

**Laws of South Sudan**

**Constitution Making Process Bill, 2021**

**2021**

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**STAGES OF THE CONSTITUTION MAKING PROCESS**

## **Laws of South Sudan**

### **Constitution Making Process Bill, 2021**

In accordance with the provisions of Article 6.3 of the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan read together with Articles 55(3)(b) and 85(1) of the Transitional Constitution, 2011 (as amended), the Reconstituted Transitional National Legislative Assembly with the assent of the President, hereby enacts the following:

#### **CHAPTER I**

##### **PRELIMINARY PROVISIONS**

###### **1. Title and Commencement**

This Bill shall be cited as “the Constitution Making Process Bill, 2021” and shall come into force on the date of its signature by the President.

###### **2. Repeal and Saving**

Any existing Legislation governing the subject of this Bill is hereby repealed; provided that all actions or proceedings taken, orders and regulations issued or appointments made under the repealed provision, shall remain in force until repealed or amended in accordance with the provisions of this Bill.

###### **3. Purpose**

The purpose of this Bill is to establish a legal framework to govern the process of the Permanent Constitution making and outline the design, form, powers and functions of the mechanisms to be involved in the Permanent Constitution making process.

###### **4. Authority and Application**

- (1) This Bill is drafted in accordance with the provisions of Article 6.9 of the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan.
- (2) The provisions of this Bill shall apply to the Permanent Constitution making process during the Transitional Period.



## 5. Definitions and Interpretations

In this Bill, unless the context otherwise requires:

- “Agreement”** means the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan signed on 12 September 2018 in Addis Ababa, Ethiopia;
- “Commission”** means the Reconstituted National Constitutional Review Commission under Section 8 of this Bill;
- “Committee”** means the Constitutional Drafting Committee under Section 16 of this Bill;
- “Conference”** means the National Constitutional Conference under Section 26 of this Bill;
- “Constitution”** means the Transitional Constitution of the Republic of South Sudan 2011 (as amended);
- “Constitutional Post Holder”** means a person who holds an office that is established by the Constitution;
- “Mechanisms”** means the mechanisms of the Permanent Constitution making process set out in Section 7 of this Bill;
- “Minister”** means the Minister of Justice and Constitutional Affairs;
- “Parties”** means the Parties signatory to the Agreement;
- “Political Office Holder”** means a person who holds an office or position in a political organisation;
- “Practising Lawyer”** means any lawyer who is actively engaged in law or law related work provided that he or she satisfies the requirements set out in Section 18(1) of this Bill;
- “RTGoNU”** means the Revitalized Transitional Government of National Unity;
- “South Sudanese National”** means a national of South Sudan as defined in the Nationality Act, 2011;

<b>“Sub-Committee”</b>	means the Preparatory Sub-Committee under Section 21 of this Bill;
<b>“Taskforce”</b>	means the Taskforce of the Ministry of Justice and Constitutional Affairs;
<b>“Transitional National Legislature”</b>	means the Transitional National Legislative Assembly and the Council of States as reconstituted under the Agreement.

## 6. Principles

The Permanent Constitution making process shall be based on the following principles as enshrined in Article 6.2 of the Agreement:

- (1) Supremacy of the People of South Sudan.
- (2) Initiate a federal and democratic system of government that reflects the character of South Sudan in its various institutions taken together, guarantees good governance, constitutionalism, rule of law, human rights, gender equity and affirmative action.
- (3) Guarantee peace and stability, national unity and territorial integrity of the Republic of South Sudan.
- (4) Promote people’s participation in the governance of the country through democratic, free and fair elections and the devolution of powers and resources to the states and counties.
- (5) Respect ethnic and regional diversity and communal rights, including the right of communities to preserve their history, develop their language, promote their culture and expression of their identities.
- (6) Ensure the provision of basic needs of the people through the establishment of a framework for fair and equitable economic growth and access to national resources and services.
- (7) Promote and facilitate regional and international cooperation with South Sudan.
- (8) Commit the people of South Sudan to peaceful resolution of national issues through dialogue, tolerance, accommodation and respect of others’ opinions.

