



THE SUDD INSTITUTE

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Weekly Review

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Amending the South Sudan's Revitalized Peace Agreement: The Implications of the Extension and its Roadmap

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Summary

On 4 August 2022, the Parties to the Revitalized Peace Agreement agreed to extend the Transitional Period for 24 months. The Parties, led by the Council of Ministers, acted under article 8.4 of the Agreement which provides a three-stage procedure for amending the Agreement. The three stages include: (1) approval by two-thirds of the Council of Ministers, (2) consent by two-thirds of the members of the Revitalized Joint Monitoring and Evaluation Commission, and (3) ratification by the Transitional National Legislature. This Weekly Review discusses the implications of this extension and its proposed Roadmap. We argue that the government's extension meets the first stage but fails short in the case of the last two for a valid amendment to be attained. We, however, contend that the Revitalized Joint Monitoring and Evaluation Commission's (RJMEC) consent is only procedural, so skipping it does not render the changes invalid provided the parliament finally ratifies them.

I. Introduction

On 4 August 2022, the Revitalized Transitional Government of National Unity (RTGoNU) consummated, in a colorful Freedom Hall event, the Council of Ministers' resolution proposing to extend the Revitalized Peace Agreement—now called the 'Roadmap for Peace.' While the extension was reportedly consented to by the Parties to the Revitalized Peace Agreement, the public exuded mixed reactions.

While the debate on merits and demerits of extension is of importance, this Weekly Review examines the procedure for amending the Agreement. Our aim is to demonstrate that any changes to the Agreement should go beyond a mere consensus among signatories, guarantors, and other supporting partners. In this context, a three-stage process is required. We discuss this process by examining article 8.4 of the Agreement, which sets out a three-stage amendment procedure.

The rest of the Review proceeds as follows. Section II discusses the amendment procedure. Section III examines the implications of the three-stage amendment procedure, and the last section concludes with policy recommendations.

II. The three-stage process of amending the Agreement

The Agreement grants the Parties the right to amend the Agreement, including an implied right to extend the transitional period. Changes should, however, be effected under article 8.4 of the Agreement, which states:¹

this Agreement *may be amended* by the Parties, with at least two-thirds of the members of the [Revitalised Transitional Government of National Unity], *and* at least two-thirds of the voting members of the Revitalised Joint Monitoring and Evaluation Commission consenting to the amendment, followed by the *ratification by the Transitional National Legislature, according to the constitutional amendment procedure* set out in the Transitional Constitution, 2011 (as amended) (italicized text, our emphasis).

The above provision reveals a three-stage amendment procedure which must be read in congruence with the Transitional Constitution, 2011 (as amended) since the Agreement was incorporated into the Constitution as required by article 8.2. The next sections discuss the three-stage approval process in more detail.

1. Two-thirds approval by Council of Ministers

The Agreement empowers the Council of Ministers to *propose* amendments to it. In this Review, the extension of the transitional period is treated as an amendment. Thus, for an extension to meet the amendment threshold of article 8.4, the Council of Ministers' resolution must be passed by two-thirds of votes. A two-thirds of votes rule—also called qualified majority principle—means more than 50% of eligible members. In this case, 66.7% of votes would be required to pass an amendment. The Council of Ministers' resolution in this matter would be conveying a common position of the political parties that are signatories to the Agreement.² The 4th of August Freedom all event merely signifies the Parties' consensus on the proposed amendment while signaling the need to go through the other two steps discussed below.

2. Two-thirds approval of RJMEC members

The second phase in the amendment process involves the RJMEC. Article 8.4 requires that 'at least two-thirds of the voting members of the RJMEC *consent*'³ to the Council of Ministers' resolution affirming the Agreement's amendment. The word 'consent', it seems, suggests mere consensus among members of the RJMEC and not a substantive power that can overturn the Council of Ministers' resolution. This view is premised on two grounds. First, the RJMEC's main role is to monitor the Agreement, coordinate, and engage the parties, and guarantors in the implementation process. Second, the RJMEC comprises South Sudanese and foreign nationals for an oversight purpose only, which means it does not carry the same weight as the Council of Ministers, a sovereign outfit.

It is not clear whether the Parties intend to pass the extension to the RJMEC for its consent, stamp, or endorsement. Be that as it may, we believe that not involving RJMEC in the Agreement's amendment process does not render the impugned extension invalid. The value of involving RJMEC is merely procedural to ensure all Parties signatory to the Agreement have consented to such decision. Furthermore, it may be the wisdom of the

¹ See the Revitalized Agreement on the Resolution of Conflict in the Republic of South Sudan (2018) <<https://docs.pca-cpa.org/2016/02/South-Sudan-Peace-Agreement-September-2018.pdf>> (accessed 6 August 2022).

