



THE SUDD INSTITUTE

RESEARCH FOR A PEACEFUL, JUST AND PROSPEROUS SOUTH SUDAN

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Weekly Review

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Democratic Elections in South Sudan

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Introduction

South Sudan is going through a precarious transition, marked by political deadlock in Juba (i.e., Chapter 2 of the agreement hasn't been implemented) and significant rise in localized violence (i.e., communally framed conflicts in Warrap, Jonglei, Western Equatoria, and Unity). Although fraught with numerous implementation issues, the Revitalized Agreement for the Resolution of Conflict (RARCSS) has been credited with bringing relative stability to South Sudan since 2018¹. The Agreement mandated the creation of a Unity Government, setting the stage for the Transitional Period, which is due to end in 2023. The moment of truth for this peace agreement is the holding of elections proscribed for the end of the Transitional Period. Although the elections mandated by the peace agreement are looming, very little has been done to prepare as other key phases of the agreement remain unimplemented.

The term of the Revitalized Government of National Unity (RTGoNU) is thirty-six months². One of the RTGoNU's functions is to hold general elections sixty days before the end of the Transitional Period, the results of which are meant to help the country install a democratically elected government. This means that without further extending the agreement as was done with the pre-transitional period, South Sudan ought to conduct elections as planned. With the timeline for preparations narrowing, debate has surfaced, with some looking for a delay to elections and others believing the elections need to happen as soon as possible. While this debate has centered on the merits of conducting these elections, little seems to be emphasized or understood about the process which should produce credible and legitimate outcomes. The debate, which appears uncoordinated, though highly desired, has also ignored other stakeholders, including the citizenry, civil society, and regional and international partners.

¹ <https://www.tandfonline.com/doi/abs/10.1080/10246029.2020.1813784>

² Section 1.1.4 of the RARCSS states: The term and mandate of the RTGoNU shall be for the duration of the Transitional Period, until such time that elections are held, except as provided for in this Agreement. Section 1.1.2. explicitly sets the term of the Transitional Period to 36 months.

This week's Review analyzes South Sudan's readiness to conduct elections in under a year and reflects on why they are important. We start out with the discussion of the election's fundamentals, then move to why elections are imperative in a post-conflict context. We then end our Review with policy perspectives that have the potential of improving/strengthening the process, preserving its integrity, and delivering credible and legitimate results, regardless of whether the elections will be conducted on time. Our stance is that the process, credibility, and associated legitimacy the elections need to produce are the most important elements rather than precise timing.

The Fundamentals

Fundamental to credible elections include relative security, census, laws (including the constitution and electoral law), and human settlement (i.e., externally displaced people are unlikely to be counted and to participate in an election). Opposition political figures are already pointing to the lack of a census and the great numbers of displaced people, likely to challenge the credibility to hold elections. Dr. Lam Akol, for example, refers to the census, security, and electoral laws as prerequisites of conducting free and fair elections³. So far, many of these are not in place.

Although the ceasefire has been holding between the main belligerents (i.e., IG and IO), meaning we have not seen large scale fighting since the signing of the agreement in 2018, subnational conflict remains at a worrying level, particularly in Jonglei, Warrap, Western Equatoria, and Unity states, potentially rendering constituencies insecure to participate in elections. In this respect, muting and managing this violence at the grassroots is fundamental to conducting credible elections. Related is the concern that the selection of candidates presents a dangerous situation that could draw local insecurity into national level political competition, making the elections a moment of real risk of sending South Sudan back to war. For this reason, some propose demilitarizing the civilian settings ahead of elections.

