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**Submission of SSHURSA on the National Elections Bill 2012,**

**To**

**The Office of the Chairperson, Legislation and Justice Committee, South Sudan  
National legislative Assembly, Juba, South Sudan**

**Presented By**

**Biel Boutros Biel<sup>1</sup>,**

**Executive Director, SSHURSA**

**At**

**PUBLIC HEARING ON THE NATIONAL ELECTIONS BILL 2012**

**National Legislative Assembly**

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**Honourable Moulana Dengtiel A. Kuur**, the South Sudan Human Rights Society for Advocacy (SSHURSA) greatly thanks you and your committee for according once again the opportunity to public particularly the civil society to give their inputs in a yet another important bill, the Elections Bill 2012. There is no legitimacy of any law unless the stakeholders have always had a prior discussion on the content of that material law. Your office Honourable Chair, having done so, bringing the Elections Bill to the attention of the public as your good office did with the Political Parties Bill, is an applauble gesture and shows your determined leadership in setting a history on the right path to democracy given the importance of this Bill in question.

Honourable Chair, after going through the text of the draft Bill, SSHURSA has seen as reasonable most of the content of the Bill except the following observations in the following chapters and sections: We cited and provided our position:

1. **Section 8(1)**; provides for the appointment of the members of the commission taking into consideration consultations with women and civil society groups and include representation of these groups.

**Our position:** The provision is ok except that in order for the members to gain confidence of all South Sudanese political parties, the names of the nominees shall be submitted to the political parties' leadership forum for scrutiny and for the purposes of ascertaining their independence as within the meaning of **Article 197(3)** of the Constitution<sup>2</sup>.

**This is to remove suspicion or accusation of the appointing authority that the members appointed might have been "compromised participants or partial".**

**Section 8(2) (c) of the Bill**<sup>3</sup> states that a member to be appointed to the commission shall not be "less than thirty five years of age"

**Our position:** This is unconstitutional and it contradicts the provision of the Constitution. To prove the unconstitutionality of this 35 age limit, a candidate to the National Legislature and Council of states is required to

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<sup>2</sup> Transitional Constitution of the Republic of South Sudan 2011, part fourteen, Chapter III on page 121

<sup>3</sup> National Elections Bill 2012 (under scrutiny hererin)

have attained only 21 years of age as provided for in the text<sup>4</sup> and this Bill<sup>5</sup>. If the supreme law, the Constitution and equally important if this Bill is also submissive to the same provision of 21 years, then there is/are no any well founded legal justification(s) to have a provision that contradicts the Constitution. In our view, the provision of age limit is put on this Bill for reasons not known to our law and our situation and interestingly rather, a practical intention that is still unknown. It is tainted in illegality and should be removed and be replaced with a requirement of **21 years of age** as to be consistent with the Constitution and this Bill when enacted and assented to possibly hereinafter. This is a provision of the old law<sup>6</sup> and doesn't reflect our circumstances; it is draconian and irrelevant to South Sudan.

**Section 8(2) (d)** provides that a member shall be *“literate with at least a senior High school certificate”*

**Our position:** The provision is too lenient and it should be with the qualifications of at least a “diploma” and above. This only a “certificate of a high school” we well know, it contradicts the provision of the Constitution that provides only for literacy but the position requires knowledge and skills not just leavers of senior High School and besides, some of the provisions in the Constitution were not discussed by the public during the review of the law<sup>7</sup> hence were imposed on the public.

**Section 10(2)** provides for the removal of the member of the commission on number of grounds and it states “-----recommendation shall be delivered to the president by the chairperson or Deputy Chairperson of the commission” We add to this line at its end to read in whole as:

“-----recommendation shall be delivered to the president by the chairperson or Deputy Chairperson of the commission **when not constituting a subject to removal”**

<sup>4</sup> Article 62(1)(b) of the Transitional Constitution of the Republic of South Sudan 2011, page 33

<sup>5</sup> Section 57(1)(b) Eligibility for the nomination to the membership of the Council of states and Section 62(1)(c) Eligibility for the election as a member of the Legislative Assemblies

<sup>6</sup> Sudan Elections Act 2008, Section 6(2) (d)

<sup>7</sup> Interim Constitution of Southern Sudan 2005

That is, if the chairperson or the Deputy Chairperson, is the one being a party to the dispute with the member of the commission, then logically, it follows that he or she cannot be the very one taking the recommendation to the president. Only an independent body of the Commission should do that.

**Section 14(3)** states that “-----*Decisions of the commission shall be taken by majority votes*” and we add in reverse to read in full as this;

***“Decisions of the commission shall be taken by consensus and only on minor issues where decisions may be taken by majority votes”***. This, in our view is to remove manipulation of the decisions by a clique within or otherwise to form itself therein.

**Section 19** provides for the commission secretariat and its functions.

We recommend that the secretariat shall be recruited to the commission through normal job process of advertising and scrutinizing the candidates by a panel of qualified members among whom, members of Public service and Anti-Corruption Commissions should be included in the panel.

