Weekly Review

February 27, 2024

On the Elections Act, 2023: The Challenges of the Allocation of Additional Geographical Constituencies

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Summary

This Review assesses the recently passed South Sudan's National Elections Act, 2023 based on the crucial question of delineating new geographical constituencies ahead of the December 2024 general elections. The Review analyzes the constituency threshold formula proposed by the National Elections Act and uses the suggested calculation guidelines to construct the possible scenarios for the distribution of geographical constituencies for the upcoming general elections. The piece also briefly looks at the conditions for the creation of new geographical constituencies and makes observations about the possible challenges that lie ahead of the process of delineating and demarcating new geographical constituencies. It concludes by casting doubt on the feasibility of completing the process for the purposes of 2024 general elections and provides options for overcoming the underlying challenges on the allocation of additional geographical constituencies. The Review proposes the establishment of a framework to expedite the process, or deference of the creation of the new geographical constituencies. This enables the NEC to create new geographical constituencies to promote fairness and equality in representation using official population data to avoid any arbitrariness in the delineation of new geographical constituencies.

1 Introduction

For nearly 14 years, the Republic of South Sudan has never held elections due to persistent conflict that first erupted in 2013. The government had since gained legitimacy to rule through negotiated peace agreements that have been repeatedly extended. For example, the Revitalized Agreement for the Resolution of Conflict in the Republic of South Sudan (RARCSS), was recently extended for 24 months, from Feb 2022 to Feb 2025, supposedly allowing the Revitalized Government of National Unity (RTGoNU) to accomplish some major reforms ahead of a national vote. One of the major reforms promised in the agreement was to establish regulatory and institutional framework to deliver credible democratic elections by December 2024. Thus far, in accordance with the resultant Roadmap, the Revitalized Legislature has passed the National Elections Act and reconstituted the National Elections Commission (NEC) to oversee the conduct of elections.

This Review attempts to evaluate the creation of new geographical constituencies proposed by the recently passed National Elections Act, 2023 and the potential implementation challenges and how to overcome them.

2 Background on the Evolution of South Sudan's National Legislature Size

A brief background about the timeline of the size-evolution of South Sudan National Assembly from 2008–2023 is illustrated in Table 1 below. From 2008–2011 the Southern Sudan National Assembly consisted of 170 members based on the 2008 National Elections Act (NEA), together with the Interim Constitution of Southern Sudan, 2005. Sixty percent (60%) of these seats were to be allocated to geographical constituencies, according to the 2008 Act.

Table 1. Evolution of South Sudan's National Assembly, 2008-2023

2008 - 2010	2011-2012	2012-2023	2023-
Size=170	Size = 332	Size = 250	Size = 332
Legal Framework	Legal Framework	Legal Framework	Legal Framework
2008 Sudan NEA	Presidential Order of 2011	2012 NEA	2023 Amendment Act to NEA 2012

In 2011, when South Sudan seceded from the Sudan, the National Legislative Assembly was convened by [1]Presidential Decree No. 10/2011 on Transformation and Reconstitution of the National Legislative Assembly of the Republic of South Sudan of August 2011. The National Assembly comprised 332 members, of whom 170 were elected members of the former Southern Sudan Legislative Assembly (SSLA), 96 former members of Sudan National Assembly who were absorbed after separation, and 66 members that were appointed by the president. The Geographical constituencies remained unchanged, according to this Presidential Order.

By 2012, the National Assembly passed the National Elections Act, 2012, which specified the total National Legislative Assembly size of 250 members, with 60% geographical constituency allocation. The geographical constituencies allocation remained unaltered at this time due to the outbreak of conflict that created unconducive situation for the scheduled 2015 national elections. The composition of subsequent National Assemblies after the outbreak of 2013 conflict followed the negotiated peace agreement modality.

In September 2023, the National Assembly passed the Amendment Act 2023 to National Election Act 2012 with section 60 of the Act specifying the size and composition of the National Assembly as follows.
   o   Overall representation increases from 250 membership to 332 membership, about 33% increase.