A second fundamental may be the population and housing census. To date the approach to elections in South Sudan would require census results for determining constituencies across the country and assist in drawing up political representations both locally and nationally. South Sudan's last census was conducted in 2008⁴. Being 14 years ago, results from this are obviously dated, and particularly so given that the 2013 conflict resulted in major displacement whose consequences remain in many instances. A hybrid population estimate⁵ is ongoing and is the proposed remedy in-lieu of a full census. Though scientifically rigorous, the method does not account for the externally displaced, a basis for potential disagreement among the parties. Some of the international partners urge that the displaced population be not disenfranchised. Also, given the public discourse has only identified the lack of a census, an estimate of this kind will likely not as yet be seen by average South Sudanese as sufficient. A traditional census could take over two years based

³ Dr. Lam Akol. 2022. When Will the First Elections in South Sudan be Held? The article is found here: <https://www.sudanspost.com/when-will-the-first-elections-in-south-sudan-be-held/>

⁴ <https://microdata.worldbank.org/index.php/catalog/1631>

⁵ https://www.efgs.info/wp-content/uploads/2019/11/4a3_HeatherChamberlain.pdf

on previous experience, obviously impractical for elections that are only a year away. Even with this truncated count just underway, there is a strong chance that the results will not be ready in time to inform the conduct of elections.

Third, and most important, elections can only be conducted after necessary laws, regulations and procedures are promulgated. While the Constitution defines the positions to be elected, the National Elections Act sets out the rules by which elections for those positions are to be conducted. The RARCSS provides for the adoption of a new Constitution, followed by an amendment to the National Elections Act to conform with the new Constitution.⁶ The RARCSS also provides for reform of the Political Parties Act to ensure it complies with international best practices for the free and democratic registration of political parties.⁷ Elections are to be held only after these (reformed) laws are in place. Under the RARCSS, this was supposed to have taken place by now; bills to reform the Political Parties Act and to establish the constitution-making process are yet to be considered by the transitional parliament.⁸

In developing and enacting this legal framework, international law provides guidance as to the standards required to ensure free and fair elections. At the continental level, the African Charter on Human and Peoples' Rights and African Charter on Democracy, Elections and Governance⁹ requires states to recognize the rights of universal suffrage, of all citizens to participate freely in elections without discrimination, and of freedom of information, association, and assembly. Such rights are similarly recognized at the international level in several UN treaties, including the International Covenant on Civil and Political Rights (ICCPR) and Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).¹⁰ Elections which do not meet these basic international legal requirements are unlikely to be perceived as credible.

Lastly, the conflict displaced millions of the South Sudanese, both internally and externally. Millions reside outside South Sudan as refugees of the recent conflict, with many others still outside the country because of earlier conflicts. With the return of refugees most recently displaced unlikely in the next two years, it is unclear how so many South Sudanese can be included, with most parties convinced that they ought to be, otherwise the credibility of any outcome will be enveloped in doubt.

Why Elections

⁶ Chapter VI of the RARCSS sets out the constitution-making process.

⁷ Article 1.20.1.

⁸ Article 6.4 of the RARCSS provides that “[t]he permanent constitution shall be completed not later than twenty-four months following the establishment of the Transitional Period and shall be in place to guide the elections toward the end of the Transition.”

⁹ South Sudan is a party to both African treaties. South Sudan is also a signatory to (though is yet to ratify) the Maputo Protocol, which provides for affirmative action to ensure the participation of women in elections.

¹⁰ South Sudan is a party to CEDAW. Although South Sudan is yet to formally ratify the ICCPR, in June 2019 the South Sudan Transitional National Legislative Assembly voted unanimously to do so.

Generally, elections are intended to confer legitimacy on those elected as representatives of the people and offer a mandate for action to a government. In a transitional post-conflict context, elections often assume additional burdens. These include formally marking the end of the transition from war to peace and replacing violence with political competition as a means of contesting and acquiring power. Elections carried out without the necessary security, legal and procedural measures in place may, however, undermine these aims and can fuel violent conflicts, even a return to war.¹¹ As a result, avoiding violence during elections demands fostering a participatory process, giving enough resources and time to prepare, and opening political space for related political debates. And yet these are not guarantees of a smooth process or credible result. Elections bring many risks as they tend to produce as many losers as winners. In South Sudan, communities are accustomed to negotiating positions in government and political organizations, with inclusion asserted through community pressure and deliberation, often with threats of violence, rather than ballot. Communities have strong and entrenched conceptions of equity when it comes to representation, and they are more than willing to hamstring wider efforts to form a government to assert their representation preferences. With the electoral process and design as yet resolved in a volatile environment, there is a heightened imperative for sufficient rigor in electoral preparations.