The secretariat cannot be appointed or be left to the approval of the commission, they should be got through known fair and impartial competitive process of recruitment of any qualified workforce so that the body works effectively as stipulated under subsection 2 of this section that “-----*the secretariat shall be responsible for the running the administrative, management and financial affairs of the commission---*”

**Section 33(1)** provides for the removal of the state Governor by the President of the Republic as provided for under **Article 101(r)** of the Constitution<sup>8</sup>.

**Our position:** This is also a repetition of the same mistake that was occasioned in the “publicly not discussed constitution”. Had the Constitution been discussed then, this provision in our view wouldn’t have seen the light because the citizens of this Country wouldn’t have allowed the violation of the known system where elected leaders can be removed by a decree. This is only possible in military

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<sup>8</sup> TCSS 2011

regimes. The provision in the Bill must be scrapped off, for it is not relevant here as it contradicts the provision of **Article 165(1)** that provides for the election of the State Governor by the residents of that state and such a Governor can only be removed through a vote of no confidence by the state legislature as provided for under **Article 164(4)** of the Constitution<sup>9</sup>

SSHURSA believes that the provision of **Article 101(r)** of the text<sup>10</sup> may not see a return into our law if the current text of the Constitution shall be reviewed and discussed by the public. Therefore, something unconstitutional though provided for in the promulgated law should not in our view be glorified because it has no future in the thinking of ordinary public of South Sudan.

This **Section 33 (1)** is silent on the tenure and terms for the office of the president. The provision is very important and should be provided for in the Act<sup>11</sup>.

**Article 100(1)** of the Constitution<sup>12</sup> provides for the tenure of the office of the President as 5 years but is silent on the term of the office of the same. For how many terms should a candidate and serving President be re-elected? Twice, thrice or he or she should be a president for life? Certainly not, no life president!

*The normal practice in most democratic countries is that a president is in the office for either 5 years and only can contest for the same office once. That means, he or she should be re-elected for the second time and thereafter, he or she cannot re-contest for the same position. Third term or life presidency such as in Zimbabwe or the recently manipulated Constitution of Uganda, should have no future in South Sudan because the history we have come through as a people, is a history of suffering and organized injustices by our oppressors, therefore, justice would be done to the South Sudanese people if they know when their president cannot manipulate the Constitution.*

**Section 34(6)**, a vote of no confidence should be allowed on a governor within the 6 months of his or her coming into office and not after 12 months as this Bill

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<sup>9</sup> TCSS 2011

<sup>10</sup> TCSS 2011

<sup>11</sup> Elections Act 2012 if enacted

<sup>12</sup> TCSS 2011

provides. This is based on the reason that, a Governor shall be assumed to be a qualified person and therefore, has been duly elected based on his or her competence seen by the voters. So the State Legislative Assembly shall be able to know within the first 3 to 6 months whether or not the elected Governor is capable or weak or incompetent and therefore, too early enough, be voted out. South Sudan in our view, needs capable leaders not mere accommodated office occupiers!

**Section 35 and section 36** of the Bill<sup>13</sup> provides for a party list.

**In our view;** This has no better justification because even if the intention is to observe the principle of inclusiveness, but it can to the contrary provide the people with very incompetent, unknown and unqualified members of the Legislature as well as the Council of States because, if simply put, the so called “party list” almost amounts to “handpicking”. Therefore, the provision should be scrapped off and what we recommend is “**Geographical constituency candidate**” and “women’s list” be maintained. You succeed or you fail in the elections, period. No way of coming through a party when people don’t want you.

**Section 35(5)** states; “The total number of the elected members of the National Legislature shall be finally determined by the Permanent Constitution Process under Chapter II of the Constitution”

This provision is unrealistic and inconsistent with the Constitution<sup>14</sup>. It cannot survive under relevant scrutiny. Its validity has been destroyed by **Article 56(1)(b)** of the Transitional Constitution that states; ***“The National Elections law shall determine the number of members and the composition of the National Assembly”***.

Provision of **Article 58(1)(b)** provides that; ***“The National Elections law shall determine the number of members of the Council of States”***

**Our position:** We recommend that let the number of the National Assembly members as well as that of the Council of states be determined because the

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<sup>13</sup> National Elections Bill 2012

<sup>14</sup> TCSS 2011

Constitution has left it to this National Election Law and therefore, it will be a contravention/violation of the cited Articles above if this is left unresolved by pushing the same to yet unknown law, **“The Permanent Constitution”**. ***This Act should now provide for a specific number of these bodies<sup>15</sup>***.

**Sectionn 46(1)(d)** the President or a Governor should have a qualification of a diploma and above subject to the amendment of the Constitution<sup>16</sup> provision in **Article 98(1)(d)** that provides only a requirement of being a “literate” which is so linient and irrelevant to the qualifications for the highest office of the land.