## CHAPTER II

### MECHANISMS OF THE PERMANENT CONSTITUTION MAKING PROCESS

#### 7. Mechanisms of the Permanent Constitution Making Process

The mechanisms shall be as follows:

- (1) Reconstituted National Constitutional Review Commission (R-NCRC).
- (2) Constitutional Drafting Committee (CDC).
- (3) Preparatory Sub-Committee (PS-C).
- (4) National Constitutional Conference (NCC).

#### *The Reconstituted National Constitutional Review Commission*

#### 8. Reconstitution of the Commission

- (1) The RTGoNU shall reconstitute the Commission within forty-five (45) days after the coming into force of this Bill.
- (2) The Commission shall be independent, having an official seal, legal entity and with the power to sue or be sued in its own name.
- (3) The Parties and other Stakeholders to the Agreement shall nominate and submit a list of their nominees to the Taskforce within thirty (30) days after the coming into force of this Bill.
- (4) The Taskforce shall consult with the nominating groups on the qualifications of the candidates on their respective lists in accordance with Section 10(2) and (3) of this Bill.
- (5) Upon conclusion of the consultation, the Minister shall transmit the names of the proposed nominees to the Executive of the RTGoNU for appointment as members of the Commission.

#### 9. Composition of the Commission

- (1) The composition of the Commission shall reflect, amongst others, the gender, political, social, ethnic, religious and regional diversity of South Sudan.

- (2) The Commission shall comprise fifty-seven (57) members, inclusive of the Chairperson and Deputy Chairperson, who shall be of opposite genders and are appointed by the Executive of the R-TGoNU.
- (3) Excluding the Chairperson and Deputy Chairperson, who shall be directly appointed by the Executive of the RTGoNU, forty-five percent (45%) of the members shall be representatives of the Stakeholders and fifty-five percent (55%) shall be representatives of the RTGoNU and political parties.

**10. Nominations and Appointment of Members of the Commission**

- (1) The nominations for appointment to the Commission shall be submitted by the following:
  - (a) RTGoNU;
  - (b) political parties;
  - (c) faith based groups;
  - (d) women groups;
  - (e) youth;
  - (f) ethnic minorities;
  - (g) representatives of the private sector;
  - (h) civil society organisations;
  - (i) academics;
  - (j) people with special needs; and
  - (k) other professionals.
- (2) The nominating groups shall ensure that their nominees possess proven knowledge and experience in relevant fields, including but not limited to: comparative constitutional law; systems and structures of government; human rights; women and gender issues; land law; governance and ethics; electoral systems; South Sudanese customary law and practice; and anthropology.
- (3) Notwithstanding the provisions of Sub-Sections (1) and (2) of this Section, a person shall:
  - (a) be a South Sudanese, of sound mind and of high moral character and integrity;
  - (b) not be an undischarged bankrupt or convicted of an offence involving moral turpitude, fraud or dishonesty within a period of five (5) years prior to the appointment.
- (4) A member of the Commission shall not use his or her position for personal benefit or for the benefit of any other party or entity.



- (5) At least thirty-five percent (35%) of the members of the Commission shall be women.

## **11. Powers and Functions of the Commission**

The Commission shall exercise and perform the following powers and functions:

- (1) Formulate its rules of procedure.
- (2) Develop its action or work plan.
- (3) Recruit the members of the Committee.
- (4) Facilitate and promote multi-phased and multi-faceted civic education and guarantee the accessibility of civic education materials to all sectors of the public.
- (5) Conduct multi-phased and multi-faceted public consultations, which cover all constitutional issues of relevance, in collaboration with non-State actors and supported by public media platforms.
- (6) Receive, analyse, and consider inputs and submissions from public participation and consultations.
- (7) Transmit the outcome of public consultations to the Committee.
- (8) Validate the first draft constitutional text.
- (9) Publish the first draft constitutional text.
- (10) Present to the Conference and the Committee a report containing the outcomes of the first stage of public consultations.
- (11) Conduct civic education following the adoption of the Permanent Constitution.

