate the terms of the two peace agreements. However, getting both parties to agree on these reforms can be difficult[153]. Devolution of forces is gradually seen by some analysts as a stopgap on the way to independence rather than a long-term solution to Sudan's national accommodation problems[154]. The CPA provides substantial diplomatic accommodation to the Southern Sudan, and one would assume that this accommodation will help to foster ties between the north and the south; however, hardliners in the south contend that the gaps between the north and the south are so great that there is no use in attempting to resolve the conflict

[151] John McGarry and Brendan O'Leary, "Federation as a Method of Ethnic Conflict Regulation," 2005, 263–96.
[152] "Amin Salih Yasin, How Effective Fiscal Federalism in Conflict Resolution in Sudan." 25-27.
[153] Abdelgabar, "Constitutional Reform as a Means for Democratic Transformation in Sudan."58-60.
[154] Abdelgabar.58-60.

within a federal structure: only secession will suffice. Southern Sudan seems to consider the federal system as a better alternative to war, but only as a first step toward secession.

In conclusion, opposing the CPA's power distribution, minority national groups seek acknowledgement and greater symmetry within Sudan's regions. As a result, federalism, as described by the CPA can exacerbate ethnic conflict by reinforcing ethnic identities by the recognition of certain ethnic groups (Southern Sudan). These parties believe that the CPA favours Southern Sudan over other Sudanese states.

The existing arrangement could be insufficient to address the gaps and disparities that occur within Sudan's regions. However, as a beneficial constitutional feature of federalism, the structure of the Council of the States can become a solution to problems of equal representation and participation of the States in national decision-making institutions.

2.4 CONCLUSION

Like other postcolonial African countries as has been seen the Sudanese constitutional Court has failed to fulfil its duty as a constitutional guardian. The Court has been plagued with institutional flaws, and its jurisprudence has primarily backed existing laws, particularly immunities clauses and acts. Limited regard to international standards or significant comparative experiences has also defined jurisprudence. Furthermore, due to exorbitant fees and lack of the legal culture, obtaining judicial review is difficult. Nonetheless, the executive branch has repeatedly violated the Court's independence throughout Sudan's history. In this regard, Sudan's judicial review system is inextricably linked to the continent's past like other sub-Saharan African countries, which is marked by a lack of constitutionalism and authoritarianism.

In terms of federalism, the autonomy provided to the South in both the Comprehensive Peace Agreement of 2005 and the Addis Ababa Agreement of 1973 to the South will almost certainly be desired in other parts of the country with similar historical, ethnic, and cultural characteristics. In the end, the characteristics of Sudanese federalism, which emphasizes cooperation, can be described. As a result of the "constitutionally asymmetric" relationship between the several levels of government, the Southern Sudan level has considerable legal legislation and prerogatives comparable to the rest of Sudan's States. The critical question

is whether this uneven power distribution will result in a political solution to Sudan's internal conflicts.

As mentioned above, the lack of constitutionalism and good governance system has a significant impact on the history of Sudan and Egypt; this chapter discussed the factors of judicial review and federalism in Sudan as the most critical issues that affected the country's stability. At the same time, the next chapter seeks to examine to what extent these elements reflected in Egypt, which is an integral part of the African context.

CHAPTER 3: JUDICIAL REVIEW AND CENTRALIZATION IN EGYPT

3.1- INTRODUCTION

Both Egypt and Sudan have mutual history regarding suffers from authoritarians regimes which affected the constitutionalism and good governance system like other sub-Sharan African countries. The previous chapter explored these elements in Sudan. While, this chapter examines to what extent judicial review and centralization which the main challenges of constitutionalism and good governance in postcolonial sub-Sharan Africa reflected in Egypt, as long as these factors have a significant impact in Sudan.

This chapter is going to study the challenges that have been facing constitutionalism in Egypt. The first section will study the role of judicial review in Egypt. It will conduct this through analyzing the historical development of judicial review in all the consecutive constitutions throughout the period from 1923 to 2012. Then, the section will introduce some practical recommendations to make the judicial review mechanism more effective provide protection of human rights and ensure that legislative and regulatory bodies remain within their constitutionally established law-making powers.

