



Background

The Comprehensive Peace Agreement (CPA) of 2005 granted the Sudan People's Liberation Movement (SPLM) 70 percent of the seats in the Southern Sudan Legislative Assembly (SSLA) while 30 percent were set aside for other parties, including 15 percent for the National Congress Party (NCP) and 15 percent for all of the other Southern parties. Although the framers of the CPA assumed that the elections scheduled for midway through the six-year period of the agreement presented an opportunity to expand the representation in the SSLA, the elections that were finally held in April 2010 resulted in a narrowing of representation. There are multiple factors that explain the opposition's failure to win more than a few seats in the SSLA during the 2010 elections, including their structural weakness and the lack of access to campaign resources, together with SPLA abuses directed at opposition parties.¹ As a result, the elections served to increase antagonism and distrust between the opposition parties and the SPLM.

Despite this antagonism, virtually all of the parties and leading figures in Southern Sudan remained committed to the CPA-stipulated self-determination referendum. Even the few who preferred unity with the North nonetheless supported a referendum to determine democratically whether the people of Southern Sudan wanted to stay in Sudan or secede. That shared commitment provided a basis on which to bring the otherwise disparate parties together. The first attempt at finding common ground was a meeting initiated by President Salva Kiir in October 2008 held in Juba. The parties committed to unity and agreed on the organization of a secret

for secession. This commission would review the current Interim Constitution for Southern Sudan (ICSS) for adoption as a transitional constitution. This was to be followed by both an all-party constitutional conference that would deliberate on a new permanent constitution for Southern Sudan, as well as the formation of a broad-based transitional government that would be led by President Salva Kiir after the end of the interim period. The transitional government would oversee a census and elections for a constituent assembly that would promulgate a permanent constitution. It was also agreed that all the southern political parties would convene again one week after the official announcement of the referendum results to discuss planning for the transition.

The October 2010 meeting was an important step toward overcoming a legacy of distrust between the SPLM and the other Southern parties and reaching agreement on the way forward in Southern Sudan, assuming secession was chosen. President Salva Kiir also used the October 2010 meeting to announce an amnesty for Southern rebel groups, a step that was widely welcomed.

Technical Committee to Review the Interim Constitution

Although the October 2010 Juba meeting resulted in an agreement to call for the convening of a National Constitution Commission to review the ICSS, President Kiir decided instead to issue a Presidential Decree on Jan. 21, 2011, establishing a Technical Committee to Review the ICSS. The Technical Committee draws most of its mandate from Article 208 (7) of the ICSS that stipulates that if Southerners choose secession, all components of the ICSS that provide for national institutions, rights, duties, and obligations must be repealed. In the terms of reference annexed to the Presidential Decree, the Technical Committee is specifically charged with the following:

- Deleting all parts of the ICSS that provide for national institutions and powers;
- Replacing all references to national institutions and powers with comparable Southern institutions and powers;
- Evaluating and identifying provisions of the ICSS that need modification in order to ensure “effective governance;”
- Developing and presenting to the president recommendations for the creation of the Permanent Constitution; and
- Presenting the final draft of the Transitional Constitution to the president by April 25, 2011, for submission to the South Sudan Legislative Assembly.

The decree appointed 20 members to the Technical Committee and four legal advisors led by Minister of Legal and Constitutional Development John Luk Jok. Approximately half of the members appointed by the initial decree are Presidential Advisors or Ministers in the Government of Southern Sudan (GoSS) and the rest are members of the SSLA, lawyers, and judges. In initial discussions about the establishment of the committee, SPLM officials stated that all members of the committee were chosen because they were either involved in the initial drafting of the ICSS or had particular expertise deemed critical to a constitutional process, but not because of their political affiliations. They also contended that the committee would only be proposing amendments to the ICSS

according to Article 208 (7) and was therefore the sole responsibility of the GoSS, since the process of amending the constitution should be a governmental process. SPLM representatives also initially indicated that the committee had the purely technical

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groups. The names of these 11 opposition representatives and one civil society representative also were agreed to at the meeting.

In subsequent meetings of the

anger that the SPLM refused to make all decisions on the basis of consensus, effectively eliminating the opposition's ability to influence certain decisions taken on proposals to be put in the draft constitution. The Carter Center understands that some decisions of the committee are taken by consensus but decisions on more controversial proposals such as the length of the transition and the expansion of the SSLA were decided on the basis of majority. Any objections by members to decisions made by the committee are recorded and put into the explanatory report that will be sent along with the draft constitution to President Kiir.

Opposition representatives on the committee also strongly disagreed with SPLM positions on the expansion of the SSLA to include Southern elected representatives returning from Khartoum. Other significant points of disagreement were the length of the transition period and the approach to determining power-sharing arrangements for the broad based transitional government. Regarding the length of the transition, some SPLM representatives claim that the mandate of those elected in April 2010 should be for five years starting from July 9, 2011, as opposed to the date of their election in 2010. The opposition's position is that the transition should last no longer than two years. On power sharing, the opposition members support a 50-50 split between SPLM and opposition, to be implemented at all levels of government, though they recognize that it is unlikely that the SPLM would agree to such a high percentage and have expressed desire to negotiate a more acceptable formula. Some SPLM members of the committee argue that only President Kiir can determine how and on what basis he would like to include members of the opposition into the executive branch of the government.

These disagreements and the inability of the opposition members to influence key decisions of the Technical Committee led five members to withdraw on March 7, leaving six opposition members in the Technical Committee. Those that withdrew have urged President Kiir to call a meeting with opposition leaders to resolve these problems and

the draft until April 25, there may be very little time for substantive consideration by the president and the Leadership Forum.

Conclusion and Recommendations

The October 2010 meeting represented a major step toward a national consensus on the political and constitutional basis for the new independent nation of South Sudan. President Salva Kiir's leadership of this process has been critical at key moments in sustaining unity and reconciliation among his fellow citizens. In turn, the opposition party leaders have shown a willingness to place shared national interests and principals above partisan interests.

However, the maintenance of a genuinely inclusive transition process is now in jeopardy due to two primary issues: first, the lack