## **12. Tenure and Loss of Membership**

- (1) The tenure of office of a member of the Commission shall be from the date of appointment and shall, unless the office falls vacant earlier owing to any reason specified in Sub-Section (2) below, terminate upon the dissolution of the Commission.
- (2) Membership of the Commission shall be lost if a member:
  - (a) becomes incompetent due to physical inability or mental infirmity based on the Medical Commission Report;

- (b) is declared bankrupt;
  - (c) is convicted for an offence involving dishonesty or moral turpitude;
  - (d) is absent without permission for three (3) consecutive meetings of the Commission;
  - (e) resigns;
  - (f) dies.
- (3) The Executive of the RTGoNU shall remove any member of the Commission subject to Sub-Section (2)(a), (b) or (c) of this Section.

**13. Vacancies on the Commission**

Where a position of the Chairperson, Deputy Chairperson or any Member falls vacant, the Executive of the RTGoNU shall, within a period of fifteen (15) days, appoint a person to fill the vacancy in accordance with this Bill.

**14. Remuneration of Members**

Remuneration of Members shall be decided in accordance with Article 6.15 of the Agreement.

**15. Secretariat of the Commission**

The Commission shall establish a Secretariat to support its work.

*The Constitutional Drafting Committee*

**16. Establishment of the Committee**

- (1) A body to be known as the Constitutional Drafting Committee is hereby established.
- (2) The Committee shall be a technical, independent, non-political and neutral body.
- (3) The Committee shall draft the constitutional text under the direction of the Commission and the Conference.
- (4) Notwithstanding Sub-Section (3) of this Section, the Commission and the Conference shall have final decision-making power over the draft constitutional texts.

**17. Composition of the Committee**

- (1) The Committee shall be composed of fifteen (15) members recruited by the Commission and appointed by the RTGoNU of whom:

- (a) twelve (12) South Sudanese nationals:
    - (i) eight (8) practicing lawyers;
    - (ii) two (2) political scientists; and
    - (iii) two (2) economists
  - (b) three (3) non-South Sudanese nationals.
- (2) At least thirty-five percent (35%) of the members of the Committee shall be women.

**18. Eligibility for Recruitment of Members of the Committee**

- (1) A South Sudanese lawyer who seeks to be recruited as a member of the Committee shall have the following qualifications and requirements:
- (a) a law degree from a recognized university; and
  - (b) at least five (5) years of proven experience in legislative drafting, constitutional law or constitution-making.
- (2) Notwithstanding the provisions of Sub-Section (1) of this Section, a South Sudanese non-lawyer shall have the following qualifications and requirements:
- (a) a degree in political science or a degree in economics; and
  - (b) at least five (5) years of proven experience in their respective fields.
- (3) The non-South Sudanese legal experts shall have the following qualifications and requirements:
- (a) be lawyers with the relevant qualifications; and
  - (b) have at least ten (10) years of proven experience in legislative drafting, constitutional law or constitution making.
- (4) At least thirty-five percent (35%) of the members of the Committee shall be women who satisfy the relevant professional qualifications and experience.
- (5) Without prejudice to the provisions of Sub-Sections (1), (2), (3) and (4) of this Section, a person shall not be eligible for recruitment as a member of the Committee if he or she occupies any of the following positions:
- (a) member of the Commission;
  - (b) member of the Conference;
  - (c) member of the Legislature; or
  - (d) Political Office Holder or Constitutional Post Holder.



- (6) Notwithstanding the provisions of Sub-Sections (1) to (5) of this Section, a person shall:
  - (a) be of sound mind and of high moral character and integrity;
  - (b) not be an undischarged bankrupt or convicted of an offence involving moral turpitude, fraud or dishonesty within a period of five (5) years prior to the appointment.
- (7) A member of the Committee shall not use his or her position for personal benefit or for the benefit of any other party or entity.

## **19. Procedure for the Recruitment of the Members of the Committee**

- (1) The Commission shall:
  - (a) conduct a competitive recruitment process for members of the Committee, as set out in Section 18 of this Bill;
  - (b) select the fifteen (15) most qualified South Sudanese candidates and rank them after verifying their academic and professional credentials;
  - (c) submit the list of the twelve (12) top ranked candidates to the RTGoNU for appointment.
- (2) The other three (3) candidates out of the fifteen (15) South Sudanese shall be placed on a reserve list to be drawn upon at the first instance should a vacancy arise during the term of the Committee.
- (3) The three (3) non-South Sudanese legal experts shall be recruited and appointed through the same process, to the extent that they shall be recruited by the Commission and appointed by the RTGoNU.

