

# The Status of the Constitutional Court, Economics and the Administration of Justice in Sudan: A Comparative Study

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## Abstract

*This study examines the role and structure of the Constitutional Court and the judiciary in Sudan within a broader comparative framework. It analyzes models from South Africa, Germany, Austria, Egypt, Italy, the Gulf States, and the United States, highlighting lessons that could guide judicial reforms in Sudan. The central argument emphasizes that any successful reform of Sudan's judiciary must originate from its social values, traditions, and legal heritage, not from blind imitation of foreign systems. The study argues that legal and judicial reform cannot be effective in isolation from the Sudanese social context, its communal values, and the customary systems that underpin its social contract. Importing foreign legal models without adaptation risks alienating the judiciary from the people it serves.*

**Keywords:** Constitutional Court, Economic Stability, Rule of Law, Social Conflict

## 1. Judicial Review: Complexity, Economic Stability, Rights and Rule of Law

A constitutionally empowered judiciary, particularly one that is independent, enforces contracts, protects property rights, and provides legal predictability. These factors are fundamental in attracting domestic and foreign investment, fostering entrepreneurship, and generating sustained economic growth. There are strong relationships between **judicial independence and economic growth**. Judicial independence is positively associated with economic growth. Empirical evidence shows that countries with greater judicial independence enjoy more robust and sustainable economic development. Conversely, non-compliance with constitutional norms or weak judicial environments correlates with lower income levels and reduced growth. The power of constitutional courts to review legislation can have both positive and negative effects on economic performance, depending on how this power is exercised:

1. If the court upholds economic rights and interprets constitutional provisions in ways that favor a stable legal and business environment, the result is typically positive for

growth.

2. Overly activist or unpredictable judicial behavior, however, may create uncertainty and discourage investment.

The mechanisms of influence should be documented in the constitution. Constitutional courts influence economic performance through several channels:

1. Providing a check on government actions that may undermine market freedom or property rights.
2. Adjudicating disputes in a timely and efficient manner, which is critical for economic activity.
3. Protecting economic and social rights, thereby supporting broader, more inclusive development.

High-profile decisions by constitutional courts can shape the business environment directly, such as rulings on labor laws or economic regulations, which can create a fairer economic ecosystem and impact investment decisions. Meanwhile, judicial inefficiencies or lapses in constitutional compliance have measurable negative effects on growth and development.

In summary, constitutional courts enhance economic performance when they operate independently, uphold the rule of law, and balance activism with predictability. Their influence is exerted both through broad institutional frameworks and concrete, case-specific decisions. That is why it is important to strengthen courts while preserving their flexibility, policy reforms should focus on enhancing judicial independence, accountability, and adaptability without creating rigid procedural barriers or undermining judicial discretion.

## 2. The Key Policy Reforms are manifested in

**Promote Judicial Independence and Accountability:** Ensure transparent, merit-based appointments; provide secure tenure for judges; and protect courts from political interference, while establishing robust oversight and accountability mechanisms to deter misuse of power.

**Enhance Training and Education:** Invest in continuous judicial education on new laws, technologies, and procedural best practices. This supports flexible, informed judgment and adaptation to social and technological changes.

**2.1. Maintain Procedural Flexibility:** Allow judges discretion in managing case schedules, determining trial modalities, and adjusting procedures to the context of each case. Legal frameworks should support judge-led procedural flexibility (e.g., adapting deadlines, promoting alternative dispute resolution).

**2.2. Regularly Review and Update Legal Frameworks:** Periodically revisit laws and court rules to keep them relevant and adaptable, incorporating input from the judiciary and other stakeholders to balance consistency with innovation.

**2.3. Promote Stakeholder Engagement and Transparency:** Involve civil society, the bar, and the broader public in reform discussions, ensuring reforms are practical, widely supported, and reinforce public trust.