The second section of the chapter will examine ‘Centralization’ being a significant element in governance and whose meaning is considered controversial between academics. The section will explain the importance of local-level changes to the political scene in the aftermath of Egypt 2011; s uprisings. In addition, it will suggest a description of decentralization after a summary of significant debates surrounding the classic rationales and critical aspects of decentralization to frame the analytical study conceptually.

3.2- CONSTITUTIONAL REVIEW IN EGYPT

The Shari'ah and the Civil law combined to form Egypt's legal system[155]. It is a civil law structure with a well-established system of codified rules enshrined in the Egyptian Constitution, which was first promulgated in 1923[156]. The Constitution of 1930 was replaced by the Constitutional Declaration of 1953, the Constitutions of 1956, 1958, and 1964, and the Permanent Constitution of 1979[157].

The idea of judicial control existed even before law gave one specialist court exclusive authority over it. The fact that judicial control of legislation is logically related to a written and strict constitution has traditionally aided the Egyptian judiciary in establishing its judicial control power[158].

In the absence of an organized mechanism of such power in the Constitutions of 1923 and 1939, the judiciary attempted to exercise a kind of control that resulted in the non-application of any law deemed unconstitutional[159]. This did not, though, abrogate any decision about the unconstitutionality of a given law that did not have a determinative effect beyond the scope of whatever dispute. There was little consensus within the judiciary at the time on the concept of judicial power, and court rulings on specific legal questions were inconsistent[160].

On the other hand, the State Council favored judicial power in 1948, seeing it as a natural result of the Constitution's sovereignty principle. Many Egyptian jurists had provided for the courts to have jurisdiction over the constitutionality of legislation before 1923, but the 1923 Constitution did not allow for this, either in terms of approval or prohibition[161].

[155] See generally, Dr. Mohamed S. E. Abdel Wahab, "UPDATE: An Overview of the Egyptian Legal System and Legal Research - GlobaLex," l.
[156] See generally, Dr. Mohamed S. E. Abdel Wahab.
[157]See generally, Dr. Mohamed S. E. Abdel Wahab.
[158] See generally, Sara Razai, "Understanding Judicial Review in the Arab Region: Centripetal and Centrifugal Dynamics," IEDJA, January 31, 2020.
[159]See generally, Sahar Tohamy, "Judicial Review in Administrative Contracts in Egypt: Evidence from Administrative Court Rulings in Government Tenders and Bids Law Disputes: Middle East Development Journal: Vol 10, No 2," n.d.
[160] Sara Razai, "Understanding Judicial Review in the Arab Region."
[161]See generally, Mohamed Abdelaal, "Constitutionality of Constitutional Acts in Egypt: Can the Egyptian Supreme Constitutional Court Extend Its Jurisdiction?," n.d.

These jurists based their reasons for jurisdiction over the constitutionality of laws on fair and correct considerations similar to those used by the US judiciary to justify their courts' ability to control the constitutionality of legislation passed by Congress[162]. According to legal tradition, the government is not legal until it exercises its authority within the bounds of the law. To put it another way, all governors must adhere to the standard of legitimacy in their actions, whether they be the product of rules, legislation, rulings, or particular procedures.

A judge's job is to enforce the law, and he is limited in this capacity by the country's customary laws and the country's fundamental law, which is greater than the customary laws. Thus, where the customary law violates the higher law, it is reasonable for the judge to choose the higher law, and this decision is consistent with the separation of powers theory. Many Egyptian jurists, like Abd al-Razzaq al-Sanhuri, Kamal Abu al-Majd, and Tawfiq al-Shawi, have acknowledged that the regulation of the local Egyptian court of the first instance in 1941, where the court reiterated the previous juristic perspective, was the first time the Egyptian courts determined their right to regulate the constitutionality of laws[163].