## **20. Powers and Functions of the Committee**

The Committee shall exercise and perform the following powers and functions:

- (1) Formulate its rules of procedure.
- (2) Elect a Senior Legal Drafter and Deputy Senior Legal Drafter from among the twelve (12) South Sudanese members.
- (3) Receive inputs from the other mandated mechanisms.
- (4) Act as a body of experts at each stage of the constitution making process.
- (5) Draft the constitutional text on the basis of the results of public consultations and deliberations of the Commission and the Conference.

- (6) Submit the first draft constitutional text to the Commission for validation.
- (7) Attend deliberations of the Conference and incorporate its results into the first draft constitutional text.
- (8) Produce a second draft constitutional text for final deliberations and adoption by the Conference.

*The Preparatory Sub-Committee*

**21. The Sub-Committee**

- (1) The Sub-Committee shall be appointed by the Executive of the RTGoNU.
- (2) The Sub-Committee shall convene the Conference on the basis of nominations submitted by the Parties to the Agreement and other Stakeholders.
- (3) The Parties to the Agreement and other Stakeholders shall submit the lists of their nominees to the Taskforce.

**22. Composition of the Sub-Committee**

- (1) The Sub-Committee shall comprise twenty-five (25) members inclusive of the Chairperson and the Deputy Chairperson, who shall be of opposite gender.
- (2) Forty-five percent (45%) of the members shall be representatives of the Stakeholders and fifty-five percent (55%) shall be representatives of the RTGoNU and political parties.
- (3) The composition of the Sub-Committee shall reflect, amongst others, the gender, political, social, ethnic, religious and regional diversity of South Sudan.
- (4) Notwithstanding the provisions of Sub-Sections (1), (2) and (3) of this Section, a person shall:
  - (a) be a person of sound mind and of high moral character and integrity;
  - (b) not be an undischarged bankrupt or convicted of an offence involving moral turpitude, fraud or dishonesty within a period of five (5) years prior to the appointment.
- (5) A member of the Sub-Committee shall not use his or her position for personal benefit or for the benefit of any other party or entity.

### **23. Nominations and Appointment of Members of the Sub-Committee**

- (1) Nominations for appointment to the Sub-Committee shall be submitted by the following:
  - (a) political parties;
  - (b) faith-based groups;
  - (c) women groups;
  - (d) youth;
  - (e) ethnic minorities;
  - (f) representatives of the private sector;
  - (g) civil society organisations groups;
  - (h) academics;
  - (i) people with special needs; and
  - (j) other professionals.
- (2) At least thirty-five percent (35%) of the members of the Sub-Committee shall be women.
- (3) The composition of the Sub-Committee shall reflect, amongst others, the gender, political, social, ethnic, religious, and regional diversity of South Sudan in recognition of the need for inclusivity, transparency and equitable participation.

### **24. Powers and Functions of the Sub-Committee**

The Sub-Committee shall exercise and perform the following powers and functions:

- (1) Formulate its rules of procedure.
- (2) Make consultations with the nominating categories under Section 27(1) of this Bill.
- (3) Convene the Conference.

### **25. Dissolution of the Sub-Committee**

The Sub-Committee shall stand dissolved after the last sitting of the Conference.

### *The National Constitutional Conference*

### **26. The Conference**

Subject to Article 6.6 of the Agreement, the Conference shall be an inclusive deliberative body with representation from all sectors of South Sudanese society.

