



# THE SUDD INSTITUTE

RESEARCH FOR A PEACEFUL, JUST AND PROSPEROUS SOUTH SUDAN

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## *Weekly Review—Know Your Constitution*

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### **How will the ‘permanent’ constitution be adopted?**

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#### **Summary**

*This Weekly Review is part of the **know your constitution series** launched by the Sudd Institute’s constitutional law researchers. It summarizes the stages, principles, and mechanisms of constitution-making as stipulated under the Constitution-Making Process Act, 2022. The Review aims to educate South Sudanese public, policymakers, regional and international actors, and civil society on the principles, steps, and processes of the ‘permanent’ constitution-making in South Sudan. The next Review of this series will look at the substantive issues of constitution-making.*

#### **1. Introduction**

South Sudan is currently engaged in the constitution-making process. And the concern that is often encountered, and which concerns this Weekly Review is, “*how will the ‘permanent’ constitution in South Sudan be adopted?*” We address this question by analyzing the principles, stages, and processes to be followed in adopting the permanent constitution, which is a key mandate of the Revitalized Peace Agreement and the Constitution-Making Process Act, 2022.

#### **2. Principles to guide the ‘permanent’ constitution-making**

The Constitution Making Process Act (CMPA), 2022 which was enacted by the Transitional National Legislative Assembly (TNLA) and assented to by the President stipulates certain key principles to guide the constitution-making<sup>1</sup>. These principles are:

- Supremacy of the people;
- Initiation of a federal and democratic system of government;
- Guaranteeing peace, stability, national unity, and territorial integrity;
- Promoting people’s participation in governance;
- Respecting ethnic and regional diversity; and
- Promoting international cooperation and a culture of peaceful resolution of disputes.

#### **3. Stages and mechanisms of constitution-making**

There are three (3) stages through which the ‘permanent’ constitution is to be adopted and ratified, guided by six (6) mechanisms as discussed below:

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<sup>1</sup> See sec 6 of the Constitution-Making Process Act 2022.

### *Stage 1: Initiation of constitution-making process*

This stage involves adopting a legislation to guide the crafting of the constitution. This is a requirement of the Revitalized Peace Agreement that the national legislature shall enact a legislation to guide the constitution-making. It is important to note that this stage has already been achieved. The Transitional National Legislative Assembly has adopted the Constitution-Making Process Act (CMPA), 2022 which the President has also signed into law. The CMPA requires a reconstitution of relevant mechanisms of constitution-making to initiate the constitution-making process by drafting the constitutional text, undertaking public consultation, and validating the first constitutional draft. This stage involves two key mechanisms as discussed below.

#### **3.1 National Constitutional Review Commission**

The National Constitutional Review Commission (Commission) whose main role is overseeing the constitution making process comprises fifty-seven (57) members including the Chairperson and Deputy Chairperson who shall be opposite genders. The membership of the Commission is to reflect, among others, gender, political, social, ethnic, religious, and regional diversity of South Sudan<sup>2</sup>.

The law requires reconstitution of the Commission to be completed within 45-days of the coming into force of the CMPA.<sup>3</sup> This means the parties and stakeholders are to nominate and submit a list of their nominees to the Taskforce of the Ministry of Justice and Constitutional Affairs (Taskforce) within 30-days<sup>4</sup>. All the nominees to the Commission are to be drawn from diverse groups such as:

*Revitalized Transitional Government of National Unity (RTGoNU), political parties, faith-based, women and youth groups, ethnic minorities, representatives of the private sector, civil society organizations, academics, university professors, people with disabilities, and other professionals<sup>5</sup>.*

The Taskforce shall consult with the nominating groups on the qualifications of the candidates on their respective lists<sup>6</sup>. Upon conclusion of such consultation, the Minister of Justice and Constitutional Affairs shall transmit the names of the nominees to the Executive of the RTGoNU for appointment as members of the Commission.

