

Existing legal frame works for Constitution Making Process in South Sudan. A State of Progress

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Accepted: 2/10/2024

Published: 8/10/2024

Abstract: The South Sudanese constitution-making process is guided by several legislative frameworks and texts, including the 2011 Transitional Constitution, the 2018 Updated Agreement for the Settlement of the South Sudanese Conflict (R-ARCSS), the National Dialogue, and the National Constitutional Review Commission. These frameworks aim to create a more inclusive governance structure, address historical grievances, and promote unity within the country, unlike other countries where elite interests often drive constitution-making.

Keywords: Existing legal frame works, Constitution, South Sudan.

Publish by IJAH 2024.

Presentation Objective

- ▶ This paper provides an overview of the legal framework and state of progress of the constitutional process in South Sudan, including a review of the constitutional parameters of the R-ARCSS, the existing legal and policy frameworks for women's inclusion, and the recent constitutional developments

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- ▶ South Sudan Women's Charter
- ▶ Recent Constitutional Developments in the Country

What is constitution making?

- Constitution making is the act of reforming the body of fundamental principles that govern a state. It can occur in the form of modest amendments or as part of a larger political transition or effort to reform the structure and functioning of the state.

- It often follows a major event, such as armed conflict, unrest, economic crisis, or political transition (for example, from authoritarianism to democracy). Constitution making is often, therefore, a critical entry point for shaping the future of a country, the exercise of power, and the social compact among citizens and between citizens and their state.
- As such, it usually highly contested, but offers groups an opportunity to get priorities on the political agenda and to cement principles that can provide a foundation for. Every constitution-making process is unique.
- There is no exact formula and variations are generally tied to the local context or ongoing political climate. As such, there is no clear blueprint that will fit every process, but there are some common practices that have emerged over time.

Transitional Constitution of South Sudan, 2011 as amended

- ▶ Guarantees women to participate equally with men in public life.
- ▶ **Article 16** of the Transitional Constitution of the Republic of South Sudan (TCRSS) stipulates the 'Rights of Women.'
- ▶ **Article 16(4)(a)** provides for 35% affirmative action intended to enhance women's participation and representation in public life. The country has also acceded to international conventions such as the United Nations Security Council
- ▶ A 35 per cent quota is mandated in each level of legislative and executive organs.
- ▶ These efforts are part of a broader commitment to constitutionalism, democracy, and rule of law that recognizes the vital role of women in these processes.

National Gender Policy, 2013

- The overall objective of the National Gender Policy (NGP) is to 'serve as a framework and provide guidelines for mainstreaming principles of gender equality and the empowerment) into national development process' (MGCSW, 2013)
- Gender and governance, features among the eight priority focus areas targeted by the policy.

R-ARCSS, 2018

- ▶ **Chapter Six of R-ARCSS** allows South Sudan people to address the root causes of the conflict, protect women's rights and promote gender equality
- ▶ R-ARCSS Article 6.6 and Article 6.14, which call for women's inclusion in the constitution review process and participation in the consultations on the reconstitution of the National Constitutional Review Commission. South Sudan Gender policy also call for women participation
- ▶ The process offers a golden opportunity for South Sudanese women to participate, in a bid safeguard their rights in the supreme law of the land..
- ▶ Article 6.6 – Requires consultation with women groups before the reconstitution of the National Constitution Review Commission (NCRC)
- ▶ Article 6.14 – Requires the reconstituted NCRC to include representatives from women's groups and Article 6.2.4 - calls for full participation of women like other stakeholders
- ▶ The R-ARCSS offers a roadmap to guide women's engagement and participation.

The Constitution Making Process Act, 2022

- ▶ The Constitution Making Process Act, 2022 of South Sudan consists of four chapters:
- ▶ Preliminary provisions, Mechanisms of the Permanent Constitution Making Process, Stages of the Constitution Making Process, and Financial Provisions.
- ▶ The Act aims to establish a legal framework for the process of making a permanent constitution in South Sudan. It outlines the design, procedures, form, powers, and functions of the mechanisms

involved in the Permanent Constitution making process

- ▶ The Constitution Making Process provides an important entry point to address some of the critical issues of concern to women and girls in South Sudan

SOUTH SUDAN WOMEN'S CHARTER

- ▶ This South Sudan Women's
- ▶ Charter ("the Charter") has been developed to articulate a common set of priorities and demands
- ▶ of the women and girls of South Sudan to be addressed in the Permanent Constitution and to
- ▶ Facilitate their active participation in the Constitution Making Process. The Charter will serve
- ▶ all women and girls in South Sudan as a tool to advocate for the Permanent Constitution to
- ▶ address their common priorities and demands and for the implementation of legal, policy
- ▶ and/or programmatic interventions to address these priorities and demands under the twelve
- ▶ (12) Themes of the Charter.