Following the foundation of the State Council in 1946, the administrative judiciary was ready to determine this power most appropriately[164]. On February 10 1948, the Court of Administrative Justice decided on its right to regulate the constitutionality of laws in the case of Law No. 148 of 1944[165]. The court dismissed the government's rebuttal that the courts had no power to appeal the constitutionality of laws, and this provision was accepted in the Court of Administrative Justice's declared rules on June 21, 1952, which reaffirmed what had been said in the previous rules. At that time, the laws have given the judiciary the right to decide on coercion[166].

[162] Mohamed Abdelaal.
[163] See generally, Sara Razai, "Understanding Judicial Review in the Arab Region."
[164] Sara Razai.
[165] See generally, Mohamed Abdelaal, "Constitutionality of Constitutional Acts in Egypt."
[166] Mohamed Abdelaal.

Previously, on February 7, 1952, the Court of Cassation ruled that the enforcement of a provision of the criminal procedure law violated the principle of the non-retrospective effect of laws established by the 1923 constitution[167].

On July 30, 1962, some articles in the Egyptian National Charter affirmed judicial power over the constitutionality of legislation, including assurances of the rule of law principle and stating the need to organize those guarantees so that they vouch for the rule of law[168]. To put it another way, laws must be passed following the Constitution. It was then necessary to create a Supreme Constitutional Court, and the new Constitution stipulated how it would be formed and what authority it would have.

The necessity of establishing a supreme constitutional court was emphasized in the resolution of March 30 1968, and the Supreme Court was created as a result of Law No. 81 of 1969[169]. In article 174 of the 1971 constitution, it was stated that "the Supreme Constitutional Court shall be a separate judiciary body in the Arab Republic of Egypt, with its seat in Cairo." It was also stated that "the Supreme Constitutional Court shall have exclusive jurisdiction to undertake judicial oversight of the constitutionality of the laws and regulations and undertake the interpretation of legislative texts[170]." Law can entrust the court with additional responsibilities." Under Law No. 48 of 1979, the Supreme Court was abolished, and the Supreme Constitutional Court was created in its place[171].

I believe that allowing the Constitution to determine the consequences of an illegitimate decision violates the principle of the rule of law and compromises judicial independence. Since all legislative and executive bodies have an interest in the decision of unconstitutionality, this effect is considered one of the most critical aspects of statute unconstitutionality and should be addressed by the Constitution. Furthermore, once the regulatory body is given power over the constitutionality of legislation, it will change the unconstitutionality decision, not in terms of the impact on the past and future, but rather by

[167] Nayel Alomran and Abdul Haseeb Ansari, "Establishment of Judicial Review and Elements of Its Emergence in Egypt," *I*.7-8.
[168] Sara Razai, "Understanding Judicial Review in the Arab Region."
[169] See generally, Mohamed Abdelaal, "Constitutionality of Constitutional Acts in Egypt."
[170] Alomran and Haseeb Ansari, "Establishment of Judicial Review and Elements of Its Emergence in Egypt." 8-10.
[171]See generally, Sara Razai, "Understanding Judicial Review in the Arab Region."

a change that excuses such unconstitutional laws. This is seen as a violation of the Constitution's requirement that all official powers be subjected to the rule of law. The Supreme Constitutional Court decides whether or not laws and regulations are constitutional in terms of their shape and substance, and there is no dispute among jurists on this point.

3.2.1- ACCESS TO JUDICIAL REVIEW

As previously said, judicial review is the ability of courts to examine statutory documents and government acts for constitutional compliance. The right to prosecute and its limitations in Egypt passed through two stages, the first before the current Constitution was enacted and the second after it was enacted[172].

Prior to the issuance or adoption of the 1971 constitution, most Egyptian jurists believed that restricting or excluding judicial remedies or the "right to prosecute" breached the presumption of judicial freedom by interfering with the judiciary's integrity and violating the two concepts of authority and division of powers[173].

The positions of superior courts may be used to examine the judiciary's position: the Court of Administrative Justice and the Supreme Administrative Court.

In 1941, a lower court claimed judicial power to see its argument overturned by an appeals court. The concept was introduced purely by judicial decision rather than formal legislative text or legislation in 1948 when the Supreme Administrative Court released a decisive decision affirming the right to judicial power[174]. Following the abolition of the monarchy in 1952, a commission tasked with writing a new constitution suggested a professional supreme court, but the government rejected the proposal[175].