## **27. Composition of the Conference**

- (1) The Conference shall comprise delegates representing the following categories:
  - (a) political parties;
  - (b) civil society organisations;
  - (c) women organisations;
  - (d) youth organisations;
  - (e) faith-based organisations;
  - (f) people with special needs;
  - (g) internally displaced persons;
  - (h) refugees and people from the diaspora;
  - (i) traditional leaders;
  - (j) war widows, veterans and war wounded;
  - (k) business leaders;
  - (l) trade unions;
  - (m) professional associations;
  - (n) academia; and
  - (o) other categories to be determined.
- (2) The Conference shall comprise at least 1,000 delegates.
- (3) Notwithstanding Sub-Sections (1) and (2) of this Section, a person shall:
  - (a) be of sound mind and of high moral character and integrity;
  - (b) not be an undischarged bankrupt or convicted of an offence involving moral turpitude, fraud or dishonesty within a period of five (5) years prior to the appointment.
- (4) A member of the Conference shall not use his or her position for personal benefit or for the benefit of any other party or entity.

## **28. Powers and Functions of the Conference**

The Conference shall exercise and perform the following powers and functions:

- (1) Formulate its rules of procedure.
- (2) Develop working modalities to guide the fulfilment of its mandate.
- (3) Examine and deliberate on the first draft constitutional text.
- (4) Adopt the final draft constitutional text.



(5) Submit the adopted constitutional text to the Minister.

**29. Quorum of the Conference**

The sitting quorum for the adoption of the final constitutional text shall be a two-thirds majority of all members of the Conference.

**30. Decisions of the Conference**

- (1) In its deliberations the Conference shall seek to achieve consensus.
- (2) The final draft constitutional text shall be adopted by consensus.
- (3) Notwithstanding Sub-Section (2) of this Section, if consensus is not achieved, the Conference shall adopt the final draft constitutional text by two-thirds majority of members present and voting.

**31. Secretariat of the Conference**

The Secretariat of the Commission shall equally function as the Secretariat of the Conference.

**32. Guiding Principles**

In the performance of their functions, the mechanisms of the Constitution making process shall:

- (1) Be accountable to the people of South Sudan.
- (2) Ensure that no parts of the public are excluded from civic education and participation for reasons of physical disability, level of education, language, geographic location, religious beliefs, ethnicity, political affiliation, or any other reasons.
- (3) Ensure that the Constitution making process:
  - (a) accommodates the diversity of the people of South Sudan;
  - (b) is guided by respect for the principles relative to constitutionalism, the rule of law, human rights, gender equity and affirmative action.
- (4) Ensure that the outcome of the Constitution making process faithfully reflects the will of the people of South Sudan.

## CHAPTER III

### STAGES OF THE CONSTITUTION MAKING PROCESS

33. The Constitution Making Process shall follow the stages set out in Sub-Sections (1), (2) and (3) of this Section and in the Annex as an integral part of this Bill.

#### (1) Stage I

- (a) Enactment of the Bill shall mark the beginning of the process, followed by the reconstitution of the Commission and the appointment of the Sub-Committee for convening the Conference;
- (b) The Commission shall become operational upon formulation of its rules of procedure, development of its action or work plan and launching of the first civic education campaign and public consultations to raise awareness on constitutional issues and promote public debate;
- (c) The Committee shall be established after reconstitution of the Commission. Members of the Committee shall attend the deliberations of the Commission throughout the first stage of the process. The Commission shall collect, collate, consider and analyse the outcomes of the first stage of public consultations and regularly transmit them to the Committee;
- (d) The Commission shall present to the Committee and the Conference, a report containing the outcomes of the first stage of public consultations. The Committee shall develop the first draft constitutional text based on the results of the first stage of public consultations and the deliberations of the Commission;
- (e) The Committee shall submit the first draft constitutional text to the Commission for validation, after which the Commission shall publish the first draft constitutional text in order to generate public debate and receive public submissions on the first draft constitutional text. The publication of the first draft shall mark the end of the first stage of the Constitution making process.

