

RoL Summary and Comments on the suit filed by Arab Groups of Manj County of Upper Nile to the Constitutional Court on 5th December

13/12/2010

Background: On 6th December RoL reported that at least one suit is being filed to the Constitutional Court (CC), by the well known Lawyer Ghazi Suliman, a former SPLM MP, on behalf of some Arab groups residing in "Manj" County of Upper Nile State, whom claim that that they were denied the right to register despite the fact they are residents of Southern Sudan since the year 1857 without interruption, which makes them eligible to register under articles 25 & 28 of the Southern Sudan referendum Act (SSRA) 2009.

Update: On 13th December RoL contacted the lawyer representing the plaintiffs whom confirmed that a three judge circuit of the Constitutional Court considered the case and found it admissible.

Accordingly the Court addressed the SSRC (defendant) demanding it to provide a written reply to the allegations of the plaintiffs.

Summary of the Suit

Plaintiffs: Nazir (Chief) Al-Sheikh Albur Al-Sheikh Alnor, Nazir Omoum (Chief General) of the Arab groups of Manj County, Upper Nile, Southern Sudan, and others.

Defendants:

- 1- Southern Sudan Referendum Commission (SSRC), under article 14 (2-b) of the SSRA.
- 2- The High Committee For the referendum in Upper Nile, under article 22(6) of the SSRA.
- 3- The Chairpersons of the referendum Sub-Committees of Manj County in Upper Nile, Southern Sudan, under article 23(6) of the SSRA.

The application divides the reasoning of the suit into two sections: Form and Substance:

In Form

The Plaintiffs request the CC to declare admissible this suit and rule on its substance in accordance with its powers under article 122(d) of the Interim National Constitution of 2005 (INC) and article 15 (1-d) of the Constitutional Court Act 2005, due to the following reasons:

- 1- The plaintiffs are groups and individuals residing permanently in Manj County of northern Upper Nile State since the year 1857, their villages are permanent and they have not departed from the area even during war times.
- 2- The plaintiffs are individuals whom possess the required conditions of registration and voter eligibility that allows them to participate in the Southern Sudan self-determination referendum as detailed in articles 25 and 28 of the SSRA.
- 3- The plaintiffs applied individually to register to the concerned committees in Manj County, Upper Nile State. They were rebuffed and verbally notified that

as Arabs they are not eligible to register in order to vote in the referendum on 9th January 2011.

- 4- The plaintiffs applied to the Chairman of the SSRC to add them to the referendum register in accordance with his authorities under article 29 (b) of the SSRA. The Chairman did not comply.

Substance of the Suit:

- 1- The actions of the defendants violated the right of the plaintiffs in registering to vote in the Southern Sudan referendum under article 222 of the INC.
- 2- The actions of the defendants violated the right of the plaintiffs under the Bill of Rights in relation to the right to vote.
- 3- The plaintiffs filed this suit under article 19(4) and (5) of the Constitutional Court Act 2005, and it has to be mentioned that the contested decision was delivered verbally.

Plaintiffs Request

The Plaintiffs requested the CC to annul the contested decision, order the registration of the plaintiffs, inform and order the Chairman of the SSRC to register them.

An additional request: the CC to order the extension of the registration period in Manj County beyond the 8th December 2010 until this suit is ruled on.

RoL Comment

The SSRA 2009 stipulates certain procedures for objecting to the details of an individual published in the referendum register for those who are already granted the right to register.

However, the SSRA is silent on the objections and appeals process in cases where individuals or groups are denied from registering, thus, leaving two legal venues to those allegedly aggrieved by the referendum commission decision to bar them from registering:-

- 1- Normal legal venue, in which the aggrieved can appeal to the competent court of first instance. However, this can only be utilized after exhausting the administrative appeals process set in article 17 of the SSRC voter registration regulation. This venue seems to be supported by question number 20 of a Q&A guide posted on the SSRC website.
- 2- Approach the Constitutional Court due to the urgency of the matter, as both the registration period and the period of time before voting date on the 9th January are short. Furthermore, the right to participate in the referendum is a constitutional right.

Finally, if the Constitutional Court decides in favor of the plaintiffs and order extending the registration period in Manj County, this might open the door for a flood of suits demanding the same in other places. It will also undermine the current timeline as issued by the SSRC.

**Drafted by RoL Officers,
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