Following its establishment in 1969, the Supreme Court did not hesitate to declare Law No. 31 of 1963, which sought to amend the State Council's cancelled act,

[172] "Shams Al Din Ahmed, Form of Reform Judicial Reform in Egypt: Lesson from the Developed Countries," 66-69a

[173] "Shams Al Din Ahmed, Form of Reform Judicial Reform in Egypt: Lesson from the Developed Countries."66-69.

[174]See generally, "Judicial System - Egypt -," n.d.

[175]See generally "Judicial System - Egypt -."

unconstitutional[176]. This statute stated that the president of the republic's rules for pensioning public employees to retirement without disciplinary procedure is an act of sovereignty because they include the confiscation of employees' right to appeal or prosecute these decisions, as well as a violation of the doctrine of equality between citizens in their rights, which conflicts with the Constitution[177].

The issuance of the 1971 constitution is the second step. Jurists who were involved in creating the charter articles and in the preparations for the 1971 constitution contained a clause in Article 68 barring immunity from any act or administrative judgment of judicial authority in its rules[178]. Since reviewing the text of Article 68 of the Constitution, the Supreme Court ruled in 1976 that the text did not end at reiterating the right of prosecution for all citizens as an original fundamental right[179]. However, the court established a presumption prohibiting legislative immunity for any regulatory act or regulation from judicial review, particularly any conflicts arising from the unconstitutionality of laws prohibiting the ability to appeal such orders[180]. As a result, the court decided that Article 68 of the Constitution applies to the constitutional nature of the right to litigate and affirms what has been recognized by the Constitution's provisions, which guarantee this right to individuals, entitling them to rights that do not achieve their results except by the establishment of this right, vouchsafing its security and enjoyment, and repelling the use of the right to litigate[181].

In 1983, the Supreme Constitutional Court ensured that the same theory and laws apply in a community of cases, establishing the right to prosecution as an original constitutional right[182]. This meant that the courts were responsible for the principle's security and

[176] See generally, Sara Razai, "Understanding Judicial Review in the Arab Region."
[177] See generally, Sara Razai.
[178] "Shams Al Din Ahmed, Form of Reform Judicial Reform in Egypt: Lesson from the Developed Countries."68-71.
[179] "Shams Al Din Ahmed, Form of Reform Judicial Reform in Egypt: Lesson from the Developed Countries."71-72.
[180] Alomran and Haseeb Ansari, "Establishment of Judicial Review and Elements of Its Emergence in Egypt."12-14.
[181] Alomran and Haseeb Ansari.13-14.
[182] "Shams Al Din Ahmed, Form of Reform Judicial Reform in Egypt: Lesson from the Developed Countries."72-73.

enforcement, as well as any legislation that provided for the immunity or cancellation of regulatory actions and judgments, ensuring the legality principle.

3.2.2- INDEPENDENCE OF THE COURTS

As previously said, as provided for in the Egyptian Constitution and numerous laws that govern the judiciary, the Minister of Justice is a very effective form of judicial independence in Egypt[183]. The Supreme Constitutional Court, for example, is governed by statutory and statutory rules that prohibit the Minister of Justice from interfering with the court's operations or disciplining its judges[184]. Similarly, the State Council Statutes deny the Minister of Justice any authority over the Council's executives, functions, or disciplinary procedures. The Minister does, however, have authority under the rules that control other judicial bodies[185].

Budgets for all other judicial bodies are decided by the Supreme Council of Judicial Bodies but essentially watched over by the Minister of Justice, demonstrating the Minister's high power level over the judiciary[186]. Furthermore, Law No. 46 of 1972, and governs the ordinary judicial body (which includes both civil and criminal courts), gives the Minister of Justice the authority to closely supervise the performance of judges in that body and gives him a role in disciplinary actions against them, including the right to initiate disciplinary proceedings and the responsibility for evicting them[187]. Furthermore, under Law No. 75 of 1963, the Minister of Justice has the authority to hold a meeting of the Supreme Council of the State Cases Agency and monitor the appointments, promotions, delegations, and transfers of its members[188]. This legislation further regulates the body's internal operations and provides an oversight department to assess the effectiveness of its members[189]. The right to initiate disciplinary proceedings against a member of the State Cases Agency is included in this capacity, just as it is with ordinary court judges.

