

The Limits of Public Participation

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In this piece, I critique the proposed people-driven constitution-making process in South Sudan, identifying some challenges that may hinder meaningful participation by the people. One is mass illiteracy: over 70% of the population is illiterate. This can impact the people's capacity to meaningfully engage with some of the complex issues that may arise from the process. Another factor is that involving the people could exacerbate existing ethnic tensions in the country, as constitution-making is inherently divisive.

My suggestion is to entrust the process to experts with oversight by parliament.

Constitution-making after independence

As a result of the decisive vote for independence in 2011, the [Transitional Constitution](#) was drafted to provide a system of government for South Sudan during its [transitional period](#). The Transitional Constitution equally provides the process for drafting a permanent constitution to mark an end to the transitional period and usher in a new political dispensation.

The permanent constitution-making process first commenced in 2012 following the formation of the [drafting body](#) – the National Constitutional Review Commission (NCRC). The [NCRC was given one year](#) to draft and finalise the constitution. This timeframe was insufficient, and it was [extended for another year](#).

Following the extension, the [NCRC launched the first phase of its work](#), which was a media campaign to inform the public. But the process was impacted by the 2013 civil war that brought nearly everything in the country to a standstill, and lack of money. (Reportedly, [parliament passed a law to allocate money](#) to the NCRC but the money was never released).

With war came the urgency to wage peace. With the support of external actors, the warring parties managed to sign a [peace agreement in 2015](#). The agreement [broke down in 2016](#) after the formation of a unity government. It was [revitalised in 2018](#), leading to the [formation of the current unity government in 2020](#).

The revitalised agreement requires [parliament](#) to enact a law to provide a legal framework for the permanent constitution-making process. Parliament passed this law – the [Constitution Making Process Act](#) (CMPA) – in December 2022. The CMPA provides for the establishment of a constitutional commission as the principal spearhead body (and one of the 3 mechanisms of the process). President Salva Kiir Mayardit recently [appointed the chairperson and the deputy chairperson of the commission](#) after nearly 12 months of delay. The process is unlikely to get off the ground until an [election has been held in 2024](#).

The process is people-driven. The people must be consulted and given the opportunity to give their input. I identify two serious challenges that may affect the people's participation, namely mass illiteracy and deep-seated ethnic divisions in the country. My suggestion is to entrust the process to experts with oversight by parliament.

Mass illiteracy in South Sudan

South Sudan is among the many countries facing significant educational challenges. It [ranks third in the world](#) on the ladder of countries with the highest illiteracy rate. A [2022 report on education](#) confirms that more than 70% of the population is illiterate.

Two factors may explain why South Sudan continues to lag behind in education. The first factor can be traced back to the pre-independence era, where successive Sudanese governments neglected social infrastructural development in the southern region. Two decades of civil war exacerbated the situation, rendering much of the south unsafe.

The second is more of an internal problem in South Sudan, which is education funding. Since independence, the education sector has consistently received limited funding (with the exception of 2023 which saw [education funding increased](#) by 12.5%). This has hindered access to education in many ways. For instance, there is a shortage of educational facilities, such as classrooms, desks, and chairs, especially in the rural areas where the majority of the people live. Concomitantly, it has made teaching an unattractive career as [teachers are massively underpaid](#), which inevitably impacts teacher recruitment and retention.

How illiteracy may hinder people's participation

I do not believe that constitution-making should exclusively be an enterprise for lawyers. But it is also true that mass illiteracy can hinder the people's ability to fully engage with the complex issues that are likely to arise in the constitution-making process.

One example is the choice between adopting a parliamentary or a presidential system of government – the latter is currently in place in South Sudan. Opposition parties are likely to advocate for the former for varied reasons. One is that it would be less susceptible to authoritarianism than the presidential system. The [government](#) is more likely to maintain the status quo, anticipating that a parliamentary system might result in an unfavourable power distribution.

Another issue that is certain to arise is whether to adopt a federal system or not. This is in fact a [long running debate](#) in South Sudan. Opposition parties are on board with this for good reasons. For example, federalism would provide stronger checks and balances. In particular, it would correct the current vertical power imbalance in South Sudan where the President has the power to interfere in what are essentially states'

exclusive political affairs, such as appointing and dismissing state governors. Such interference would not be permissible under a formal/pluralist federal system.

The government, however, has expressed its concerns about federalism, arguing that it could lead to the fragmentation of the country, given the existing ethnic divisions and [historical incidents](#). But however sincere the government's concerns may be, the truth is that it had signed a binding [peace agreement](#) in 2018 that prescribes federalism as South Sudan's system of government to be embedded in a new constitution.

Understanding and evaluating the practicalities of the different governmental systems – ie parliamentary system, presidential system, and federalism – requires one to have a high level of education. Educating the South Sudanese people about these concepts within the time constraints of the constitution-making process is practically impossible for two key reasons. The first is a lack of money to fund civic education programs, which are likely to be too expensive. The second is the government of South Sudan lacks the capacity to successfully implement nationwide civic education programs.

After all, the elites are going to decide what goes into the content of the constitution. For example, the text is going to be drafted by a group of experts, and parliament is going to have the final say on a draft text per the CMPA. It is unclear what difference the would-be canvassed people's views would make as such. Furthermore, involving the people could intensify existing ethnic tensions.

Deep-seated ethnic divisions in South Sudan

South Sudan is deeply divided along ethnic lines. Several factors explain this. One is the widely [perceived Dinka domination](#) of the national government. This has left many ethnic groups feeling alienated and resentful.

The divisions have been exacerbated by a [contest for power](#) between President Mayardit and Dr Riek Machar Teny – [leader of the SPLM-IO](#) – that culminated in the civil war in 2013. Each leader sought support from his ethnic group in fighting the other. For example, in supporting President Mayardit's war effort, General Paul Malong Awan [ordered the Mathiang Anyoor](#) Dinka militia to kill thousands of the Nuer people after the war began. Conversely, [the White Army](#) Nuer militia allied with Dr Riek's forces killed many Dinka people in revenge, particularly in Bor.

In essence, the two leaders pitted their communities against each other, creating deep distrusts and fear. The people's participation in the constitution-making process runs the risk of worsening existing ethnic tensions. The possibility of this becomes even stronger when considering the likelihood that potential spoilers – disgruntled individuals or political leaders – will use misleading campaigns or disinformation to undermine the process. As evidenced in South Sudan's divisive politics, people tend to believe what their leaders tell them.

What this approach would mean for the CMPA

My suggestion is to think about a more realistic approach to higher law making in South Sudan, evaluating what is feasible and worth the cost. Given the challenges outlined above, popular participation is impractical and the outcome it is likely to produce may not justify the expense.

The process should be entrusted to experts with parliamentary oversight. If this suggestion were to gain traction with stakeholders, primarily the [peace parties](#), parliament would be required to revise the CMPA to repeal parts that require popular participation. It is the responsibility of parliament to ensure the process is designed more efficiently, bearing in mind the scarcity of resources.