## 3. Relationships between the constitutional court and economic performance

The relationship between constitutional courts and economic performance is direct and multifaceted. Constitutional courts, by

safeguarding constitutional norms and ensuring the rule of law, contribute to the stability, accountability, and credibility necessary for healthy economic environments. Establish a statutory “core” of unmodifiable court functions (e.g., impartiality, due process). Some important issues are as follows:

- Legislate explicit zones or mechanisms for judge/party adaptation.
- Encourage digital modernization and process review for continuous improvement.
- Ensure broad and open public engagement in reform design, supporting feedback and iterative adjustment.
- This approach enables stronger yet adaptable court systems capable of evolving with legal, technological, and social change, while retaining legal certainty where required.

### 3.1. Implementation Principles

**3.1.1. Context Sensitivity:** By adapting reforms to local legal traditions, administrative capacities, and societal expectations and avoiding one-size-fits-all models in favor of tailor-made solutions that foster buy-in and sustainability. Integration of International Best Practices by drawing on successful examples from other jurisdictions while remaining flexible enough to personalize strategies for local needs.

**3.1.2. Ongoing Oversight and Evaluation:** Establish bodies or mechanisms for monitoring reform progress, ensuring reforms continue to serve independence, effectiveness, and adaptability over time.

Adopting a multi-dimensional reform agenda grounded in independence, accountability, and flexibility courts can become stronger and more responsive, supporting the rule of law and economic development without sacrificing adaptability.

Academic analysis suggests that strengthening courts without sacrificing their procedural flexibility requires targeted reforms to both institutions and rules. These reforms must enhance independence, efficiency, and technological modernization, while safeguarding the judge’s and parties’ ability to adapt procedures to case-specific needs. The following tables synthesize findings from EU Member State policy experience and theoretical models of procedural flexibility.

Reform Theme	Typical Measures (Examples)	Preserves Flexibility?
Digitalization	E-filing, digital records, developing e-justice platforms, remote hearings	Yes, allows varied access/participation
Human Resource Modernization	Specialized judicial training, flexible work arrangements, merit-based appointments	Yes, improves capacity for adaptation
Reduction of Administrative Burden	Simplification of procedures, one-stop shop for filings, streamlined permitting and licensing	Yes, less rigid procedures
Quality Assurance and Evaluation	Performance benchmarks, regular review of processes, user satisfaction feedback	Yes, maintains room for local adjustment
Independence Safeguards	Transparent appointment process, tenure rules, protections against political interference	Yes, but may reduce scope for executive adjustment

Stakeholder Engagement	Public consultations on reforms, judicial feedback loops, adaptive law drafting policies	Yes, supports context-sensitive reform
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**Table 1: Common Judicial Policy Reforms in EU National Recovery Plans**

Mode of Control	Description	Examples	Policy Relevance
No Flexibility	No deviation from default rules by any actor	Rules on subject matter jurisdiction	Retains certainty/standardization
Judge Control	Judge may alter procedure, parties may not	Changing deadlines, case management orders	Ensures responsiveness to case needs
Joint Judge/Party	Judge and parties together can alter default rules	Consent to non-jury trials, case scheduling	Shared flexibility
Party Agreement	Parties can mutually agree to alter certain procedures, sometimes without judge input	Agreeing to limit discovery, waiving jury	Maximizes adaptability
Unilateral Party	One party can change procedure without agreement	Removal to federal court (in US context)	Ensures access to certain protections

**Table 2: Spectrum of Procedural Flexibility Who Can Modify Court Procedures?**

### 3.2. Academic Insights

Procedural flexibility” exists on a continuum, from essential, unalterable rules (“core”) to fully negotiable processes (“non-core”) that parties (or judges) can adapt to the demands of a specific case.

Effective court reforms protect the core while explicitly identifying and expanding the areas where adaptive flexibility is desirable such as digital tools, alternative dispute resolution, or party-driven case management.

Overly rigid codification, or politicized oversight, risks reducing courts’ ability to innovate and tailor justice to changing needs.

Constant feedback and periodic review support a balance between flexibility and legal certainty.

### 4. Comparative Analysis of Judicial Systems

The following sections examine how constitutional courts function globally and the implications for Sudan’s governance and judicial independence.

#### 4.1. South Africa

After the end of apartheid (1993–1994), South Africa established a strong Constitutional Court embedded within the judiciary under the Chief Justice. It operates as an autonomous yet integral part of the judicial system.

