Citizens' Dialogues on the Constitution conducted in the Ten states of the Republic of South Sudan

Dialogues implemented from April 2012 – July 2013 across the ten state
Analysis of data July 2013 – July 2014

Implemented by:

In partnership with

. ***Working for Peace and Rights in Africa***

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Overview

The Civil Society Resource Team on the Constitution Review Process, in partnership with the South Sudan Law Society and Justice Africa, organized and led citizens' dialogues on the constitution in all ten states of South Sudan. The dialogues were held in:

- Torit, Eastern Equatoria – 5th – 7th June 2012
- Yambio, Western Equatoria – 26th – 28th June 2012
- Aweil, Northern Bahr el Ghazal – 15th – 17th August 2012
- Kuajok, Warrap – 21st – 22nd August 2012
- Malakal, Upper Nile – 7th – 9th October 2012
- Rumbek, Lakes State – 4th – 6th November 2012
- Bentiu, Unity State – 13th – 15th February 2013
- Bor, Jonglei State – 25th – 27th March 2013
- Wau, Western Bahr el Ghazal – 13th – 15th May 2013
- Juba, Central Equatoria – 17th-19th July 2013

The dialogues brought together over 1,200 citizens, including over 500 participants from all the counties of the respective states. The participants were drawn from a variety of stakeholders including traditional authorities, women's groups, youth groups, civil society, the state assemblies, members of parliament, religious groups and local government.

In addition to the constitutional dialogues, marginalised groups were also supported to organise discussions to analyse the Transitional Constitution and put forward recommendations and amendments towards a future constitution that is sensitive to, and promotes the rights of, women, youth and those with disability with reference to the views gathered in the dialogues. These views have been incorporated into the recommendations (please contact SSLS or Justice Africa to see the women, youth and Persons with disabilities recommendations).

Though the dialogues were highly diverse there were some key themes of discussion that arose including the nationwide demand for federalism, Local Government, corruption, equitable distribution of resources, the need for legal protection against rape and gender based violence, affirmative action for women, youth and people with disabilities, the separation of powers of the three arms of government, reducing the powers of the president and the need for all constitutional posts to be filled through election.

Civil Society Resource Team on the Constitution Review Process

The Civil Society Resource Team on the Constitution Review Process consists of 18 civil society organisations working towards a participatory constitution-making process in South Sudan. The Resource Team was created to share views gathered from citizens, civic education methods and to coordinate activities and advocacy efforts. The resource team have gone through a process of capacity building, including exposure trips to Kenya, South Africa and Ghana, and training in facilitation skills, civic education methods and data collection. The Resource Team consists of the following civil society organisations and networks:

- South Sudan Law Society (SSLS)

- Sudan Domestic Election Monitoring and Observation Programme (SuDEMOP)
- South Sudan Network for Democratic Elections (SuNDE)
- Voice for Change
- Community Empowerment for Progress Organisation (CEPO)
- Institute for the Promotion of Civil Society (IPCS)
- South Sudan Women Lawyers Association (SSWLA)
- South Sudan Human Rights Society for Advocacy (SSHURSA)
- Organisation for Nonviolence and Development (ONAD)
- South Sudan Union for Persons with Disability (SSUPD)
- South Sudan Action Network on Small Arms (SSANSA)
- Catholic Radio Network (Radio Bakhita, Radio Emmanuel)
- Policy Advocacy for Strategic Studies (PASS)
- Gadet Pentagon
- Equatoria Rehabilitation and Development Agency (ERADA)
- South Sudan Women's Empowerment Network (SSWEN)
- South Sudan Association of the Visually Impaired (SSAVI)
- South Sudan Youth Peace and Development Organisation (SSYPADO)
- South Sudan Women with Disabilities Network (SSWDN)

Dialogue Implementation Methodology

The dialogues were conducted in a participatory manner with a strong emphasis on group work to ascertain the citizens' views on the constitution and the issues pertaining to their state. Each presentation was followed by a plenary session to ensure that the participants had an opportunity to comment and question the facilitators. Presentations were given on the following topics:

- What is a constitution?
- The main features of the Transitional Constitution
- Democracy and good governance
- Unitary and federal systems of governance
- Presidential and parliamentary systems of government
- Local government in South Sudan

Finally, the opinions of the participants were recorded, summarized and read back to the participants at the end of each dialogue for validation.