² The Transitional Government of National Unity is comprised of Incumbent Transitional Government of National Unity (comprising various political groups including the mainstream faction of the Sudan People's Liberation Movement-In Government (SPLM-IG) SPLM-In Opposition, South Sudan Opposition Alliance (SSOA), Sudan People's Liberation Movement Former Detainees (SPLM-FDs) and Other Political Parties (OPP).

³ Article 8.4 of the Revitalised Peace Agreement.

drafters to involve the R-JMEC in the amendment process to protect the Agreement from unilateral actions by the Parties.

3. Two-thirds approval by the National Legislature

The last phase in effecting changes to the Agreement is the ratification by the Transitional National Legislature. The relevant text in article 8.4 requiring parliament to approve changes to the Agreement states that:

changes to the Agreement must be ratified by the Transitional National Legislature, in accordance with the constitutional amendment procedure set out in the Transitional Constitution, 2011 (as amended).

This provision is indeed in tune with the Constitution which confers upon the parliament the duty to pass all constitutional amendments. The Transitional Constitution requires both chambers of the national legislature (Transitional National Legislative Assembly and the Council of States) to sit separately when considering a constitutional amendment.⁴ This means the Roadmap would have to be passed by two-thirds of both chambers of national legislature.

Having discussed the Agreement's amendment procedure above, we now consider the implications of the Roadmap as put forward by the Parties:

- What are the implications of the Roadmap being adopted by the parties as the final amendment to the Agreement?
- What would be the implications if the parliament does not ratify the amendment to the Agreement?

III. The implications of the three-stage procedure on the extension

There are two critical implications for the three-stage amendment procedure discussed above.

1. Any changes to the Agreement amount to a constitutional amendment

The incorporation of the Agreement into the Transitional Constitution effectively confers a *legal-political* nature on it. More importantly, changes to the Agreement would have to be passed by the Transitional National Legislature as a constitutional amendment. In so doing, the members of parliament would be entitled—as they are in any constitutional amendment—to reject or approve changes requested by the executive. This step is crucial if the extension is to be valid in accordance with article 8.4.

Given the political nature of the Agreement and the governance structures in South Sudan, it is highly unlikely that the parliament will reject it. Nonetheless, the Parties should not deem the Council of Ministers' resolution as being final on the extension of the Agreement. Another implication to note is that, once the Roadmap is treated as a constitutional amendment, it ceases to be a sole responsibility of the Parties, the guarantors, and partners. The members of parliament, before voting on the proposed amendment, would have to consult with the citizens.

⁴ Article 199 of the Transitional Constitution of the Republic of South Sudan, 2011 (as amended).

2. The amendment of the Agreement should not displace other constitutional frameworks

The Agreement is part of a constitutional culture which the proposed amendment should be in congruence with. For instance, the extension of the Agreement will inevitably affect reforms and institutional strengthening, including priorities of the government already set out in the Constitution. It is, therefore, imperative that the other constitutional duties are not deprioritized by the extension. Although article 8.4 does not provide substantive limitations on some of the key provisions such as governance and transitional justice, it is important that such provisions be safeguarded against unilateral actions of the Parties, including resort to courts of law when constitutionalism is threatened.

If what is generally expected does not obtain, then a resort to the court of law might be necessary.

IV. Conclusion and recommendations

We have thus far discussed the amendment process outlined under article 8.4 of the Agreement and its implications. Consequently, we put forward three key recommendations to the Parties and stakeholders for consideration:

First, whereas the RJMEC's consent may be overstepped, it is important that the Parties 'market' the extension to members of the RJMEC, including Troika to keep all of the stakeholders engaged and supportive. The involvement of RJMEC, guarantors, and other stakeholders remains key to securing continued support for the Agreement.

Second, the Parties should engage the citizens to popularize the justifications for extending the Agreement. Just like any constitutional amendment, the process should be rigorous, and both the proponents and opponents should be allowed to express their views freely. This will enhance the ownership of the Agreement and build confidence in the citizens that the extension is worthy.

Finally, there is a need to contemplate judicial avenues in the unlikely event that the amendment fails to pass in the parliament. The Supreme Court is competent to entertain disputes arising or involving constitutional interpretation.

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