

THE REPUBLIC OF SOUTH SUDAN

NATIONAL LEGISLATURE

JUBA

Report of the two Committees of Legislation and Justice of the NLA and Legislation, Legal Affairs & Human Rights of the Council of States on the Transitional Constitution (Amendment) Bill, 2013.

(Second Reading)

Monday, 25th February 2013

Rt. Hon. Speaker,

Hon. Members

Introduction

Allow me to table the Transitional Constitution (Amendment) Bill 2013. In its Sitting No. 1/2013 of the Extraordinary Session dated 21st January 2013, H.E. the Minister of Justice-RSS, tabled the Transitional Constitution (Amendment) Bill 2013 to the National Legislature august House. The proposed bill seeks to amend the Transitional Constitution of the Republic of South Sudan, 2011. The purpose of the amendment is to extend the tenure and mandate of the National Constitutional Review Commission. It also seeks to reduce the period within which both the National Constitutional Conference and the National Legislature review the draft constitution.

In accordance with Regulation 102 (1) of the National Legislative Assembly, Conduct of Business Regulations 2011, and Article 199 of the Transitional Constitution, 2011, the Speaker of the National Legislature committed the Transitional Constitution (Amendment) Bill 2013, to the two Committees of Legislation and Justice of both houses i.e the National Legislative Assembly and the Council of States for consideration, scrutiny and presentation to the House for second reading.

The two Committees of Justice in accordance with Regulation 135 (4) of the National Legislative Assembly Conduct of Business Regulations 2011, and Art 199 of the constitution scrutinized the Transitional Constitution (Amendment) Bill 2013, and now present this report with observations, recommendations and proposed amendments below:

Methodology

1. The Committees keenly studied and scrutinized the text of the Bill, consulted stakeholders for their general opinions, held discussions with the Hon. Minister of Justice and with the chairperson of the NCRC with members of his commission in the presence of audience of various stake holders. The two Committees reviewed the Transitional Constitution, the transitional constitutional debate documents of the Assembly and literature from other jurisdictions as well as South Sudan.
2. The two Committees of Legislation and Justice organized a one day public hearing. It was attended by heads and representatives of various Ministries, including the minister of justice, chairperson of the NCRC, Chairperson of the elections commission, chairperson of the Anti-corruption commission, heads and representatives of political parties, Civil society organizations, Law Associations, None Governmental Organizations (NGOs) Diplomats and different media houses.

Observations:

1. The proposed amendment is allowed by the Transitional Constitution of the Republic of South Sudan, 2011.
2. The amendment is not substantive but only procedural. This means that it will not affect the activities and timelines of important events such as the conduct of census and elections in the transitional Constitution, 2011. This has to be made clear to the honourable members of this august house because during audience with stake holders the question of what the amendment may mean to the transitional constitution has surfaced repeatedly. In the Transitional Constitution, 2011, the Permanent Constitution Process is a separate process. Nothing makes the carrying out of any main event in the Transitional constitution contingent on the Permanent Constitution Process.

The permanent Constitution Process

1. The timetable was drawn with the expectation to have a permanent constitution in force by the end of the life of this Assembly i.e 8th July, 2015 which would be the end of the Transition period. It was hoped that by that time table the permanent constitution would be in force latest 8th October, 2014 since the National Legislature would adopt the constitution within 3 months. This would leave at least 9 months of an operational constitution before elections. The proposed amendments seek to maintain this schedule by reducing the periods.
2. The timetable was not followed mainly because of financial constraints. The national review commission was neither availed sufficient resources nor was even the little released on time
3. The period of three years for the commission, the National Conference and the National legislature was intended to ensure that South Sudan has a well thought out permanent Constitution by the end of the Transition period.
4. If the constitutional making process is rushed, the possibility of not having an inclusive and consulted draft constitution is high.

Why is enough time needed for the permanent constitution making process

1. Since the permanent constitution making process is an independent process that will not interfere with the timelines of major constitutional events in the transitional period, enough time should be given to this process.
2. Constitution making process usually takes time. Experiences of other countries testify to this fact. We present below experiences of constitution making process of a few countries as examples.

a) Rwanda

In accordance with the Arusha Peace Agreement and Law Number 23 of 1999 dated 24.12.1999, the Legal, Judicial and Constitution Commission [Constitutional Commission] was set up to prepare a draft bill of the constitution and revise the laws of Rwanda. The Commission was given a time frame of three years within which to complete its work. It used one and a half years on the Constitution itself.

b) Kenya

The Constitution of Kenya Review Act [Act No. 9 of 2008] set up a committee of Experts to review the Constitution. Under Section 12 of that Act the tenure of office was given as from the date of appointment up to the time of its dissolution. However under section 28 it was required to complete its work within twelve months. The members were appointed on 23rd February 2009. It issued its final report on 23rd February 2010. It therefore took a period of one year. However, this committee had an advantage. It had the proposed new Constitution 2005 and the Bomas draft produced by the National Conference on 15th March 2004. Both these were a product of the Kenya Review Act which expired on 31st January 2006. In other words a lot of its work had already been done by an earlier Commission.

C. Tanzania

The Constitutional Review Act 2012 Laws of Tanzania established a Commission to coordinate and collect opinions on constitutional review. Section 8[3] states "*the Commission shall complete the performance of its functions within eighteen months from the date of commencing business*" However subsection [4] provides that the period may be extended for a further two months. This means the Commission in Tanzania had twenty months

D. Uganda

The Constitutional Commission of Uganda was set up by statute 5 of 1988. It held its first meeting on 7th March 1989. It was given two years and was expected to hand in its report to the President in March 1991. However the two years proved to be insufficient and it was extended to March 1992. Even that deadline was not kept and the Chairman of the Commission handed over the report on 31st December 1992 but was adopted in 1995. This means the Commission in Uganda took six years.

