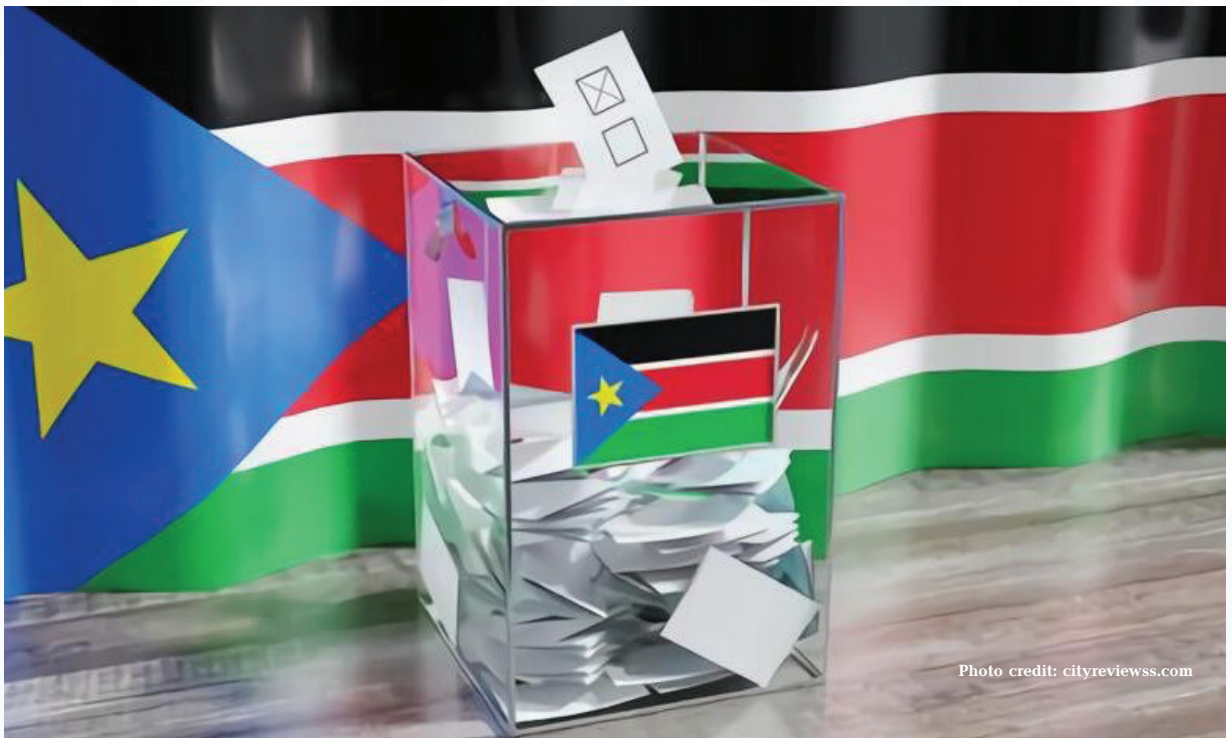


# The Mashariki Today

## Constitutional Reform to Address Election and Democratic Governance In South Sudan



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### Introduction

The Government of South Sudan opted to delay elections due in December 2024 until 2026.<sup>1</sup> This, underlines deep-seated political problems in the country, way beyond just election delays. All these are underpinned by the inability to produce a permanent Constitution—a key pre-requisite towards cementing the fragile peace and entrenching democratic governance in the country. Ever since 2011, the year of its independence, the youngest country in Africa—South Sudan—has reeled under a civil war,<sup>2</sup> ethnic violence, and political turmoil. While the signing of the 2018 Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan was meant to usher in a new chapter,<sup>3</sup> the peace process has poorly taken off. The Transitional Government, established in 2020, was mandated to lead the country through a fragile transition period, yet it has failed or is yet to implement the most critical reforms of the peace agreement: coming up with a permanent constitution that lays out how the government will be organized and how power is divided, in turn enabling valid elections to take place.<sup>4</sup> The stated reason for the failure to hold the election in 2024 is that such preparations as working out the constitution are not complete.

Without a completed legal framework, the country is ill-set to handle elections, as that would further divide rather than bring people together. Any electoral activities without a strong constitutional framework risks being perceived as illegitimate and could re-ignite violence in the already ethnically divided country. Thus, the deferral of elections is not solely a logistical challenge; it's representative of a deeper crisis of governance that is facing the nation of South Sudan.

Thus, this commentary, seeks to discuss key issues related to constitutional reform that will help address electoral delays in South Sudan.



### Key Issues

#### Power Sharing

Power sharing lies at the heart of political problems in South Sudan.<sup>5</sup> Under the current political dispensation, power is highly centralized in the hands of the presidency. In effect, this has made President Salva Kiir's government be characterized by claims of authoritarianism, accused of quelling political opposition and perpetuating power consolidation.<sup>6</sup> Indeed, the fact that elections have been postponed provides a golden opportunity for this imbalance to be corrected through constitutional amendments aimed at decentralizing authority and making politics more inclusive. It shall be the aim of the new constitution to ensure due representation for the various ethnic groups of South Sudan. The civil war that has stunted development in the country was partly driven by ethnic grievances and feelings of exclusion from power. The peace agreement had sought to address this with a power-sharing arrangement, but without a permanent legal framework to support such an agreement, these commitments have remained unfulfilled.

