

THE CONSTITUTIONAL AUTHORITY OF SOUTH SUDAN'S PRESIDENT: APPOINTING AND DISMISSING STATE GOVERNORS

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Introduction

Since South Sudan's independence in 2011, a persistent debate has surrounded the powers of the President regarding state governors, with an overwhelming majority assuming that State Governors serve at the discretion of the President, who, by law, is the head of state and government. The President's frequent reliance on Presidential Decrees to administer the country has elicited heavy criticism of the nation's constitution, the Transitional Constitution of the Republic of South Sudan (TCRSS) 2011. Fondly referred to as 'John Luk's Constitution' by many South Sudanese, a name synonymous with John Luk Jok, a prominent lawyer who is widely regarded as the mastermind behind the drafting of the independence constitution, majority of the citizens feel that the constitution has granted the President significant powers as stipulated under Article 101, which bestowed 21 functions to the President.

However, a closer examination of the Transitional Constitution of the Republic of South Sudan (TCRSS) 2011, subsequent peace agreements, and legal amendments reveals a more nuanced picture of the President's authority over State Governors. The findings showed that the President's authority is limited, primarily tied to a ceremonial capacity, such as formalising an appointment. The paper further found that the Constitution (2011) and subsequent peace agreements vest authority in the electorate through elections or political party nominations, and dismissals are restricted to exceptional circumstances.

This article examines the historical and legal context, drawing on the Comprehensive Peace Agreement (2005), the Transitional Constitution (2011), the ARCSS (2015), and the R-ARCSS (2018). It aims to inform the public and dispel the misconceptions behind common assumptions about South Sudan's governance. Understanding these dynamics is crucial for promoting institutional accountability, stability, and democratic transition in a nation plagued by conflict and prolonged electoral delays.

Comprehensive Peace Agreement Era: Transitioning into a Democratic State

Governors were initially appointed under CPA power-sharing formulas; however, the 2010 Elections (held between 11 and 15 April 2010) shifted the mandate to direct popular votes in each of the 10 states, aligning with democratic aspirations. The Southern Sudan Legislative

Assembly (later the National Legislative Assembly) and state assemblies followed similar paths. These elections, overseen by the National Elections Commission (NEC), signified a turning point in civic participation, though marred by allegations of irregularities. This election marked 25 years since the 1986 multi-party elections in Sudan. The election cost \$315 million, with international donors contributing 43% of the budget, and the remaining 57% financed by the government, according to the National Elections Commission (2013)¹.

The Independence South Sudan: The Transitional Constitution of the Republic of South Sudan (2011) (2011–2013)

The TCRSS 2011 envisioned democratic gubernatorial elections. Article 165(1) states: "There shall be a governor for each state elected by the residents of that state in compliance with the requirements of the National Elections Commission and in accordance with this constitution and the relevant state constitution." This vests primary authority in the electorate, not the President.

Article 101(c) grants the President the authority to appoint "constitutional and judicial post holders," but governors are not explicitly included as freely appointable. Article 101(r) permits the President to dismiss a Governor only in crises threatening national security, followed by a 60-day caretaker appointment under Article 101(s) to facilitate elections. Furthermore, the Constitution authorises the President, under Article 164 (4)(b), to call for a snap election in the event the State Legislative Assembly passes a vote of no confidence against the Governor as stipulated under Article 164 (4)(a). This further restricts the President's authority to appoint and dismiss the State Governor.

Early Precedents of Executive Overreach

On January 21, 2013, Lakes State Governor Chol Tong Mayay was dismissed amid inter-clan clashes in Rumbek Central that claimed the lives of 25 people and was replaced by a military caretaker Governor citing security concerns. This is plausible as Article 101 (r) and (s) permits the President to dismiss the governor and appoint a caretaker governor in such cases. Supported by the constitution's ambiguity on what constitutes a crisis that threatens national security, the loss of 25 lives may indeed qualify as a crisis that may warrant the President's intervention and ultimately allow him to exercise some discretion. However, the fact that the caretaker Governor

¹National Elections Commission. (2010). Preliminary report on the 2010 elections. <http://nec.org.sd/en/wp-content/uploads/sites/2/2013/09/NEC-preliminary-report-2010-elections.pdf>

overstayed in that position for 2 years and 11 months, contrary to the constitutional provisions under Article 101 (s) that mandate a snap election to take place within 60 days, constitutes a violation of the constitution by the President.

On July 7, 2013, the President issued a presidential decree dismissing Unity State's Governor Taban Deng Gai and replacing him with Joseph Nguen Monyuel. The former Governor termed the dismissal "unwarranted and unconstitutional." This sparked a debate on whether the President exceeded his constitutional bounds, especially as it coincided with broader purges, including the dismissal of the entire cabinet and the Vice President on July 23, 2013².