Participants in Yambio - Chair exercise to explain the balance of powers between the arms of government

Next steps of the process

The Resource Team have been undertaking discussions under the following themes (specified during an advocacy strategy retreat held in May): peace and security, governance, gender and social relations, resource governance and human rights. These thematic discussions have consolidated the views gathered from the state dialogues with those collected by the individual CSOs towards formulating concrete recommendations for the next Constitution. These recommendations were discussed through seminars (facilitated by regional experts) and later turned into legal language by South Sudanese lawyers in order to build consensus and strengthen the language and presentation of the recommendations. Organisations representing women, persons with disabilities and youth held broader consultations (with the support of Justice Africa) to consolidate specific recommendations for the next constitution. Currently the Resource Team are working on a consolidated advocacy document including the marginalised group recommendations which will be used to lobby for the inclusion of their recommendations in the next constitution. The Resource Team also plan to carry out further civic education and consultation on the Constitution at state and county level in the immediate future using the formulated recommendations as a basis. The Resource Team also recognise that due to the violence that broke out since the 15th of December 2013 the recommendations need further review according to the current context.

Areas for further civic education

The Resource Team have consistently acknowledged the need for further civic education to be carried out nationwide in order to reach a broader proportion of the population especially at payam and boma levels. In particular the following areas require large-scale sensitisation of citizens: human rights; disability rights; women's rights and equality; systems of governance; citizenship; local governance setups and how to hold leaders accountable; and customary law with regards to its compliance or non compliance with statutory laws of South Sudan.

Key Issues Arising from the Ten State Dialogues (please note the following is a summary)

Government good will for the constitution making process

Generally, the participants had no access to the Transitional Constitution and many were not aware of the ongoing constitution review process. There were calls for greater government good will for the process, which many felt should be inclusive of all citizens down to the Boma level. Participants wanted assurance that the review process will result in a document that genuinely reflects their will.

Democratic Governance

Citizens would like to see effective institutions, structures and principles that will nurture, consolidate and guarantee democratic governance. Participants called for equal development opportunities for all citizens and regions.

In all states, participants called for an end to corruption and a mechanism for holding corrupt officials accountable. In addition, participants called for the implementation of equality before the law and the eradication of impunity.

Calls for a Federal Political Structure

Participants were concerned that although the Transitional Constitution of South Sudan 2011 has a strong emphasis on decentralization, the national government continues to be dominant over the state governments. The powers of the states are mandated by the national government which can withdraw state powers. Consequently, in all dialogues participants called for a federal system of governance.

Human Rights

People would like to see a constitution that guarantees the protection and promotion of human rights, including affirmative action quotas for women, people with disabilities, and youth. They called for a constitution that recognizes citizens' rights to participate in the development of the country according to their priorities. They want a constitution that guarantees equality, freedom and liberty, free and independent media, and a secular state that recognizes diversity in culture and religion. Participants also called for the right to food, to divorce and the right to a clean and healthy environment to be added to the Bill of Rights.

Resource Management

All participants expressed that they wanted a constitution that enables the proper management of resources for the benefit of present and future generations. Participants recommended that states should have control over their own resources. They recommended that the Transitional Constitution 2011 should state that a specific quota of all natural resources be allocated to the producing state. It was also recommended that resource distribution should be based upon population distribution in order to be equitable.

Peace and Security

All participants want to see a constitution that redresses the deteriorating security situation. They want a constitution that provides a mechanism for nurturing social trust among and between communities. Citizens want the constitution to provide mechanisms that can redress

the long history of inter-communal violence, the pronounced gun culture and the high proliferation of arms in the hands of civilians.

Distribution of Power

Citizens called for a constitution that stipulates: how constitutional positions and those in support structures are filled; the terms, period and termination of service of constitutional office holders and other senior public officials; a specified turn-over cycle of constitutional positions; a methodology for removal prior to completion of term and a definition of supportive legal instruments.