- Decreasing the geographical seats allocation from 60% to 50% while increasing the women proportional representation from 25% to 35% of the total representation and Party list proportional representation remained unchanged at 15%.
- A new component of 5% representation to be appointed by the president was added.

3 How the current geographical constituencies were determined

The determination of the number of current geographical constituencies for National Assembly was based on sections 36 & 37 of National Elections Act, 2008. There may be other considerations in delineation of geographical constituencies, but population remains the main driving factor. The National Elections Commission (NEC), as mandated by the NEA 2008, determined the current geographical constituencies threshold based on the formula and 2008 census data as shown in the Table 2 below.

Table 2. Constituencies allocation Formula as of 2010 Elections and based on 2008 Census Data

Parameter	Formula	Computation
Seats to National Assembly	60% of geographical allocations of the total 170 seats	60% of 170 = 102
Targeted Size for each Constituency(dividend)	Population divided by the number of seats	8,260,490/102 = 80,958
Seats for each state	State population divided by dividend	State population/80,958

The distribution of geographical constituencies was based on the national dividend or targeted constituency population size of 80,958 as illustrated in Table 3 below. This was the basis of the 102 geographical constituencies allocation in 2010 Elections. South Sudan inherited this number of geographical constituencies on separation from Sudan in 2011 and no new geographical constituency has been created since then.

Table 3. Distribution of Constituencies according to State

State	Population (2008 Census)	Seats as of 2010 Elections
Central Equatoria	1,103,592	14
Eastern Equatoria	906,126	11
Jonglei	1,358,602	17
Northern Bahr el Ghazal	720,898	9
Unity	585,801	7
Upper Nile	964,353	12
Warrap	972,928	12
Western Bahr el Ghazal	333,431	4
Lakes	695,730	9
Western Equatoria	619,029	8
Total	8,260,490	102

4 Implication of the National Elections Act, 2023 on Delineation of New Geographical Constituencies

What is new in the amendment Act, 2023 in relation to the NEA ,2012 is the 10% percentage reduction in the total allocation to the geographical constituencies and the overall increase of

33% in the total size of seats to the National Legislative Assembly. The delineation of geographical constituencies for 2024 elections is to be guided by sections 40 & 41 of the National Elections Act, 2023. On this basis, the calculations for the new geographical constituency threshold will be as illustrated in the Table 4 below if NEC were to follow the interpretations of sections 40 & 41 of the Act. For the purposes of calculations, I will stick with the 2008 census data as this is the officially accepted population data. Although there is new population projection from the National Bureau of Statistics (NBS) indicating that South Sudan population has grown to 12.4 million since the last census, this figure may not be used for the purposes of national representation calculations as it is not officially adopted and accepted by the RTGoNU.

Table 4. Constituencies allocation Formula as suggested by Amendment Act 2023

Parameter	Formula	Computation
Seats to National Assembly	50% of geographical allocations of the total 332 seats less 5% nomination by the president	50% of 332 -5% = 157.7
Targeted Size for each Constituency(dividend)	Population divided by the number of seats	8,260,490/157.7 = 52,381
Seats for each state	State population divided by dividend	State population/52,381

Table 5. Distribution of Constituencies according to State (numbers rounded off for this analysis)

State	Population (2008 Census)	Seats as of 2010	Seats as of 2024	New seats
Central Equatoria	1,103,592	14	21	7
Eastern Equatoria	906,126	11	17	6
Jonglei	1,358,602	17	26	9
Northern Bahr el Ghazal	720,898	9	14	5
Unity	585,801	7	11	4
Upper Nile	964,353	12	18	7
Warrap	972,928	12	19	7
Western Bahr el Ghazal	333,431	4	6	2
Lakes	695,730	9	13	5
Western Equatoria	619,029	8	12	4
Total	**8,260,490**	**102**	**158**	**56**

If the above calculations for the delineation of geographical constituencies were to hold based on the provision of sections 40 & 41 of the National Elections Amendment Act, then the NEC may need to create approximately 56 new geographical constituencies, and this is one of the areas where NEC may face operationalization and implementation challenges, some of which are discussed on section 5 of this analysis.