[183] Tamir Moustafa, "Law versus the State: The Judicialization of Politics in Egypt," *Law & Social Inquiry* 28, no. 4 (2003): 883–930.
[184] Moustafa 883-887.
[185] Moustafa 883-887.
[186] Moustafa 883-887.
[187] Moustafa 883-887.
[188] Moustafa 883-887.
[189] Alomran and Haseeb Ansari, "Establishment of Judicial Review and Elements of Its Emergence in Egypt."9-11.

As with the State Cases Agency, Law No. 117 of 1958 grants the Minister of Justice the right to review and supervise the Administrative Prosecution Body's operation, and the Minister of Justice has the power to call a meeting of the Administrative Prosecution Body's supreme Council to relocate its mem[190]. The Egyptian Minister of Justice plays a significant role in the affairs of Egyptian courts, especially when it comes to judicial discipline.

Finally, the Egyptian Supreme Constitutional Court has affirmed the principle of judicial freedom in a series of recent rulings[191]. The Supreme Court affirmed the difference between judicial independence and judicial neutrality, providing rules to guarantee judicial independence, critical in a democratic society[192]. Besides, the court has protected judges' discretion from legislative efforts to limit judicial independence and separation of powers.

In conclusion, this section clearly shows how, the tradition of judicial review, which is one of the fundamental features of a stable democracy and essential for guaranteeing human rights to the country's people, has steadily grown. Access to justice and judicial independence are both guaranteed under the current Egyptian Constitution. However, since the country's judiciary reports to the Minister of Justice, some opponents argue that the Egyptian judiciary is more or less autonomous, and therefore the authority to review legislative and administrative endeavors in the form of laws, subordinate laws, and administrative orders cannot be reviewed.

3.3- CENERALAIZATION IN EGYPT

Following January 25, 2011, revolution, many observers emphasized that the momentum of reform efforts in Egypt would likely set the stage for reforms elsewhere and affect the

[190] "Shams Al Din Ahmed, Form of Reform Judicial Reform in Egypt: Lesson from the Developed Countries."76-79.
[191] Sahar Tohamy, "Judicial Review in Administrative Contracts in Egypt: Evidence from Administrative Court Rulings in Government Tenders and Bids Law Disputes: Middle East Development Journal: Vol 10, No 2." P.22.
[192] Alomran and Haseeb Ansari, "Establishment of Judicial Review and Elements of Its Emergence in Egypt."10-11.

region's long-term growth[193]. Given the region's history of state diffusion, in which several Arab countries followed essentially identical institutional and policy structures, the case of Egypt is fascinating to investigate. The following sections include an in-depth look at the country's histories to assess current local governance processes and extrapolate ongoing concerns about decentralization changes in states with traditionally stable political ideologies.

Scholars have debated the origins of the Egyptian local administration structure for a long time, and two competing hypotheses have emerged[194]. On the one hand, it is argued that the current regime is very similar to the one established during the pharaonic period[195]. On the other hand, it is argued that the system's roots can be traced back to Napoleon's campaign in Egypt and his decision to create governorates known as Dawawean at the time[196]. According to the above literature, the start came at the end of the nineteenth century with the establishment of governorates councils (Magalas al-Moderayat) and city councils, the first of which was the Alexandria city council, which was founded in 1890[197].

While the roots of Egypt's municipal administration system are debated, experts nearly unanimously agree that the 1923 constitution was the first to give local government formal status, recognizing governorates, towns, and villages as legitimate entities (judicial persons) served by their councils (article 132)[198]. This restriction also stated that the councils should be elected, even under exceptional circumstances, and should be charged with all local matters of concern to these local administrative units (article 133)[199]. Besides, the Constitution mandated that these councils' meetings be open to the public and that their budgets be transparent to the public[200]. Many historians regard this Constitution as Egypt's first detailed and progressive Constitution, sometimes referred to as the "Nation's

[193] Soraya M El Hag, "A Review of Decentralization and Local Development Initiatives in Egypt between the Years of 1994 and 2011," n.d., 83.
[194] Hag.
[195] Hag.
[196] Hag.
[197] Hag.
[198] See generally, Sarah Tonsy, "Territory and Governance: the Arab Republic of Egypt between Two Historical Political Actors," *L'Année du Maghreb,*.
[199] Tonsy.
[200] Tonsy.