Participants also called for a reduction of the presidential powers stipulated in the current constitution that are seen to hamper democracy, including the power to remove elected officials. There were also strong calls across the states for all elective constitutional posts to be subjected to elections. Across the ten states participants called for the judiciary to be devolved to state level.

Gender and Social Relations

Deliberations in the dialogues and other CSO consultations organized by women's networks emphasized the need to redress inequalities and injustices resulting from history, customs and traditional practice. Although participants acknowledged the 25% affirmative action threshold, they lamented the unsatisfactory implementation of this significant constitutional postulate, particularly within the judiciary. Women's groups have called for an increase in the affirmative action threshold percentage to 35%, as promised by the government, and look forward to the implementation of this promise.

In all dialogues, participants called for a marriageable age of at least 18 years and above for both sexes to be specified. Participants also called for inheritance rights for women and an express provision prohibiting all forms of violence against women. They called for ratification of the international human rights legal treaty, the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW), without any reservations.

Many participants were concerned that the interpretation of South Sudanese customary law is undefined and undocumented and can undermine fundamental principles enshrined in the constitution, in existing legislation and in international law. This leads to contraventions of human rights, particularly those of women and girls.

Elections

Citizens acknowledged that democratic elections are the basis of the authority of any representative government and that regular elections constitute a key element of the democratization process. Citizens thus recommended that elections should be conducted periodically, freely and fairly. It was noted that the Transitional Constitution does not have a provision on how and when elections will be held after the transitional period and that this has led to the peculiar position where we have a National Elections Act that is not guided by a constitution.

Political Systems

While most participants preferred a presidential system to a parliamentary system, they strongly called for the separation of powers. They emphasized that none of the arms of the government should in any way interfere with the functions and work of the other, and therefore there should be no overlap of personnel in the different arms of government.

Other important areas of discussion

Importance was also placed on issues of citizenship and nationality; the official language; the role of the traditional authority; the actualization of women's rights; how to fully implement the affirmative action quota for women and other marginalised groups; how the local government should function; mechanisms of controlling conflict of interests; and the importance of domesticating international law and conventions.

Summary of views from each state dialogue

Citizens' Dialogue on the Constitution of the Republic of South Sudan
Torit, Eastern Equatoria State
5th – 7th June 2011
Catholic Diocese of Torit, Torit Town

The participants of the dialogue spoke at length about the need for self-reliance, particularly with respect to agriculture. They argued that South Sudanese should not be forced to rely on foreign imports when they have fertile land and consequently must develop their own agricultural industry. However, they noted that the agricultural sector can only be developed if there are roads to link farms to the markets. They complained that the best roads link South Sudan to foreign markets and internal road networks should be developed. If this could be achieved it would mean great strides towards dealing with the issue of food insecurity.

Participants also explained that the government must work on its service delivery, and that vital services such as education, health and access to clean water are insufficient for the needs of the people. The participants argued that the people must provide far greater oversight of the institutions that deliver services, that the government must be more transparent in how it delivers services and that the citizens must be consulted to determine their priorities. This was reflected in how the participants wished to be governed through a federal system. They felt that by constitutionally protecting the rights of the states, governance could be brought closer to the people. Participants raised the issue that the judiciary is not fully devolved or operational at state level. They also felt that there must be a greater emphasis on implementing the terms of the Local Government Act, particularly the need to ensure democratically elected officials at the local level. They argued that democratic accountability would force officials to be more accountable in how they use public funds, particularly the Constituent Development Fund.

The participants argued that adequate service delivery would take the strain off the local communities and decrease the struggles over resources such as land and cattle, which are key issues in Eastern Equatoria. At the same time they recognized that the war created many divisions within society and that the government must focus on promoting peace and reconciliation between communities. If trust could be built between societies this would provide an opportunity to pursue peaceful disarmament and deal with the problem of small arms and light weapons which has caused serious insecurity in Eastern Equatoria.

In terms of social issues they felt that there is a lack of clarity about the legal status of issues such as girl child compensation and child abduction, and that the government has failed to outline the role of traditional justice and give sufficient support to the traditional authorities. The participants also felt that the government should do more to curb the widespread cases of gender based violence and mob justice. In this regard the participants felt that the police have

not provided sufficient protection for communities and that there should be police posts in all levels of society from the bomas upwards.