On geographical constituency demarcation relating to the recognized 3 administrative areas of Abyei, Ruweng, and Greater Pibor, the Amendment Act is not clear on whether the delineation process of geographical constituencies within those boundaries will follow the states process or will be done separately. It is important to note that the Abyei Administrative Area with a population of 52,883 as of 2008 was considered part of Warrap state as of 2010 elections, Greater Pibor (consisting of Pibor and Pochalla counties with a combined population of 214,676 as of 2008) had its constituencies demarcated as part of Jonglei state and Ruweng Administrative Area (consisting of Abiemnhom and Pariang counties with a combined population of 99,455 as of 2008) had its constituencies demarcated as part of Unity state. This may be an important issue where clarity on the interpretation of the Amendment Act is necessary.

For the purposes of illustration on how the geographical seats distribution plays out at the state level, I take the example of Jonglei state and the scenario for possible seats distribution by county as shown in Table 6 below.

Table 6. Example of seats distribution by county in Jonglei State as per Amendment Act

County	Population (2008)	2010 seats	2024 seats	Seat variance
Old Fangak	110,130	1	2	1
Khorflus	99,068	1	2	1
Ayod	139,282	2	3	1
Duk	65,588	1	1	0
Wuror	178,519	2	3	1
Nyirol	108,674	1	2	1
Akobo	136,210	2	3	1
Pochalla	66,201	1	1	0
Pibor	148,475	2	3	1
Twic East	85,349	1	2	1
Bor South	221,106	3	4	1
Totals		17	26	9

5 Conditions and Challenges for Delineation of Geographical Constituencies

When delineating geographical constituencies based on population, the main goal is to ensure fairness and equality in representation. The NEC will need to consider the following main conditions for the delineation of geographical constituencies, besides population as required by section 41 (1) of the NEA 2012.

- o Consultation with local civil society groups and communities to ensure acceptability of the boundaries.
- o All reviews shall be completed and widely shared prior (at least 9 months ahead) to the general elections.
- o If the geographical constituencies are created less than 9 months into the general elections, the new boundaries may not take effect for the purposes of general elections.

Firstly, given the conditions mentioned above, the process of creating new geographical constituencies is a highly political and technical procedure, which may require time and resources. With less than 10 months into general elections, the creation of 56 newly proposed geographical constituencies, according to the Elections Amend Act, 2023, may be infeasible. Secondly, delineation of geographical constituencies tends to be highly emotive and political and may sometimes trigger conflict if the process is not handled properly. During the 2009 demarcation of the current geographical constituencies, there were many contentious issues of disputed administrative divisions. The most political and emotive case of all being the detachment of Wanduruba Payam from Juba County to Lainya. The contest led to attempt on the life of a senior member of a political party by dissatisfied groups who believed that the senior politician had appealed to the NEC to detach the Payam from Juba County.

Thirdly, there is the issue of which population data to use for the purposes of delineation. The 2008 census data may be outdated for the purposes of constituencies delineation. However, officially accepted census data is the only formally recognized source of data for the purposes of constituencies delineation and this may put the NEC in a very tight position.

6 Conclusion and Recommendations

Firstly, the independence of the NEC from any interference is crucial in ensuring transparency in geographical seats delineation.

Secondly, given that constituency delineation process is highly technical and requires a lot of time and resources it is recommendable that the NEC consider the option for deferring the process of delineation of new constituencies for 2024 general elections to future elections. This means the NEC sticks with the current 102 geographical constituencies.

Thirdly, given that the 2024 elections may be a special case, and should there be determined public demand for more political representation, the NEC may request the relevant arms of the government to amend the Act to facilitate the expedited process for creation of geographical constituencies.

Finally, the question of the population data to use for the purpose of constituency delineation for 2024 general elections may remain a contentious issue, but it is advisable that the NEC sticks with the officially accepted census data of 2008 to avoid any arbitrariness in the creation of new geographical constituencies.

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Authors' biographies

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