



Joint Monitoring and Evaluation Commission
(JMEC)

IMPLEMENTATION STATUS REPORT

OF

**CHAPTER I OF THE AGREEMENT ON THE RESOLUTION OF THE CONFLICT IN
REPUBLIC OF SOUTH SUDAN**

SUBMITTED TO

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BY

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ACRONYMS

AC	National Audit Chambers
ACC	Anti-Corruption Commission
ARCSS	Agreement on the Resolution of the Conflict in the Republic of South Sudan
EALA	East Africa Legislative Assembly
CSC	Civil Service Commission
FFAMC	Fiscal, Financial Allocation and Monitoring Commission
HRC	Human Rights Commission
JMEC	Joint Monitoring and Evaluation Commission
JSC	Judicial Service Commission
M&E	Monitoring and Evaluation
NBS	National Bureau of Statistics
NBS	National Bureau of Standards
NCAC	National Constitutional Amendment Committee
NEC	National Elections Commission
NPGC	National Petroleum and Gas Commission
LC	Land Commission
PC	Peace Commission
PGC	Public Grievances Chambers
PPC	Political Parties Council
RRC	Relief and Rehabilitation Commission
SSBC	South Sudan Broadcasting Corporation
TGoNU	Transitional Government of National Unity
TNLA	Transitional National Legislative Assembly
UNC	Urban Water Corporation
UNMISS	United Nations Mission in South Sudan



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INTRODUCTION

The Joint Monitoring and Evaluation Commission (JMEC) undertook a mid-term review of the status of implementation of the Agreement for the Resolution on the Conflict in the Republic of South Sudan (ARCSS) since the establishment of the Transitional Government of National Unity (TGoNU).

The tasks of the Governance Working Committee is derived from Art. 2.5 of Chapter VII of the ARCSS, where JMEC's mandate¹ to form Committees to facilitate its activities, as deemed necessary, are stipulated.

As part of the review process, the Governance Working Committee undertook the monitoring and evaluation of implementation of the provisions of Chapter I of the ARCSS. The Committee comprises of seven (07) members and seven (07) observers, and is chaired by Hon. Alokiir² Malual Aguer.

The Committee's current report covers the period from 29 April 2016 to 13 September 2017.

The status review report provides an appraisal of progress in the implementation of Chapter I of the ARCSS. The report highlights key milestones, tasks which have not yet been implemented, challenges and makes recommendations for remedial actions.

METHODOLOGY

The Committee conducted its work through six regular meetings and maintained constant evaluation of progress in the implementation of Chapter I of the ARCSS. Also, it held stakeholder consultations to validate the available information on the implementation of the Chapter. It also had direct interactions with the TGoNU.

Furthermore, the Committee used a monitoring and evaluation matrix (attached in Annex 1) that it developed to keep track of its work.

¹ See Clause Clause 9 of the JMEC Terms of Reference for further details.

² The Chairperson of the Governance Working Committee was elected during its first sitting.



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STATUS OF IMPLEMENTATION OF THE CHAPTER

Article 1: Establishment, Seat and Terms of TGoNU

As provided in Art.1, the ARCSS sets out the terms of TGoNU with a clearly defined structure, composition and tasks. The TGoNU is to implement the ARCSS during its 30-month Transitional Period.

The TGoNU was to be established 90 days after the signing of the ARCSS in August 2015 but it was effected on 29 April 2016, eight months later. This delay meant that the pre-Transitional Period slipped by 150 days.

The power-sharing formula in the Executive of the TGoNu has been implemented among the Parties³ to the ARCSS as provided for under Art. 1.6 of the Chapter.

Although the ARCSS was signed based on the original 10 states and special provisions were made for power-sharing at the national and state levels, the circumstances have since changed. The number of states have been increased to 32 against the 10 envisioned in the ARCSS.

Art. 2: Mandate of the TGoNU

The TGoNU continues to implement Art. 2.1.1 of Chapter I on restoration of peace, security and stability in the country but at a slow pace. The slow progress has been due to a number of challenges, including the new political development⁴ within the SPLM-IO and the fighting which erupted in July 2016. In this context, peace and stability has not yet been fully restored in the entire country.

Hostilities continued to be experienced in some parts of the country resulting in continued displacements within and outside the country.

³ The Parties to the ARCSS include the Government of the Republic of South Sudan (GRSS), the South Sudan Armed Opposition, Former Detainees and other Political Parties. The power-sharing has been implemented based on the spirit of the ARCSS.

⁴ The SPLM-IO split into factions.



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Art.2.1.2 on expedition of relief, protection, voluntary and dignified repatriation⁵, rehabilitation and resettlement of IDPs and returnees are partially implemented⁶. The details are covered under Humanitarian Affairs Working Committee on Chapter III of the ARCSS which focuses on Humanitarian Assistance and Reconstruction.

The Permanent Constitution-making process⁷ (Art. 2.1.4), rehabilitation and reforms of the civil service (Art. 2.1.9), security sector reforms and security sector transformation (Art. 2.1.10), rebuilding of destroyed physical infrastructure in the conflict affected areas (Art. 2.1.11), establishment of a competent National Election Commission (NEC) (Art.2.1.12)⁸ and national population and housing census (Art. 2.1.13) are yet to be implemented.

Art 2.1.6 on TGoNU's obligation to conduct reforms of public financial management is dealt with under the Economic Affairs Working Committee on Chapter IV on Resource, Economic and Financial Management⁹.

Art. 3: Composition of the TGoNU

The TGoNU – composed of the Government of the Republic of South Sudan (GRSS), South Sudan Armed Opposition, Former Detainees and other Political Parties – is established as provided for in Art. 3 of the ARCSS.