Feature	Description
Structure	Single-headed system under the Chief Justice
Independence	Separate from lower courts
Function	Constitutional interpretation and judicial review
Key Role	Protection of citizens’ constitutional rights

**Table 3: The Status of the Constitutional Court in South Africa**

#### 4.2. Key Insights

Ensures consistency of legislation with the Constitution of 1996. Builds public trust through transparency and respect for fundamental rights. Supports administrative and financial independence, ensuring impartiality in rulings.

#### 4.3. Federal Republic of Germany

Following reunification in 1990, Germany established the Federal Constitutional Court (Bundesverfassungsgericht) as a central pillar of constitutional democracy.

Feature	Description
Structure	Unitary head system within the judiciary
Function	Oversight of constitutional conformity of federal laws

Role	Checks and balances between federal institutions
Outcome	Strengthened unity between former East and West Germany

**Table 4: The Status of the Constitutional Court in Germany**

#### 4.4. Lessons for Sudan

A centralized but independent constitutional body ensures coherent national jurisprudence. Judicial interpretation stabilizes federal integration and maintains harmony between legislative and executive branches.

#### 4.5. Austria

Austria presents a dual-headed system, with separate heads for the ordinary judiciary and the constitutional judiciary.

Feature	Judiciary	Constitutional Court
Leadership	Chief Justice of the Supreme Court	President of the Constitutional Court
Subordination	Ministry of Justice	Parliament (autonomous unit)
Function	Civil and criminal adjudication	Constitutional oversight
System Type	Federal, democratic dual-chamber parliament	Judicial independence from executive authority

**Table 5: The Status of the Constitutional Court in Austria**

#### 4.6. Implications

The dual system enhances separation of powers and judicial independence. The Constitutional Court's role within Parliament allows effective monitoring of legislative constitutionality while maintaining functional autonomy. Such structural dualism may suit Sudan's plural legal heritage, balancing civil courts with customary adjudication systems.

#### 4.7. Italy

Italy's Constitutional Court (Corte Costituzionale) functions as an independent body entirely separate from the three powers of state. Its twin-headed system parallels Austria's, ensuring comprehensive oversight and separation of powers.

Feature	Description
Structure	Two-headed judiciary model
Independence	Financial and administrative autonomy
Judicial Selection	Independent appointment process
Function	Review laws for constitutional consistency and protect democracy

**Table 6: The Status of the Constitutional Court in Italy**

Italy's model demonstrates that constitutional courts can simultaneously guard against political excessive exercises and preserve democratic balance, offering Sudan a model for institutional integrity during reform.

#### 4.8. Kingdom of Saudi Arabia and Gulf States

Judicial systems across the Gulf Cooperation Council (GCC), including Saudi Arabia, Kuwait, and Bahrain, are deeply rooted in Islamic Sharia principles. Their constitutional oversight mechanisms are either integrated into the judiciary or operate under religiously guided frameworks.

State	Judicial Foundation	Constitutional Mechanism	Distinct Feature
Saudi Arabia	Sharia-centric	Supreme and appellate courts apply Sharia	Unified religious-legal model
Kuwait & Bahrain	Mixed Sharia and statutory law	Specialized Constitutional Courts	Partial independence under judicial supervision
UAE & Qatar	Hybrid Sharia and civil systems	Federal Supreme Court	Modern procedural law integration

**Table 7: The Status of the Constitutional Court in Saudi Arabia**

#### 4.9. Arab Republic of Egypt

Egypt's Supreme Constitutional Court operates under a semi-unitary structure within the judiciary but is influenced by executive administrative oversight via the Minister of Justice (Al-Tayeb 2025). However, ministerial oversight is limited to logistical matters like budgeting and administration.

#### 5. Contextual Challenges

Egypt faces significant geopolitical and security threats, owing to its strategic position between Africa and Asia and regional

instabilities.

These challenges shaped a security-prioritized judiciary that balances national safety and constitutional rights.

#### 5.1. United States of America

The Supreme Court of the United States exemplifies a single-head model and serves as the apex judicial authority with final say on constitutional interpretation.