E. South Africa

South Africa took three years to complete their constitution. In 1994, the constituent Assembly created a constitutional committee. The new South Africa Constitution took effect in 1997; three years later.

F. Nepal

Nepal's Constituent Assembly was established in 2008 and over 4 years later it had not produced a draft constitution. Nepal's parliament extended the constituent Assembly's mandate four times before the supreme court intervened to allow the mandate to expire.

G. Zambia

The search for a permanent constitution started in 2007 and it is now 6 years later continuing.

Justification for extension

The National Constitution Review Commission of South Sudan has hardly begun work. It does not have advantages of its counterparts in Kenya, Uganda and Rwanda. It does not have the advantages the one in Tanzania had. These countries have the infrastructure developed over fifty years of independence. That infrastructure in terms of resources [both financial and human], networks, academia, civil society etc greatly helped those commissions. South Sudan does not have them. A rushed process coupled with lack of infrastructure is dangerous for the country.

A Constitution making process must allocate sufficient time to a Constitutional Commission. This is because it is the foundation upon which a National Conference or Referendum is based. A durable constitution reached by Consensus is only possible based on the work of a Commission.

The National Constitutional Review Commission has hardly begun serious work and the extension to September 2013 is not sufficient time. Taking December 2012 as the time when the NCRC began its work, the three years provided for would elapse in December 2015. This would be beyond the transition period. It is no longer defensible to continue insisting on having a permanent constitution by the end of the transitional period as if that date is cast in stone.

Even the time for the National Conference and the National Legislature is not sufficient

Administrative observations

We can't close this report without bringing to this august house the administrative and financial constraints that face the NCRC. The committee has been strongly advised during the

scrutiny by all the stake holders to bring to notice to this august house:

1. That the commission urgently needs the financial support, commitment and political will of the government in its important assignment.
2. That this august house should work together and bring pressure to bear on the executive to avail funds and any other administrative support needed by the NCRC.
3. That the NCRC be empowered to seek donor support.

**Rt. Hon. Speaker,
Hon. Members**

Observations and Recommendations

1. In Article 202 (4), replace "10th September 2013" with "31st December 2014".

This is to enable the commission come up with a work which incorporates all the citizens' views and opinions which are well studied, researched and shared.

This is to avoid hindrances that have happened to the commission and therefore we need to give the commission enough time. There is need to conduct wide consultation properly after drafting the constitution. This is also the consensus position found during the public hearing

2. Paraphrase Article 202 (10) to read: The Commission shall adopt and present the Draft Constitutional Text and an Explanatory Report to the President within a period not extending beyond 31st December 2014.
3. Article 203 (3) (e) be maintained because it gives the National Constitution Conference enough time to finish its work successfully. This conference is the one with inclusiveness of all

the specific national stakeholders of all categories and need adequate time to effectively do its work.

4. Article 203 (7) be paraphrased to read: **The President shall, within three months of the receipt of the Draft Constitutional Text, cause the same to be tabled before the National Legislature for deliberation and adoption within twelve months.**

5. **The 2015 elections shall be governed by the Transitional Constitution, 2011**

**Rt. Hon. Speaker,
Hon. Members,**

Finally, we humbly request the august House to deliberate and pass the observations and recommendations of these Committees and the amendments in this Bill in its Second Reading Stage.

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For the NLA

Hon. Dengtiel A. Kuur

Chairperson

Justice & Legislation Committee

Sgn

For Council of States

Hon. Aldo Ajou Deng

Chairperson

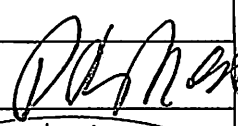

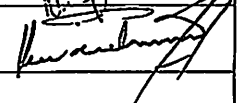

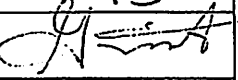
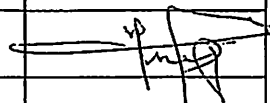
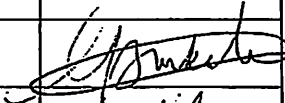

Legislation, Legal Affairs and

Human Rights Committee






NATIONAL LEGISLATIVE ASSEMBLY
 COMMEEITEE OF LEGISLATION & JUSTICE
 LIST OF COMMEEITTEE MEMBERS

Date: 18/2/2013.....

Agenda Transitional Constitution Amendment Bill 2013

| S/N | Name | Title | Signature |
|-----|-------------------------------|---------------|---|
| 1 | Hon. Dengtiel A. Kuur | Chairperson |  |
| 2 | Hon. Parmena Awerial Aluong | D/Chairperson |  |
| 3 | Hon. Abraham Biar Deng | Member |  |
| 4 | Hon. Simon Malual Deng | Member | |
| 5 | Hon. Maker Thiong Maal | Member |  |
| 6 | Hon. George Andrea Juma | Member |  |
| 7 | Hon. Daniel Dhieu Matuet | Member | |
| 8 | Hon. Deng Arop Kuol | Member |  |
| 9 | Hon. Samuel Aban Acien | Member | |
| 10 | Hon. Pro George Bureng Nyombe | Member |  |
| 11 | Hon. Margret Samuel Aru | Member |  |
| 12 | Hon. Bonguot Amum Okiech | Member | |
| 13 | Hon. Abuk Payiti Ayiik | Member | |
| 14 | Hon. Francis Lokurnyang Angou | Member | |
| 15 | Hon. Riek Gai Kok | Member | |

NATIONAL LEGISLATIVE
 Committee of Legislation Legal & Human Rights
 Council of States

| # | NAME | Position | Signature | Contact |
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| 1 | Aedo Ajin Deng | Chairperson |  | 0922066022 |
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