Constitution."[201] In reality, it remained in force until the 1952 revolution, except for a brief period when King Fouad published the 1930 constitution, only to later revoke it and revert to the 1923 constitution due to public pressure[202].

The broad changes brought on by Gamal Abdel Nasser's reforms did not affect Egypt's political system regulating local government[203]. This was shown because the 1956 constitution followed the same direction as the 1923 constitution in terms of local government, especially in providing local units led by an elected council and enabling the central government to select certain representatives with local development experience[204]. Furthermore, the two constitutions give the central government the authority to overrule any decisions taken by elected councils if they overstepped their bounds or caused harm to the public interest[205].

Nonetheless, the 1956 constitution established core principles and privileges for municipal governments, such as raising local taxes and fees and the right to obtain technological, financial, and administrative assistance from the state[206]. The Constitution further emphasized the ability of municipal administrative units to engage in and collaborate with other governing bodies[207].

Egypt's president, Anwar el-Sadat, took over from Gamal Abdel Nasser in 1971[208]. Sadat aimed to undermine Nasser's one-party rule by encouraging the proliferation of pluralism, political reforms, and a better legal structure[209]. Infitah, or opening, is the term used to describe Sadat's liberal economic reforms. Indeed, his aim of opening Egypt up was not

[201] Tonsy.
[202] Jorge Martinez-Vazquez and Andrey Timofeev, "Decentralizing Egypt: Not Just Another Economic Reform," in *Decentralization in Developing Countries*, by Jorge Martinez-Vazquez and François Vaillancourt (Edward Elgar Publishing, 2011), 14175, https://doi.org/10.4337/9781781000878.00017.
[203] See generally, Jameson Boex, "Democratization in Egypt: The Potential Role of Decentralization," n.d., 5.
[204] Boex.
[205] Boex.
[206] Hag, "A Review of Decentralization and Local Development Initiatives in Egypt between the Years of 1994 and 2011."46-48.
[207] Hag.
[208] Tonsy, "Territory and Governance." 7-9.
[209]See generally, ERIN COX, "Development and Good Governance in Egypt," n.d.

only economic; it also included political decentralization, as expressed in the 1971 constitution[210].

The division of local administrative units as governorates, towns, and villages was stated in the first paragraph of article 161[211]. It does, however, provide for the formation of a new municipal administration focused on shared interests. The second paragraph was introduced on March 26, 2007, after former Egyptian President Hosni Mubarak suggested an amendment[212]. It claimed that the concept of decentralization was "guaranteed," The statute was responsible for determining the production and administration of municipal services, infrastructure, and other provisions[213].

Article 162 addressed how municipal elections can motivate popular councils, or people's assemblies, with half of the membership slots reserved for farmers and workers[214]. A city council president and vice-president will be elected from within this membership[215]. Furthermore, this article emphasized that the phased transition of powers from the central government to elected councils could be carried out in stages. The final article, 163, states that the competencies, financial capital, member status, involvement in the planning and executing development plans, and partnership between the central government and local councils will all be discussed[216].

Human liberties, social rights, and economic empowerment were at the forefront of the movement on January 25, 2011. As a result, there have been demands for a new constitution to be written that stresses the citizens as the basis of the state's sovereignty, legitimacy, and authority[217]. For municipal governments, this has indicated a significant shift toward decentralization and public participation in decision-making. As opposed to previous constitutions, a new constitution was passed on November 29, 2012, with more explicit

[210] Martinez-Vazquez and Timofeev, “Decentralizing Egypt.”32-25.
[211] Tonsy, “Territory and Governance.” 9-11.
[212] Hag, “A Review of Decentralization and Local Development Initiatives in Egypt between the Years of 1994 and 2011.”
[213] Hag.
[214] Tonsy, “Territory and Governance.” 10-13.
[215] Tonsy.
[216] Tonsy.
[217] Dr Zinat Tobala-Contributor (Institute of National Planning), “Egypt Human Development Report Decentralization,”27-34.

mention of municipal government organization, responsibilities, and privileges[218]. There is also more information on the status of municipal authorities, with some additional articles devoted to local councils, including articles 188-192[219].