The Second Transitional Period: The Agreement on the Resolution of Conflict in South Sudan (ARCSS) (2015-2018)

The 2013 civil war led to the signing of the ARCSS in 2015, which extended the terms of the President, Governors, and the National Legislative Assembly and introduced power-sharing. Article 15(15.1) and (15.2) required all parties to the agreement to nominate governors, with the President merely formalising appointments according to a sharing formula. The President's 19 enumerated powers, functions, and responsibilities in Article 5(5.2) do not include governor appointments or dismissals. ARCSS,2015, advocates for a consultative decision-making process, where the powers to nominate and appoint state governors, in consideration of other party nominations, are entrusted jointly to the President, the First Vice President (FVP), and the other four Vice Presidents, as outlined in Article 8 (8.1) (8.1.1).

In practice, however, the President continued to invoke TCRSS,2011, provisions, notably Article 101, dismissing governors, dissolution of states, and even the redrawing of state boundaries to create 28 (later 32) states in 2015, thereby enabling more appointments. This highlighted a clear executive overreach and lack of fidelity to the constitution and/or peace agreements, perpetuating political and institutional instability.

The Third Transitional Period: The Revitalised Agreement on the Resolution of the Conflict in South Sudan (2018-Present)

R-ARCSS (2018) mirrored its predecessor (ARCSS), listing 19 presidential powers, functions, and responsibilities in Section 1.6.2 without mentioning the President's authority to appoint

² BBC News. (2013, July 24). South Sudan's Salva Kiir sacks cabinet. <https://www.bbc.co.uk/news/world-africa-23428557>

and dismiss governors. Furthermore, Section 1.16 vests nomination to parties to the agreement, reducing the President's role to a ceremonial capacity.

Conclusively, the 2020 Amendment No. 6 incorporated R-ARCSS into the TCRSS, updating presidential powers (Amendment No. 31) to exclude governor-related authority and removing the President's crisis-based discretion under Article 101(r) and (s). Article 164 (4)(1) mandates the President, in consultation with the First Vice President (FVP), to appoint a new State Governor in case of a vote of no confidence against the incumbent, without recourse to requirements or elections. However, there has never been any governor who was impeached to warrant the President to invoke such a discretion.

Despite this, executive actions regarding the appointment and dismissal of state governors continue to prevail.

Recent Developments (2024–2025)

In 2025, notable dismissals include the removal of the Governor of Western Bahr el Ghazal in September and the last Machar-aligned governor in Upper Nile, all in total disregard of the SPLM-IO nomination rights under the R-ARCSS, 2018.

As of October 2025, the President has been unilaterally reshuffling Governors and their deputies, often citing Article 106A (2)(a) of the Constitution (as amended) read together with section 38(1) of The Interpretation of Laws and General Provisions Act, 2006, despite that Article 106A (2)(1) stipulates for a consensus between the President and the First Vice President (FVP) and the four other Vice Presidents for any appointments to take effect.

Conclusion and Recommendations

The legal documents examined clearly show that the President lacks unanimous authority to appoint or dismiss governors; authority lies in collegial consultative decision-making processes, elections, or party nominations. South Sudan's governance has been dominated by political agreements and decrees, sidelining civic engagement and fuelling instability. For over 60 years, cycles of violence have claimed the lives of generations, trapping the nation in a perpetual cycle of instability and abject poverty. According to the World Bank 2022 Household Budget Survey, 80% of South Sudan's population lives below the national poverty line (Capped at SSP 358,724), and 93% experience deprivation across education, access to services,

asset ownership, and quality housing³. These are both direct and indirect results of the conflict in South Sudan, both before and after independence.

To break this, parties must uphold peace deals, provide financial resources to fund electoral bodies, and hold credible elections in 2026. Learning from Sudan's 2010 elections or international best practices could guide reforms. The country needs a substantive constitution that emphasises decentralisation and a lean governance structure, reflecting the country's realities. More importantly, there is an urgent need to institutionalise military and police reforms, ensuring that the government has a monopoly over violence and thereby guarantees peace and stability, fostering development. The continued reliance of communities on vigilante groups for security, rather than the government, is a recipe for disaster in the long run. Ultimately, embracing peace over conflict offers the path to shared prosperity for current and future generations. We owe it to the brave men and women who sacrificed their lives in the struggle movements (1955-1972; 1983-2005) to ensure that we end this cycle of instability. Lastly, Public awareness and advocacy are key to demanding accountable leadership. An informed citizenry becomes part of the solution and not an obstacle.

About the Author

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³ World Bank. (2025, April). Poverty & equity brief: South Sudan. <https://documents1.worldbank.org/curated/en/099450004222541402/pdf/IDU-3fe3c1ae-78e2-4a8e-bd36-aa3fc86adc32.pdf>