#### (2) Stage II

- (a) The Sub-Committee shall convene the Conference to mark the beginning of the second stage of the Constitution making process. The Conference shall develop and adopt its rules of procedure and working modalities to guide the fulfilment of its mandate after seven days;
- (b) Upon convening of the Conference, the Commission shall submit a report outlining the results of the first stage of public participation and the first draft

constitutional text to the Conference. This shall mark the start of the second civic education and public participation campaign, which shall be conducted on the basis of the first draft constitutional text. The public shall have the opportunity to express its views on the first draft constitutional text;

- (c) The members of the Committee shall attend the deliberations of the Conference and incorporate the results into the first draft constitutional text. The Committee members shall also attend the deliberations of the Commission in the second stage of the process. The Committee shall produce a second draft constitutional text for final deliberation and adoption by the Conference. The publication of the constitutional text as adopted by the Conference and its submission to the Minister shall mark the end of the second stage of the Constitution making process.

### **(3) Stage III**

- (a) After the submission of the adopted draft constitutional text to the Minister, the Transitional National Legislature shall transform into a Constituent Assembly for deliberation and adoption of the final Constitution. The Committee may assist the Constituent Assembly upon request with regard to clerical corrections that may be required;
- (b) Upon adoption of the Permanent Constitution by the Constituent Assembly, the third stage of civic education shall be conducted to disseminate the contents of the Permanent Constitution among the people of South Sudan.

## **CHAPTER IV**

### **FINANCIAL PROVISIONS**

#### **34. Sources of Funding**

The sources of funding of the Constitution making process shall be from:

- (1) National approved budget.



- (2) Assistance and donations from regional and international partners and friends of South Sudan.

**35. Audit**

The Auditor General or his or her appointee shall have access to all books of account and other financial records of the mechanisms.

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**ANNEX:**

**STAGES OF THE CONSTITUTION-MAKING PROCESS**

**STAGE I: VALIDATION OF THE FIRST CONSTITUTIONAL DRAFT TEXT  
BY THE COMMISSION**

<b>Sequence of Activities</b>		<b>Responsible Bodies</b>
1.	Reconstitution of the Commission	RTGoNU
2.	Appointment of the members and other staff	R-NCRC
3.	Development of the Commission's action / work plan	R-NCRC
4.	Recruitment of the members of the Committee	R-NCRC
5.	Conduct of a civic education campaign to raise awareness on constitutional issues and promote public debate	R-NCRC
6.	Collection and collating of public views on the different constitutional issues	R-NCRC
7.	Production of a report containing an analysis of the outcomes of collected public views	R-NCRC
8.	Development of the first constitutional draft on the basis of the analysis of the outcomes of collected views and the Commission's deliberations thereupon	CDC
9.	Validation and publication of the first constitutional draft	R-NCRC

**STAGE II: DELIBERATION ON AND ADOPTION OF THE FINAL DRAFT  
CONSTITUTIONAL TEXT BY THE CONFERENCE**

<b>Sequence of Activities</b>		<b>Responsible Bodies</b>
1.	Convening of the National Constitutional Conference	Preparatory Sub-Committee (PS-C)
2.	Submission of a report outlining the results of the first stage of public participation and the first draft constitutional text to the Conference	R-NCRC
3.	Conduct of a civic education campaign to disseminate the contents of the first constitutional draft among the public	R-NCRC

4.	Collection and collating of public views on the first draft constitutional text	R-NCRC
5.	Development and adoption of rules of procedure and working modalities to guide the fulfilment of the Conference's mandate	NCC
6.	Submission of analysis of views to the Conference	R-NCRC
7.	Members of the Committee attend the deliberations of the Conference and incorporate the results into the draft constitutional text throughout deliberations of the Conference	CDC
8.	Development of the second draft constitutional text for final deliberation and adoption by the Conference	CDC NCC
9.	Submission of the final draft constitutional text to the Minister	NCC

**STAGE III: APPROVAL OF THE FINAL DRAFT CONSTITUTIONAL TEXT  
BY THE TRANSITIONAL NATIONAL LEGISLATURE**

Sequence of Activities		Responsible Bodies
1.	Transitional National Legislature to transform into a Constituent Assembly for deliberation and adoption of the final Constitution	Transitional National Legislature (TNL)
2.	Submission of the final draft constitutional text to the Constituent Assembly	MoJCA
3.	The Committee may assist the Constituent Assembly upon request with regard to clerical corrections that may be required	CDC
4.	Launching of civic education campaign to disseminate the contents of the Permanent Constitution as adopted among the people of South Sudan	R-NCRC