Article 185 deals with tax collection and proposes that municipal governments finance their activities by emulating state collection procedures[220]. Both taxes and fees must be exclusive, supplemental, and exclusive to the region. The section's final two papers look at the central state's administrative arrangement with local units.

The 2012 constitution, according to many academics and experts in local government, is a radical move forward, mainly because it discusses decentralization as a target to be achieved within ten years[221]. Furthermore, the central government is required to provide technical and financial assistance to local authorities in order for them to discharge their obligations[222].

However, some critical questions were posed about the uncertainty of the arrangement between the central and local governments. The governor's exact position and powers over officially de-concentrated government entities are also not specified in the Constitution[223]. In the same way, his association with elected bodies is hazy. The composition of elected councils has been criticized for encouraging executive officers to serve on them[224]. Even though these bodies do not have voting rights, opponents argue that the implementation of this principle encourages the executive to compete with the elected council's decisions[225]. In particular, they cannot efficiently exercise lateral oversight or monitoring of local executive authority due to their structure and official mandate[226]. These questions

[218] Planning) 30-33.
[219] Planning) 30- 33.
[220] Planning) 30-33.
[221] Planning) 30-33.
[222] Mohamed Nada Asya El-Meehy, "Institutional Development and Transition: Decentralization in the Course of Political Transformation," ESCWA, 33-35.
[223] Planning), "Egypt Human Development Report Decentralization."
[224] Asya El-Meehy, "Institutional Development and Transition."
[225]See generally, Tonsy, "Territory and Governance."
[226] Planning), "Egypt Human Development Report Decentralization."33-35.

prompted the Shoura Council to convene an expert meeting to gather input on the issues and explore the prospect of amending them[227].

Besides, executive joint councils' powers and duties have been expanded (EPCs), empowering elected members to question and withhold confidence from executive councils and oversee special funds financially[228]. Both plans have not been implemented. It manifested. However, there are concerns about the regime's political commitment to decentralization measures, provided that the people can choose neither governors nor municipal executive units[229]. Proposed changes to the law Furthermore, the new bill protects the government's ability to abolish city governments.

In conclusion, a subsidiarity article in a constitution may enhance the local government tier and cede residual functions to it. If a widespread consensus on local governance reform has been formed, particular parts of the state's administrative organization may be stated in the constitution. Most crucially, the way local governments are formed and the scope of their rights and authorities should be established. Furthermore, the constitution should ideally describe the distinct roles and responsibilities—the various tiers' functions and responsibilities and the local-level branches of power. Detailed descriptions of the central government's supervisory powers and scenarios that call for the dissolution of local governments are more likely to prevent fragmented and conflicting reforms while establishing more apparent vertical responsibility lines.

3.4 CONCLUSION

This chapter explored the judicial review and centralization in Egypt, the first section studied the historical development of judicial review in Egypt and examined the executive intervene in the judicial affair. Apparently, there is still no clear separation between the judiciary and the executive. As previously stated, the Minister of Justice continue to have significant control over the courts. Even though the President's powers have been reduced as a result of the amendments, he still retains the majority of them, whether in the executive, legislative, or judicial fields, where he is the one who appoints the general prosecutor, the

[227] See generally, Tonsy, "Territory and Governance."
[228] Hag, "A Review of Decentralization and Local Development Initiatives in Egypt between the Years of 1994 and 2011."46-48.
[229]See generally. Tonsy, "Territory and Governance."

presidents of the Court of Cassation and the Supreme Constitutional Court, and is the head of the judicial bodies' council.