#### **3.2 Constitutional Drafting Committee**

The second mechanism is called the Constitutional Drafting Committee (CDC) which is a technical, independent, non-political, and neutral body whose role shall be to draft the constitutional text. Its mandate is to draft the constitutional text for deliberations and adoption. The Committee is to consist of fifteen (15) members recruited through a competitive process by the Commission. Of the 15 members, 12 are to be South Sudanese of which 6 shall be practicing lawyers, a sociologist, gender expert, two political scientists and two economists, while the three (3) shall be non-South Sudanese experts in legislative drafting. A member of the Committee shall have qualifications in law and social sciences with at least five (5) years of experience. The Committee's membership shall have at least

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2 Sec 10(1) Constitution-Making Process Act, 2022

3 Sec 9(1) Constitution-Making Process Act, 2022

4 Sec 9(3) Constitution-Making Process Act, 2022

5 Sec 11(1) Constitution-Making Process Act, 2022

6 Sec 9(4) Constitution-Making Process Act, 2022

35 percent women representation. Once this stage is completed, the next is to convene a national conference.

*Stage 2: Constitutional deliberation and adoption*

This stage is a deliberative phase which involves two key mechanisms, as highlighted below.

### **3.3 Preparatory Sub-Committee**

This ad-hoc committee is to comprise 25 members whose main task is to convene the national constitutional conference. The members of Sub-Committee are to be appointed by the Executive of the RTGoNU. Forty-five per cent (45%) of the Sub-Committee's members shall represent the stakeholders and fifty-five per cent (55%) shall be drawn from the RTGoNU. Of the representatives, thirty-five per cent (35%) shall be women. The Sub-Committee shall be dissolved after the last sitting of the constitutional conference.

### **3.4 National Constitutional Conference**

The other mechanism in this stage is the National Constitutional Conference (Conference) which is to comprise 1,200 delegates of whom 100 shall be drawn from each of the 10 states, 30 from each Administrative Area and 110 from other categories. The Conference delegates are to be drawn from a pool of backgrounds, political affiliations, civil society, and other interest groups to deliberate and adopt the final constitutional text. The Conference does this by either consensus or two-thirds majority of the delegates present and voting. The Conference shall submit the adopted constitutional text to the Minister of Justice and Constitutional Affairs who shall in turn present it to the Constituent Assembly for deliberation and ratification.

*Stage 3: Ratification of the 'permanent' Constitution by the Constituent Assembly*

This last stage is the ratification of the final constitutional text. It is to be led by the national legislature (Council of States and Transitional National Legislative Assembly) sitting together as the **(v) Constituent Assembly** for purposes of ratifying the 'permanent' constitution of the Republic of South Sudan. The process shall commence with a dissolution of the national legislature and reconstituting it as the Constituent Assembly by the president of the Republic. Once the Constituent Assembly has passed the 'permanent' Constitution, the president shall promulgate it in a public event for South Sudanese to witness the birth of their new constitution. This shall be followed by civic education to disseminate the contents of the permanent Constitution among the populace.

### **3.5 Secretariat of the Commission**

The last mechanism is the Secretariat which is to be headed by the Secretary-General. The Secretariat is to assist the Commission and the entire process of constitution-making<sup>7</sup>. The Secretary-General shall oversee and manage financial, administrative, and logistical work of the Commission, while reporting to the Chairperson of the Commission. The Secretary-General serves as the Secretary of the Commission and of the conference.

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<sup>7</sup> Sec 18(3)(4) Constitution-Making Process Act, 2022

## 4 Conclusion

This Weekly Review summarized the processes, principles, and mechanisms of constitution-making. As a series, the Sudd Institute's experts will address specific aspects of the constitution-making on a weekly basis to create awareness and address fundamental policy questions. The next Weekly Review will, therefore, tackle the substantive issues of constitution-making, beginning with the question of ***“how will the constitution be drafted?”*** *Here, we will discuss how the process will start and end, while focusing on contents, rather than mechanisms involved.* Stay tuned!

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### **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 in order to promote a more peaceful, just and prosperous society.

### **Authors' biographies**

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