Conclusions

Fostering an acceptable electoral process will require the development of basic laws, a feasible format, and widely held public inclusion and trust. To date public debate has been insufficient and insufficiently informed to undergird a credible outcome. The first step to elections, therefore, ought to be the fostering of public discourse that opens up political space and provides the foundation of laws and acceptable procedures. To achieve this, two main interventions are proposed. The first, monthly, possibly more frequent, public debates. In these debates, the stakeholders should discuss outstanding issues cited above and provide the vehicle to compel leaders to resolve an agreed path that speaks to the concerns and needs of the wider public.

Finally, the South Sudanese citizens have for long been neglected in the peace processes and stabilization agenda. All too often the process has been treated as technical rather than a deeply political one. Being the major player, the public presents a great deal of importance in attaining and sustaining peace and stability in South Sudan. Therefore, a second intervention concerns engaging with the citizens via public opinion polling, seeking their perspectives on the elections process. The central objective of the polling is to help frame and inform public views on elections and related stabilization processes. For example, it would be imperative to understand what the public thinks of the timing of elections and how the process is being handled. Insights from the polling would inform the process. Polling sets the stage for credible elections and provides a basis from which to move discussions on critical issues and policy positions. In the debate over the timing of elections, several prominent figures are already calling for delays and intimating possible boycotts should their desire not be met. Thus, polling offers the possibility to provide a more

¹¹ <https://www.sipri.org/commentary/blog/2014/voting-under-gun-elections-and-conflict-around-world>

representative basis for the key debates on timing and form, with the aim of mitigating some of the most egregious tactics the politicians would adopt to secure a short-term political survival.

Once the groundwork is set, the key foundations for a credible election are more likely to take shape with less dangerous contention. With legislation, procedure, and timing resolved in an environment with this kind of public discourse, an accepted and credible outcome is likely to be produced, as compared to one where electoral process is seen as spurious by enough of the public, consequently undermining the main purpose of elections as key to safely transitioning from conflict to peace.

About Sudd Institute

The Sudd Institute is an independent research organization that conducts and facilitates policy relevant research and training to inform public policy and practice, to create opportunities for discussion and debate, and to improve analytical capacity in South Sudan. The Sudd Institute's intention is to significantly improve the quality, impact, and accountability of local, national, and international policy- and decision-making in South Sudan to promote a more peaceful, just, and prosperous society.

Authors' Biography

Augustino Ting Mayai is the Acting Managing Director of the Sudd Institute. He holds a PhD in Sociology, with concentrations on demography and development from the University of Wisconsin-Madison. He currently studies how state effectiveness affects child health outcomes in South Sudan and Ethiopia. Dr. Mayai has written extensively on South Sudan's current affairs.

Matthew LeRiche is an Assistant Professor of Global Studies, Director War and Peace Studies, Director Global Leadership Center, Ohio University. He is a regular political risk analyst for industry and government. Author of various articles and chapters on South Sudan as well as the book *South Sudan: From Revolution to Independence* (Oxford University Press). Matthew holds a Ph.D. from King's College London.

William Underwood is a doctoral (PhD) candidate in international law at Stockholm University and a visiting PhD researcher at the Sudd Institute. His thesis examines whether and how international legal norms shape the process and content of governmental and constitutional change after armed conflict. He researches and consults more broadly on the legal aspects of democratic governance, peace processes and post-conflict transitions, and has worked for International IDEA and the UN Mediation Support Unit. A former Australian diplomat, he is admitted as a lawyer in Australia and holds master's degrees in international law from the University of Melbourne, and in peace and conflict studies from Uppsala University.