While the second chapter explored the Centralization. Egypt have one of the oldest central systems in the world. However, governmental weakness hinders subnational actors' ability to dominate society or extend official rules, laws, and regulations. In many situations, formal subnational authority coexists with traditional community or tribal authority, both of which can play important roles that must be respected or even promoted.

As a result of the points raised above, on the one hand, Egypt has a weak judicial review system like Sudan and most postcolonial African countries. This has been seen in the intervention of the executive power in the judiciary and the significant role of the minister of justice in the judicial affair. In this sense, the poor separation of powers system is, by default, a significant impact on constitutionalism in Egypt.

On the other hand, regarding centralization, Egypt has an inherent central system that took place many years ago; this system does not affect the country's stability since the ethnic diversity found in Sudan and sub-Saharan African countries do not exist in Egypt. Admittedly, ethnicity had a significant impact on Sudan and sub-Saharan postcolonial African countries that the central system prevented many ethnicities from participating in governance and access to the resources.

4. CONCLUSION

This thesis intended to demonstrate that the constitutionalism challenges of postcolonial sub-Saharan African countries on judicial review and Centralization are reflected in Sudan and Egypt. In doing so, the thesis highlighted the key challenges of judicial review and centralization that impacted constitutionalism in Sub-Saharan Africa, Sudan, and Egypt.

From the analysis, it is clear that sub-Saharan African countries, since the postcolonial period, continue facing numerous challenges that affected judicial review system as well as the governance system. While there are some narrative differences, the nature of the most of these challenges is quite similar. In terms of judicial review, one of the main challenges affecting the independence of the judiciary and the overall judicial review system in Sub-Saharan Africa is the appointment and dismissal of judges. In most of these countries, the executive power had some authority over appointing and dismissing judges. As a result of this authority, the judicial system became weak and vulnerable to different form of threats form the executive power.

Similarly, in Sudan, since the independence, the judicial power was greatly influenced by the executive power, whereby the appointment and dismissal of chief justice, Supreme Court, and constitutional court judges is made by the executive power (mainly the president). Likewise, in Egypt the Minister of Justice, who is part of the executive branch, is the head of the judicial power and have full authorities over the judicial system, including appointing and dismissing judges. Such a common challenge in all of the examined countries implies a blatant interference in the judicial system, which intuitively undermines the concepts of separation of powers and judiciary independence, putting constitutionalism at danger.

With regard to centralization and good governance system, the thesis discovers that most African nations had building-nation difficulties throughout the post-colonial period. Despite the fact that most Sub-Saharan African countries have significant ethnic and cultural variety, central administrations have been unable to create unified states. Some of these countries such as South Africa, Nigeria, and, to some extent, Ethiopia, have surmounted these obstacles by establishing a federal form of governance that accommodates and respects their people's variety.

Centralization issue can also be seen in Sudan, where the country has tremendous form of diversity. Political elite (through central system of governance), however, were unable and unwilling to construct a society that reflected this diversity. As a result, Sudan witnessed a protracted civil conflict in various Sudanese states. These civil wars have led to the separation of South Sudan, and vast types of atrocities, including genocide and crimes against humanity in Darfur. While the CPA sought to establish a federal system of governance with the aim of distributing wealth and power across Sudanese groups, the system's long-term viability remains vulnerable to variety of factors, notably the federal governments political will.

Unlike most of the sub-Saharan African countries and Sudan, Egypt had an effective and deeply rooted governance system that can be traced back to Napoleon's campaign in Egypt and his determination to establish Dawawean governorates. Aside from the historical context of Egypt's government structure, the country hasn't had any ethnic or cultural diversity concerns. This has helped the country to strengthen its central structure, making it more effective over time.

As has been seen, the challenges of constitutionalism in postcolonial sub-Saharan African countries regarding judicial review do reflect to a great extent on both Sudan and Egypt. While the challenge of a good governance system reflects on Sudan, however, Sudan tried to avoid this challenge by adopting a federal system in Addis Abba 1973 and the Comprehensive Peace Agreement 2005. Nevertheless, unlike Sudan, and postcolonial sub-Saharan African countries, Egypt does not suffer from a lack of a good governance system due to several reasons, as discussed.

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