**Section 51(1), read together with section 62(1) and (2)**, the last part of this subsection is confusing because it mentions “Competent courts” and this phrase “Competent Courts” wasn’t defined in the interpretation section except only a “Court” was defined to mean the “Supreme Court”. So “competent Courts”, which courts now? The language should be clear for if there is intention to mean different courts other than the Supreme Court, then let those courts be defined for the purposes of eliminating confusion.

**Section 81(5)** mentions about the campaign to be regulated by the “*Media Regulatory Body*”. Which media regulatory body when there is no media law since 2005 in South Sudan? It should be subject to the passing of the media bills in case our parliamen will do that anyway.

**Section 82(1)** prohibits the Political Party or a candidate to receive money from any foreign donations.

In our view, SSHURSA sees this as a technical ban and death certificate of some small parties by the big ones. Parties cannot depend only on national or internal donations. A party should be allowed to solicit for foreign assistance financially and to the above provision, this version should be added to read;

***“Unless such foreign financial assistance contravenes the national interest or sovereignty of South Sudan and if such a contravention is not clearly demonstrated, the burden of proof of the contravention shall be on who***

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<sup>15</sup> National Assembly and Council of States

<sup>16</sup> TCSS 2011

***alleges it and such evidence be produced and proved before a court of law”***

**Section 124(c)** provides for an offence that constitutes one of the defamatory statements; that if a person;

**“Signs a petition for a referendum when not entitled to sign “**

This is not clear and as in what grounds can a person not sign a petition for a referendum?

**Elections of the Local government officials:** This should be clearly spelt out because the **Local Government Act 2009**(when reformed) shall comply with this Act and therefore, this Act should be a source of clarity rather than adding or creating confusion.

It should be noted that, **Section 48(2)** of the **Local Government Act 2009** has been violated by the Executive of this Country through the state Governors. The provision states; **“The County Commissioner shall directly be elected by the people of the County by universal suffrage in a general election”**. This has been violated by appointing the County Commissioners after the 2010 General Elections and after Independence in July 2011.

**Section 48(3) of the LGA<sup>17</sup> 2009** that states; **“The tenure of the office of the County Commissioner shall be four years(4) from the date of assuming office, and may be re-elected for one additional term only”**, has been violated because there are county commissioners who are in their offices for more than two terms as per now.

This in our view gives a rationale for the people of South Sudan to analyze critically any content of the Bill when brought to the public attention because even the already enacted laws are not respected. How worst will it be then to have a wrong law to be implemented?

This should give necessary worries to the people’s representatives in the Assemblies and therefore, they should pass good laws that are pro-people other than pro-political parties or draconian/or anti-public legislations.

**Note:**

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<sup>17</sup> Local Government Act 2009

We would like to recommend as to be a section in this Bill that hasn't been provided for and it should be under the election of a member to the National Legislature or state legislative Assembly and this should read as follows:

**Section 0** (1) "No candidate to the membership of the National Legislature or State legislative Assembly shall combine his or her membership to the respective body with any ministerial position in either the state or national government"

(2) ) "No candidate to the membership of the National Legislature or State legislative Assembly who fails to win an election in his or Constituency shall be appointed to any ministerial position in either in the state or national government".

(3) Members of the candidate as provided for in Subsection (2) of this section shall have the right to challenge and contest the appointing authority before the court of law if the provision is contravened.

***Honestly speaking, what is and will be the rationale for a governor or the president to appoint a person who has failed because he or she was well judged by his or her Constituency and therefore, they have found him or her unworthy or a relevant material to represent them?***

***Section 0: Independent Candidacy:*** should be provided for in the Act because there is no way such an issue will escape our situation as has happened in the 2010 elections. The law should be very clear on this unless one fears democracy.

Finally, SSHURSA would like to request the office of the Chair, Hon. Dengtiel to accord the civil society and every public at large every opportunity to attend a public hearing of most of the crucial Bills, particularly Bills which are sensitive to the general public interest. A case in point was a company Act that was enacted last month without the notice of the Civil Society.

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### **Brief Background of SSHURSA:**

SSHURSA is an indigenous, non- political and non-profit making human rights organization founded on June 5, 2007 by South Sudanese lawyers and law students at Makerere Law development Centre (LDC), Kampala-Uganda. It is registered with the Republic of South Sudan's Ministry of Justice. SSHURSA became operational in South Sudan in 2009 with its head office in Juba and co-

ordination offices in the ten states. Its membership-network composes of individuals and member organizations who believe in its rights protection mandate.

SSHURSA vision is to advocate for a democratic and human rights abiding South Sudan and its mission is to monitor, document and publish human rights violations and train local organizations and general public on the importance of human rights, fundamental freedoms of individuals, rule of law and democracy all of which aimed at creating a more responsible, justice and good governance oriented South Sudan. SSHURSA objectively stands to protect the rights of other human rights defenders and speaks for those who cannot speak for themselves.

The organization works in partnership with South Sudan Human Rights Commission and other local and international institutions whose mandate is geared towards protection of the universality of human rights and the rule of law.

**Thank you so much Honorable chair for giving us the chance to give our version on the Bill.**

For any clarifications or otherwise, Contact us through the above contacts provided.

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