<sup>1</sup>Agroecology South Sudan postpones December election by two years. Al Jazeera, 2024. Retrieved from: <https://www.aljazeera.com/news/2024/9/14/south-sudan-postpones-december-election-by-two-years>

<sup>2</sup>South Sudan at cross-roads, challenges and hopes 11 years after independence. Human Rights Watch, 2021. Retrieved from: <https://www.hrw.org/news/2021/07/09/south-sudan-crossroads>

<sup>3</sup>Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan, IGAD. Retrieved from: <https://docs.pca-cpa.org/2016/02/South-Sudan-Peace-Agreement-September-2018.pdf>

<sup>4</sup>The Formation of the Revitalized Transitional Government of National Unity in South Sudan, ACCORD. Retrieved from: <https://www.accord.org.za/conflict-trends/the-formation-of-the-revitalized-transitional-government-of-national-unity-in-south-sudan/>



Photo credit: Oryx

### Security Sector Reform

Reform of the security sector is also an issue that is no less important during the constitutional reform process. Despite the peace treaty, in some parts of South Sudan, violence continues, and armed groups have not laid down their arms. The opposing forces have been integrated into one unified national army but only at a very slow rate. It is considered a big concern that civilian oversight of security forces has not been put in place. Clearly, guidelines on security sector reform are yet to be fully articulated; therefore, any guarantee of safety and security, which goes hand in hand with peaceful elections, cannot be ascertained. A new constitution must, above all, determine the ways through which armed groups are to be demobilized and ensure that the military carries out its activities under civilian control. These reforms are what needs to be emphasized more. South Sudan is presently standing at a crossroads, and decisions to be made in the coming months will determine whether the country is going to head towards peace and stability or slide back into renewed violence.

### Involvement of Regional and International Actors

The delay in elections should not be seen as a setback, but rather as an opportunity to invest in key fundamental reforms that shall lay the foundation for lasting peace. However, this will be a missed opportunity unless the transitional government makes constitutional reform the first order of business. The transitional government is obligated to immediately begin to implement a finalized constitution. The process should be inclusive, involving all political parties, civil society, and representatives of different ethnic groups. Public consultations on the new constitution are necessary so that it shall have the legitimacy and acceptance needed for effective governance. It also calls for transparency in the drafting process with timelines and accountability mechanisms put in place to prevent further delays.

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<sup>5</sup>High Stakes for the South Sudan Talks in Kenya, International Crisis Group, 2024. Retrieved from: <https://www.crisisgroup.org/africa/horn-africa/south-sudan-kenya/high-stakes-south-sudan-talks-kenya>

<sup>6</sup>Corruption by South Sudan's political elite: A collective responsibility for hindering democracy. Radio Tamazuj, 2024. Retrieved from: <https://www.radiotamazuj.org/en/news/article/opinion-corruption-by-south-sudans-political-elite-a-collective-responsibility-for-hindering-democracy>

The African Union, and particularly the regional actors, should assist in this regard in the constitutional reform process. The African Union has the greater responsibility of mediating between the different political factions in South Sudan and providing technical assistance to ensure timely completion of the constitution. Regional stakeholders, with a vested interest in South Sudan's stability, have to provide the transitional government with financial and logistical support to facilitate the said reforms. This also means that the international community, starting with the UNMISS, needs to get much more engaged. The UNMISS has played a very critical role in the protection of civilians and monitoring of human rights, but it is now time that its attention is directed at building the capacity of South Sudan's electoral institutions. This includes providing technical support to the electoral body and assisting in drafting the relevant legal framework for holding free and fair elections.

In addition, international donors must link budgetary support with progress on constitutional review and utilize such aid as leverage to ensure the transitional government gears up more on governance reforms and less on political maneuvering. As the elections of 2026 approach, the question of economic governance has to be tackled by the government of South Sudan. Heavily reliant on oil revenues, these revenues have many times been mismanaged or monopolized by elites. One of the provisions of the new constitution should be to make the management of natural resources transparent so that the wealth of the country will benefit all its citizens, not just a few of them. Without reform in this respect, economic grievances will continue to feed conflict and undermine efforts to build a stable democracy.



### Conclusion

The deferment of elections in South Sudan becomes a pointer to a far deeper governance crisis that cannot be sorted out by electoral processes alone. Indeed, the ultimate future of the nation depends on how effectively the ongoing process of constitutional reform is concluded in an inclusive and transparent manner and actually addresses the root causes of the conflict. The Transitional Government thus has a rare opportunity to set in place those critical building blocks that will help attain stability and democracy in the state of South Sudan. If this is not done now, the consequences will be quite grave. However, if correctly reformed, South Sudan can head in the direction of peace and prosperity.

## Policy Recommendations

In this regard, the following are key policy recommendations;

- **The Transitional Government of National Unity** should accelerate the process of drafting the constitution through an inclusive public consultation to allow for the widest consultations of representatives of various political and ethnic cadres.
- **The African Union should** seek to provide mediation and technical support for the timely completion of the constitutional reform process in South Sudan.
- **The United Nations Mission in South Sudan (UNMISS)** should strengthen the capacity of South Sudan's electoral institutions while placing greater emphasis on security sector reform.
- **Regional Actors such as the IGAD and EAC** should provide technical expertise, financial and logistical support for the reform process, while enhancing mediation between different political factions to the conflict.
- **The international Community** should provide financial assistance to support constitutional reforms in South Sudan, with emphasis on good governance and transparency.



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