The participants concluded that the government must govern in accordance to the will of the people and must be more responsive to the needs and priorities of the people.

Citizens' Dialogue on the Constitution of the Republic of South Sudan
Yambio, Western Equatoria State
26th – 28th June 2012
Ministry of Education Hall, Yambio

Central to the discussions in Yambio was the issue of governance. The participants called for major reforms in order to achieve the decentralization of governance that is required in the Transitional Constitution. The primary reforms the participants wanted were the creation of a federal state with a parliamentary system of government. In the absence of such significant reforms the participants felt it was of integral importance to promote decentralisation and have three independent arms of government that could provide oversight and check the powers of one another, in particular the executive. For instance, the participants felt it was undemocratic for the president to have the power to dismiss a democratically elected governor or state legislature. They argued that only the state legislature should have the authority to dismiss a state governor through a two thirds vote of no confidence. They also felt that powers such as the right to declare a state of emergency or appoint government officials should not be vested solely in the president; rather the national parliament must be consulted before such decisions are made. The participants argued that it is important that there be term limits of two four year terms for both the president and governors. Such term limits would help to ensure consistent changes of government. The participants also felt that issues of vital national importance such as the decision to change the national capital or the ratification of the permanent constitution should be subjected to a referendum to ensure the agreement of the people.

Another issue of importance to the participants was the management of public resources. The participants were adamant that public resources should be equitably divided between all levels of government. It was felt that since 2005 resources have been too greatly concentrated in Juba and as such the equitable division of resources should be constitutionally enshrined.

Regarding the local government, the participants expressed their desire to have commissioners and councillors elected as stipulated in the Local Government Act. The participants also felt that policing should be devolved to the state level.

Finally, in respect to social issues the participants felt that the constitution should clearly define the marriageable age and that the government should work to eradicate social practices that are discriminatory to women.

Citizens' Dialogue on the Constitution of the Republic of South Sudan
Aweil, Northern Bahr el Ghazal
15th – 17th August 2012
South Sudan Hotel, Aweil

The participants in Aweil largely focused on how the constitution could be used to regulate social norms and behaviour. This resulted in a striking dichotomy between calls for women's increased participation in public life and the desire to regulate society through strict traditional practices. For instance, the participants called for women to be included within the traditional courts, to have the right to own property within the family, and for women to make up at least 25% of the civil service as well the government. At the same time they were adamant that the constitution should criminalize adultery, which in a polygamous society clearly discriminates against women. They also called for restrictions upon divorce and the criminalization of sexual relations that lead to pregnancy outside of marriage.

With respect to governance, the participants outlined the importance of reforming the current system and granting constitutional rights to the states, thus enshrining federalism within the constitution. They felt that while a presidential system should be maintained, there should be clear term limits within the constitution and that there should be greater restrictions on presidential power. They also argued that the government has been far too remote from the citizens and that the constitution should require that MPs meet with their constituents on a regular basis.

In terms of economic principles to be included in the constitution they expressed a preference for protectionist policies that would promote local industries and markets. They argued that foreign traders should be banned from working anywhere but the state capitals and should not be allowed to own land. They also expressed the view that all development contracts should be granted to local firms who then would have the right to subcontract foreigners. Finally, they felt that the government should be constitutionally obligated to control the prices of essential goods.

Security issues were also of concern to the participants who felt that the movement and sale of cattle should be regulated by the government. In doing so they argued that the government could lessen the conflicts between pastoralists and farmers and reduce the incidents of cattle raiding. While they accepted that foreigners had the right of movement in South Sudan they said that pastoralist communities coming into Northern Bahr el Ghazal from Sudan must have the requisite documentation. Finally, they were vocal that murder and treason should be punished by the death penalty.

