

D. South Sudan

1. Background

On the basis of the independence referendum of 9 January 2011, in which 98.83% of the electorate voted in favour of secession of the south, South Sudan declared its independence on 9 July 2011.

As mentioned earlier, the semiautonomous region of South Sudan was guaranteed with its own constitutional framework for the transitional period of 2005-2011 through the Comprehensive Peace Agreement (CPA). In order to convert the regional Interim Constitution of South Sudan (ICSS) into a national constitution, President Salva Kiir set up the Technical Committee for the Review of the Interim Constitution of Southern Sudan. The Southern Sudan Legislative Assembly (SSLA) approved the revised constitution on 6 July 2011.

Building on projects already carried out in the region, the Max Planck Institute Africa Team offered its assistance to the South Sudanese institutions, in particular the new parliament, the National Legislative Assembly (NLA). The Africa Team is currently carrying out capacity-building programmes for the NLA and the Ministry of Justice. In these programmes, emphasis is placed on the general challenges that face a young nation and the challenge of the pending constitutional process for creating a final and definitive constitution.

As is provided for in the new Transitional Constitution of the Republic of South Sudan (TCSS), the president of South Sudan appointed members to the National Constitutional Review Commission (NCRC) on 9 January 2011 by presidential decree.

As well as this, the new Council of States was also created through the new TCSS. This institution, which did not previously exist in South Sudan, raises new questions, especially in regard to its responsibilities. Both chambers of parliament will be assisted by the Sudan Team through the capacity-building programmes until the end of 2013. These programmes

will primarily deal with questions of constitutional law. A further capacity-building programme in international law for civil servants is also being prepared.

2. Projects

a. Meeting of high-ranking legal experts on the constitutional order of South Sudan

Prof. Wolfrum invited representatives from South Sudan to take part in a forum at the Max Planck Institute from 8 March to 11 March 2011 at which the necessary changes to the ICSS, in view of the country's imminent independence, would be discussed.

The aim of this initiative was to provide a neutral platform for the discussion of technical changes to the constitution to the different interest groups invited and to establish relations between North and South Sudan following the referendum. During the four day conference, members of the South Sudanese judiciary, in particular judges of the supreme court and members of the SSLA revised the ICSS of 2005 and discussed technical and formal changes with regard to the imminent independence of South Sudan. More than anything else, it was necessary to address the sovereignty of the state in the text of the constitution and transfer all responsibilities exercised at the national level to the level of the South Sudanese government.



Participants at the meeting of high-ranking legal experts on the constitutional order of South Sudan in Heidelberg in March 2011

With the assistance of a team of internationally renowned mediators (Prof. Dr. Tono Eitel, Judge Albert J. Hoffmann, Dr. Kamal Hossain, Prof. Dr. Thomas Mensah), the discussions lead by Prof. Dr. Wolfrum focused on purely technical changes to the ICSS. Constitutional changes which would have required political decisions for their implementation remained intentionally excluded from the discussion because they would not have adhered to the frame of reference of the conference. The responsibility for the revision of the ICSS was exclusively one of the GoSS. Therefore, the working document which resulted from the meeting was made available to the Technical Committee to Review the Interim Constitution of Southern Sudan of 2005.

The succession of states in relation to international treaties, debts, assets, archives, membership of international organisations, matters related to natural resources (e.g. the water of the River Nile) and cross-border migration were all issues for which further political consultation was deemed necessary.

The document was presented to the Minister for Legal Affairs and Constitutional Development on 23 March 2011. It was also discussed internally by the technical committee and presented by members of the Africa Team to the chamber of the SSLA at a sitting that was broadcast on South Sudanese television.

b. Workshops for the National Legislative Assembly

Following a request by the NLA, the Africa Team of the Max Planck Institute is conducting a capacity-building programme on legal issues in Juba.

The aim of this programme is to assist the NLA in exercising its competencies which have been established in the constitution. In accordance with the principle of political neutrality and the restriction of assistance to legal advice, all issues are analysed from a purely academic perspective and without influencing the political decisions of the participants. Following the adaptation of the TCSS on 6 July 2011, the NLA now faces the task of establishing and asserting itself within the new government structures. A well-functioning parliament would be able to make a valuable contribution to ensuring peace and stability in South Sudan.

The programme consisted of six workshops on the themes of horizontal and vertical division of powers, decentralisation, the foundations of international law, international treaties, international humanitarian law and the foundations of international criminal law. These workshops are held over four or five day periods in Juba.

In light of the pending constitutional process, different options for federal and decentralised government structures and the related scope of competencies of the president were of particular interest to the participating parliamentarians. Another point focused on was that of secession and its consequences for state succession to treaties, for debts and assets and for the membership of international organisations. The

system of the United Nations and other treaty systems of regional and international organisations were explained to the participants. The history of international criminal law, international criminal offences and the role of the International Criminal Court were also discussed.

Comparative studies of countries served to clarify the different structuring options. Every workshop was accompanied by discussions about prospects for South Sudan.

One consequence of South Sudan's secession was the integration of members of the Khartoum national parliament into the newly founded NLA in addition to the presidential nomination of 66 new deputies. The working group will therefore continue the assistance programme in 2012 and expand it to the Council of States which was created through the transitional constitution to function as a second house of parliament.

c. Participation at the "Speakers Forum"

The Speakers Forum was established in 2007 for members of the parliaments of South Sudan's constituent states to deliberate over the political and legal challenges facing the semiautonomous region of South Sudan. The goal of this initiative was to improve the coordination of cooperation between the state parliaments and the GoSS.

The Ministry of Parliamentary Affairs requested the Africa Team to send a representative to the Speakers Forum from 8 to 11 June 2011 in order to give a presentation on options for decentralised and federal government structures and on the development and adoption processes for a constitution.

The discussions and presentations focused primarily on the running debate over changes to the ICSS and on the relationship between the governments of constituent states and the central government.

As the only non-Sudanese institution invited to participate actively in this forum, this was a considerable honour for the Africa Team.

3. Academic works and publications

During the period covered by this report, Dr. Daniel Gruss and Katharina Diehl published the following essays:

- A New Constitution for South Sudan, in *Yearbook of Islamic and Middle Eastern Law* 16, 2012 (forthcoming).
- Constitutional Development in Southern Sudan, in H. Elliesie and T. Marauhn (ed.), *Legal Transformation in Northern Africa and Southern Sudan*, Den Haag 2013 (forthcoming).