Attribute	Description
Headship	Chief Justice of the Supreme Court
Appointment	Presidential nomination and Senate confirmation
Tenure	Lifetime, ensuring judicial independence
Role	Oversight of federal law and constitutional disputes

**Table 8: The Status of the Judicial Authority in United States**

#### 6. Social and Political Impacts

Landmark rulings (e.g., civil rights, abortion) reflect the Court's influence on social transformation.

Despite criticism of politicization, lifetime tenure shields judges from executive or legislative pressure. The Court mediates between federal diversity and national unity, paralleling Sudan's potential federal reconstruction challenges.

Country	Judiciary Model	Independence	Key Benefit	Lesson for Sudan
South Africa	Single-head	High	Equality & public trust	Cohesion through central judicial authority
Germany	Single-head federal	High	Legal harmony	Unified oversight in diversity
Austria	Dual-head	Very high	Pluralist judicial independence	Balances federal pluralism
Egypt	Semi-unitary	Moderate	Security balance	Integrates safety and rights
Italy	Dual-head independent	Very high	Stability & balance	Institutional separation
GCC States	Sharia-based mixed	Varied	Cultural legitimacy	Integration of religion & modern law
USA	Single-head Supreme Court	Maximum	Final constitutional authority	Ensures strong central oversight

**Table 9: Comparative Summary Table**

#### 7. Foundations of Judicial Reform in Sudan

After the demise of the National Salvation Front in 2019, the Sudanese constitutional court was dissolved. The 2005 constitution was abandoned. There were movements to revive the concept and reform the judicial system in the country. We are proposing some points which start by the local context as:

Legal reform in Sudan must be rooted in the Sudanese social fabric, respecting societal norms, religious values, and traditional dispute-resolution mechanisms. A country with high ratio of illiteracy, 550 tribes, different cultures. A country that is contains nations which can only be united by an agreed upon law.

Avoiding Blind Imitation by copying Western, Eastern European, or global legislative models is ineffective if disconnected from social realities. Genuine legitimacy arises from popular acceptance

and cultural compatibility.

Integration of Modernity and Tradition, which has conflicts since independence that resulted in many civil wars and pains to the Sudanese population.

A functional legal framework should reconcile modern state law with customary and religious law, balancing formal justice with communal reconciliation methods such as judiya and tribal mediation.

#### 8. Application to Sudan

A balanced relationship between security imperatives and rights protection is vital for Sudan's post-conflict governance. Independence must coexist with national stability measures,

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especially during transitional justice reforms.

- Mechanisms of Independence of the Constitutional Court
- Independent budget allocation free from executive influence.
- Administrative self-management ensuring operational autonomy.
- Transparent appointment of judges through an impartial process.
- Legal protections against political interference.
- Public dissemination of decisions to promote accountability.

### 8.1. Lessons for Sudan

Religious law as constitutional foundation aligns with Sudan's Islamic identity.

Civil-Sharia harmony prevents legal contradictions.

Encourages training of judges in both civil and Sharia law for interpretive depth.

The law should modernize within Islamic contexts, Gulf states integrate digital case management, transparency initiatives, and international judicial cooperation, all relevant to future Sudanese judicial modernization policies.

1. Institutional Design: A hybrid structure semi-independent Constitutional Court under judicial presidency would balance integration and autonomy.
2. The Cultural Integration should be according to following rules: Embedding customary and Islamic jurisprudence ensures grassroots legitimacy and public compliance.
3. Financial and Administrative Independence: Adopting Italy's and South Africa's funding models could secure functional autonomy from political interference.
4. Capacity Building: Judicial training programs inspired by the GCC and German models would raise the competence of

Sudanese judges in constitutional interpretation.

5. Transparency and Accountability: Publishing judgments and enabling appeal mechanisms increase citizen trust in the judiciary.

### 9. Conclusions

Reforming Sudan's judiciary is a national project, not merely a technical endeavor. It demands reconciling tradition with modernity and sovereignty with universality. By learning selectively from international experiences, while remaining faithful to Sudan's social ethos the country can build a legitimate, independent, and trusted system of justice. Ultimately, a Sudanese Constitutional Court must embody the will of its people, drawing from both customary wisdom and constitutional rationality, to secure justice, stability, and sustainable national unity.

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