Citizens' Dialogue on the Constitution of the Republic of South Sudan
Kuajok, Warrap State
21st – 22nd August 2012
Council of Traditional Authority Leaders Hall, Kuajok

The participants at the dialogue were predominately concerned with social issues. While they called for customary law to be respected, they also felt that some of what they described as harmful cultural practices should be prohibited. In particular they wanted to see the constitution define the marriageable at 18 years and forbid underage and forced marriage. They also called for the government to regulate bride price. There was also a debate about whether adultery should be a criminal offense. While the majority of participants felt that adultery should be retained as an offense there was a significant minority that recognised that this unfairly discriminates against women.

On governance issues they called for South Sudan to be governed as a federal state with a presidential system of government. However, they argued that the powers of the president should be reduced to allow for clear distinctions between the three arms of government. In line with the requirements of a federal state they wanted the judiciary to be extended to the state level. Finally, they placed a considerable emphasis on the need to eradicate corruption from the government at all levels.

Citizens' Dialogue on the Constitution of the Republic of South Sudan
Malakal, Upper Nile
7th – 9th November 2012
South Sudan Hotel, Malakal- support by IKV Pax Christi

In Malakal there was a strong emphasis on the need to develop an inclusive national identity and to eradicate tribalism. This point was repeated numerous times and the participants argued that a failure to do so would inhibit sustainable development in the country. For instance, they argued that the constitution must protect against exclusionary hiring practices that have resulted in a government whose main function is to provide patronage rather than services. This they argued was also reflected in conflicts over county and payam boundaries, which must be conclusively demarcated. The struggle between communities to control local government institutions has on numerous occasions resulted in outbreaks of violence. The participants also felt that a greater democratization of local government, in line with the Local Government Act 2009, would allow for a more inclusive representation. This would help reduce the current 'winner takes all' mentality concerning the control of local institutions and their respective forms of patronage.

In regard to economics, the participants felt that current levels of taxation were too high and that corruption represented an enormous challenge to economic growth. In the most strident language of any dialogue the participants called for the prosecution of any official involved in corrupt practices.

Finally, the majority of participants called for South Sudan to be ruled as a federal state.

Citizens' Dialogue on the Constitution of the Republic of South Sudan
Rumbek, Lakes State
4th – 6th December 2012
Rumbek Business Centre, Rumbek - Supported by Trocaire

This dialogue provided an interesting focus on the rights of marginalized groups; in particular women, youth and persons with disabilities. The participants argued that the 25% affirmative action clause for women in government should be increased to 35% and equal opportunity laws should be enacted to promote women's participation in public life. Youth should also be represented at all levels of government; however, the participants did not outline how such affirmative action would work. In regard to persons with disabilities (PWDs), the participants called for a 50% discount for PWDs in education and public transport costs. Furthermore, PWDs should be represented at all levels of government.

An interesting view that was not heard in previous dialogues was the need to reform the Council of States to clarify its functions and enable it to protect the interests of the states. If South Sudan is to be a federal state, which the majority of participants in each dialogue have called for, further revisions need to be made to the function of the upper house. Members of the Council of States are selected by their respective state legislatures and sit in joint sessions with the National Assembly the majority of who are directly elected. Furthermore, the Transitional Constitution is unclear concerning the competences of the Council of States as outlined by articles 55, 57 and 59.[1] The Transitional Constitution stipulates that an Inter-House Committee will decide whether a bill falls under the remit of the Council of States. This places considerable power concerning the interests of the states in one committee with no further specification concerning its structures and composition.

Citizens' Dialogue on the Constitution of the Republic of South Sudan
Bentiu, Unity State
13th – 15th February 2013 supported by Cordaid
Council of Traditional Authority - Bentiu

The Bentiu dialogue had a strong focus on how constitutional posts should be appointed. It was strongly stated that the powers of the President should be reduced and decision making processes should involve the National Legislative Assembly, particularly regarding the dismissal of government officials voted in by the citizens.

There was also a strong call for the Council of Traditional Authority to be formed in Unity State and the need for the Constituency Development Fund to be closely monitored at both national and state level.

Participants also suggested that oil producing states should get a higher percentage of the oil revenues.

Finally the participants expressed a need to reconcile the local customary law (Pangak) with the Local Government Act in order to clarify the role of local authorities to the communities particularly when resolving conflicts at payam/boma level.