Thematic areas of the women's charter

1. Women's Participation in Politics and Public Life
2. Education and Training
3. Marriage and Family
4. Property Ownership and Inheritance
5. Health and Reproductive Rights
6. Economic and Social Welfare Rights
7. Equality and Freedom from Discrimination
8. Special Protection of Elderly and Persons with Disabilities
9. Protection against Gender-Based Violence
10. Access to Justice
11. Environment, Natural Resources, and Climate Security
12. Public Finance Management Reforms

Recent Constitutional Developments

- ▶ Reconstitution of the National Constitutional Review Commission(NCRC)
 - ▶ Reconstitution of the National Election Commission(NEC)
 - ▶ Reconstitution of the Political Parties Council(PPC)
 - ▶ In accordance with Article 1.20.6 of the R-ARCSS, which calls for the amendment of the National Elections Act, 2012 to conform to the provisions of the Permanent Constitution, The Act has indeed been amended as the National Elections (Amendment) Act, 2023, (Amendment) Act, 2023
- Political Parties Amendment Act, 2023

Powers and Functions of the NCRC

- ▶ The powers and functions of the NCRC are spelt out in Article 12 of the "Constitution Making Process Act 2022". These can be summarized as follows:
- ▶ Internal matters of the commission (Sub-sections 1, 2 and 12);
- ▶ Recruiting members of the Constitution Drafting Committee (sub-section 3);
- ▶ Facilitation and conduct of civic education and public consultation (sub-sections 4, 5, 6, 7, 10 and 11);
- ▶ Validating and publishing the first draft constitutional text (sub-sections 8 and 9).

APPLICATION FOR FULL REGISTRATION

No association of persons or organizations shall operate or function as a political party unless it has been registered in accordance with the provisions of this Act

An application for full registration of political party shall be in writing and shall be signed by an authorized official of the political party

A provisionally registered political party shall be qualified to be fully registered if:

1. It has recruited as members not less than five hundred eligible voters from at least two-thirds of the states and administrative areas
2. The Members referred to in paragraph (a) reflect regional and ethnic diversity and gender balance representation
3. The composition of its governing body reflects regional and ethnic diversity and gender balance
4. At least 35% of the members of the governing body are women
5. It has demonstrated that members of its governing body meet the requirements of the constitution

Membership of the Political Parties Council

- ▶ The Council shall be comprised of a full-time Chairperson and Deputy Chairperson and seven (7) part-time members who shall be constituted by the Executive of the RTGoNU
- ▶ The status of the chairperson and the deputy chairperson shall be similar to that of a national minister and deputy minister respectively
- ▶ The Council shall comprise of at least thirty- five percent women.
- ▶ All members of the Council shall be resident in South Sudan
- ▶ Members of the Council shall be persons known for their integrity, honesty, objectivity, experience and shall have no partisan affiliations
- ▶ The Chairperson, Deputy Chairperson and members of the Council shall be approved by resolution adopted by a two third majority of the members of the Transitional National Legislative Assembly, and following approval shall be appointed by the President

Purpose of the Elections Act 2012

- ▶ The Statute establishes a legal framework for conducting democratic, peaceful, free and fair elections and referenda in South Sudan.

Provisions for women's participation and representation in the National Election Act 2012

- ▶ The National Elections Act secures women's right to equal participation in political and public life in line with Articles 7 of CEDAW, and 9 of the Maputo Protocol. Section 5(b) of the Act guarantees to every citizen the right to participate in government, stand for office, and to freely vote (as long as the person is an eligible voter as defined under Section 33).
- ▶ Section 60 (2) (b) provides that the National Legislative Assembly shall be composed of, inter alia, 30 percent of women members elected based on proportionate representation at the national level from closed party lists.
- ▶ Section 60 (3) states that out of the four representatives from each State in the Council of States elected by members of the State Legislative Assembly, one representative must be a woman.
- ▶ Section 61 (b) provides that the State Legislative Assembly shall be composed of, inter alia, 30 percent of elected women members, based on proportional representation at the State level from closed women lists.
- ▶ Section 5(b) of the Act, however, provides for the right to participate in government, stand for office, and freely cast a ballot without 'political discrimination' or 'unreasonable restriction.'

WOMEN REPRESENTATION IN THE NCRC, NEC & PPC

INSTITUTION	MEN	WOMEN	% OF WOMEN
NCRC	39	19	32%
NEC	7	2	22%
PPC	5	4	44%

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LINKS

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