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Is Time Running Out for South Sudan's New Constitution?

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Juba, South Sudan—As South Sudan celebrates the one year anniversary of its independence, the new nation and its citizenry are in the midst of a critical legal and political process: the drafting of a permanent constitution. Delays in this process risk undermining its credibility among South Sudan's civil society, opposition political parties, and the international community.

“The Transitional Constitution of the Republic of South Sudan,” or the Transitional Constitution, drafted and passed into law in the weeks and months ahead of the country's independence, lays out the process for drafting a permanent constitution for the new nation. Notably, the Transitional Constitution calls for the establishment of a National Constitutional Review Commission, or NCRC, within six-months of July 9, 2011. Accordingly, on January 9 of this year, President Kiir established the NCRC and appointed its membership, the majority of which is from the South's ruling political party, the Sudan People's Liberation Movement, or SPLM. *Within one year of its establishment*, and in accordance with the Transitional Constitution, the NCRC is to carry out civic education, conduct popular consultations to collect the views and suggestions of South Sudanese on, among other things, the current system of governance, review the Transitional Constitution, and adopt a Draft Constitutional Text and Explanatory Report for submission to the President.

Today, nearly six months after its establishment, the NCRC has made little, if any, significant progress in its required program of work. While South Sudanese civil society organizations have begun collecting the views of the population on the Transitional Constitution and related governance matters, the NCRC has yet to fully constitute its secretariat, adopt its rules of procedure or work plan, or initiate civic education, let alone begin the required popular consultations. The United Nations Mission in South Sudan, or UNMISS, has begun to convene working group meetings of international organizations capable of providing technical, logistical, and other expertise and support to the NCRC. Indeed, the NCRC seems almost overwhelmed with offers of support and expertise from the international community. However, both South Sudanese and international actors working on the process in Juba agree that the time remaining

before the January 2013 deadline is not sufficient enough for the NCRC to carry out a comprehensive civic education program and popular consultation process.

In light of the criticism that the government of South Sudan and the SPLM received from domestic and international actors concerning the lack of popular consultations during the transitional constitutional process, and assurances that the permanent process would be consultative, the limited time frame within which the NCRC has to carry out its work is particularly troubling and potentially problematic for the SPLM and the government of South Sudan, or RSS. The NCRC's failure to perform transparent, all-inclusive consultations, per the provisions of the Transitional Constitution, could bring about intense criticism of the RSS and the SPLM from South Sudanese civil society, opposition political parties, and the international community. Indeed, some internationals in Juba today muse that any draft text that the NCRC produces will be an "SPLM constitution." The exact definition of an "SPLM constitution" varies depending on with whom one speaks. Nevertheless, its general use among some within the international community indicates the tone of criticism that would come, should the NCRC not engage in a truly consultative process.

There remains, however, one problem: time. According to the provisions of the Transitional Constitution, the NCRC *must* complete its work within one year of its formation, or January 9, 2013. That leaves approximately six months for civic education, popular consultations, a review of the Transitional Constitution, and the compilation and presentation of a draft constitutional text and explanatory report. This is an impossibly short period that appears to demand an extension to ensure that the NCRC has sufficient time to adequately complete its work. However, an extension would require an amendment to the Transitional Constitution, which, in and of itself, presents further challenges.

For the NCRC's mandate to be extended, allowing it the time necessary to complete comprehensive popular consultations and the other aspects of its work, a member of South Sudan's legislature would have to introduce an amendment to the relevant provisions of the Transitional Constitution, which would, in turn, have to pass both legislative chambers by a two-thirds majority of each chamber's membership. Such a vote, though, could only take place at least one month after the introduction of the amendment.

It is, as of yet, unclear whether any such amendment will be introduced, let alone passed. What appears increasingly clear, however, is that the remaining six months of its mandate will not afford the NCRC enough time to adequately complete its envisioned work, leaving any draft constitutional text it forwards to President Kiir open to intense criticism from the people of South Sudan and the international community. For a young nation trying to establish transparent and inclusive democratic institutions and processes, such criticism could, rightly or wrongly, undermine the SPLM's legitimacy and hold on power, and call into question the degree to which South Sudan's permanent constitution truly represents the will of its people.