Citizens' Dialogue on the Constitution of the Republic of South Sudan
Bor, Jonglei State
25th – 27th March 2013
South Sudan Hotel, Bor

Bor dialogue also had a strong emphasis on limiting the powers of the President and reducing the size of the government. The participants agreed that the President should have two terms of four years with mid-term elections. Participants added that a date for the 2015 elections should be clearly stated in the next constitution. Participants called for affirmative action for youth, persons with disabilities and women. However, consensus was not reached as to whether the affirmative action percentage for women should be raised to 35% or left at the current 25%. There was disagreement between women's organisations at state capital level who were calling for an increase and the traditional authority representatives from county level.

It was also suggested that population size should be considered in the distribution of wealth - including the percentage of natural resource wealth going to the states.

Citizens' Dialogue on the Constitution of the Republic of South Sudan –

Wau, Western Bahr el Ghazal State
13th – 15th May 2013 – Supported by DANIDA
Western Bahr el Ghazal University, Wau

Key issues raised in the dialogue showed a concern for the devolution of powers to enable development, leading a majority to call for a federal system of governance. There was an emphasis on the need for accountable leadership, for all constitutional positions to be filled through election, for separation of the three arms of the government, and for a reduction of the powers of the president, as well as a presidential term limit of 2 terms of 4 years.

There was a high consideration of the needs of marginalised groups; it was put forward that women should be included in all levels of the judiciary and that affirmative action should be applied in all arms of government, institutions and private sector. Fifty nine participants voted for affirmative action to remain at 25% for women, while 31 voted for it to be increased to 35%. It was also put forward that PWDs should also be included in all levels of government, given equal rights and opportunities and integrated into the mainstream education system. In addition participants stated that a divorce law should be created and a Family Law that is gender neutral. It was also stipulated that rape should be made punishable by law with 10 years imprisonment as punishment.

Concern was raised that there should be a transitional period to the use of English as the only official language, as Arabic is much more widely spoken than English at present.

Generally the Wau dialogue provoked lively and fluent debate. Due to the Greater Bahr el Ghazal states conference running simultaneously there was an absence of government representatives; however Hon. Lillian Riziq, the Minister of Agriculture, Forestry and Irrigation, gave an opening speech and emphasised the need to include women in political processes.

Citizen's Dialogue on the Constitution of the Republic of South Sudan
Juba, Central Equatoria State
17th-19th July 2013, Nyakuron Cultural Centre

Participants called for all political positions to be filled through elections not appointment, for presidential powers to be limited, and presidential term limits to be stipulated at 2 terms of 4 years. Federalism was strongly favoured as the system of governance for South Sudan.

Participants were concerned with the specification of women's rights (including their right to own property) as well as equal access to services for PWDs, the elderly and vulnerable and marginalised groups. They stated that the right to food should be included in the Bill of Rights, as well as promotion of creative arts and protection of copyright.

They stated that the marriageable age should be 18 and above for both sexes, and participants discussed the need to regulate bride price. However, one female participant argued that abolishing bride price, or limiting it at too low a price, could mean families would not be motivated to allow their girl children an education if it would not increase her bride price value.

People demanded fair and equitable division of resources. There were calls to make 'defilement' (sexual abuse and statutory rape) and rape punishable in a court of law. It was highlighted that there is a need to ratify international conventions, and it was specified that the president should not be the one to sign death sentences but the Supreme Court. There were calls for the judiciary to be decentralised and an independent judicial commission mandated at state level.

Participants called for 35% affirmative action for women, 10% affirmative action for PWDs and 20% for youth. Women with disabilities should be given a quota within the 35% for women. It was stated that these groups should be able to elect their own representatives, not have them appointed by the state.

There were calls for a thorough disarmament programme that does not target some communities over others, for a literate and demilitarized police force, and for more government control over movement of cattle, particularly over armed herders.

Participants stipulated that the land belongs to communities and called for the implementation of the Land Act 2009 to prevent land grabbing.

Concern was expressed over issues of foreign investment; participants encouraged government favouring of local business and investment over contracting to foreign investors.

There were strong calls for transparency and accountability in the management of fund transfers from national to state level, for the full implementation of the Local Government Act 2009 and for the establishment of a ministry of local government at the national level.