Art. 4: Structure of the Executive of the TGoNU

Art.4.1 on the structure of the Executive of the TGoNU has been implemented with the President, the First Vice President, the Vice President, the Council of Ministers and Deputy Ministers as its members.

⁵ According to UNMISS, at least 11,000 internally displaced persons have reportedly left UNMISS Protection of Civilian sites around the country since the beginning of 2017.

⁶ For more information regarding the humanitarian access, repatriation of some IDPs, refer to the Humanitarian Affairs Working Committee's Evaluation Report on Chapter III of the ARCSS.

⁷ Refer to the Constitutional Affairs Working Committee report on its progress.

⁸ The current NEC has not been reconstituted as required by the ARCSS. See Art. 16 for more requirement for reconstitution of the NEC before national elections are conducted.

⁹ Refer to Art. 2 of the Evaluation Report of the Economic Affairs Working Committee.



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In line with Art.4.2, the Council of Ministers comprising the President the First Vice President, the Vice President and Deputy Ministers was created and continues to perform its functions.

Art. 5 to 9: President, First Vice President and Vice President of the Republic of South Sudan, their Powers, Functions and Responsibilities, and Decision Making and Consultation Procedures in the Executive of the TGoNU

The positions, powers, functions and responsibilities including the decision making and consultation procedures of the President of the Republic, the First Vice President and the Vice President were established as prescribed in Art. 5 to 9 of the ARCSS.

The Executive position holders are carrying out their roles and responsibilities as provided for in the ARCSS.

The decision making process of the Executive was not visible to the Governance Working Committee.

Art. 10: Council of Ministers

In line with Art.10.1, the power-sharing formula among the GRSS, South Sudan Armed Opposition, Former Detainees and Other Political Parties was applied to the Council of Ministers with defined duties and responsibilities.

The TGoNU also clustered the Ministries under the three main categories as per Art. 10.2.1 as follows: Ten (10) Ministries under the Governance Cluster, thirteen (13) Ministries under the Economic Cluster and seven (7) Ministries under the Service Delivery Cluster.

Ministries selection and Deputy Ministers' appointment among the Parties to the ARCSS as provided for in Art 10.5 was based on the spirit and not letter of the ARCSS. The eight (8) Deputy Ministers were also created to assist their respective Ministers in line with Art. 10.5.1. However, the vacant position of the Deputy Minister of Foreign Affairs and International Cooperation has not yet been filled.

Appointments of women in the Executive, Council of Ministers and Deputy Ministers as provided for in Art. 10.5.2 and 10.5.4 respectively have not been fully implemented.



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Out of the 25% (8) women representation required in the Executive, 20% (6) were appointed.

Article 10.5.4 which requires that no fewer than two (02) Deputy Ministers shall be women is not implemented as no woman is appointed a Deputy Minister.

Art. 11: The Transitional National Legislative Assembly (TNLA) and Council of States

The National Legislative Assembly was expanded from 332 members to 400 in line with Art. 11.1 of Chapter I of the ARCSS. The selection of the Speaker of the TNLA from Equatoria was also implemented as provided for under Art. 11.4 of the Chapter.

The TNLA has formed various Sub-Committees and continued to conduct business to support the ARCSS as well as enact legislation.

Art. 12: Judiciary

The Judiciary of South Sudan faces several obstacles¹⁰ in the exercise of its independent functions. Although the Judiciary received some technical support from some partners¹¹ to enhance its capacity, its other aspects as provided for under Art.12.2 of the Chapter, including comprehensive judicial reforms and review of the Judiciary Act are still pending.

Art. 13. Pre-Transitional and the National Constitutional Amendment Committee

The National Constitutional Amendment Committee (NCAC) was established during the Transitional Period and continued to pursue its mandate as provided for under Art. 13 of the Chapter. The details of the work of the NCAC are contained in the Constitutional Affairs Working Committee's evaluation report.

¹⁰ Judges went on strike from May 2017 – 11 September 2017. The TGoNU promised to resolve the issues that led to the judges' strike.

¹¹ Capacity building support was provided by UNDP through its Max Planck programme.



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Art. 14: Transitional Institutions and Mechanisms¹²

The TGoNU is yet to reconstitute the following existing 18 Commissions and Institutions as provided for under Art. 14 of the Chapter: Anti-Corruption Commission (ACC); Public Grievances Chamber (PGC); Fiscal, Financial Allocation and Monitoring Commission (FFAMC); National Audit Chamber (AC); Relief and Rehabilitation Commission (RRC);

Peace Commission (PC); National Bureau of Statistics (NBS); Human Rights Commission (HRC); Judicial Service Commission (JSC); Civil Service Commission (CSC); Land Commission (LC); Electricity Corporation (EC); Refugees Commission (RC); South Sudan Broadcasting Corporation (SSBC); National Petroleum and Gas Commission (NPGC); National Bureau of Standards (NBS); Urban Water Corporation (UWC); and Roads Authority.

The TGoNU has reported initial steps it has taken towards making reforms particularly through developing and submitting matrices to various line institutions for reviews. That notwithstanding, the reported actions have not yet translated into reconstitution of the transitional Institutions and Mechanisms mentioned above.

Art. 15: Structure and Composition of State Governors

The ARCSS envisioned the implementation of the structure and composition of the state governors based on 10 states. However, the circumstances have changed as the number of states expanded from the original 10 to 32. As a result, power-sharing arrangement in line with Art.15 of the Chapter was not implemented.

Art. 16: National Elections

In line with Articles 16.1 and 16.3, the NCAC is reviewing the Political Parties Act, 2012 and the National Elections Act 2012 to conform to the ARCSS. This means the presentation of reviewed legislation and open registration of Parties are pending.

Reconstitution of Political Parties Council, the National Elections Commission and conduct of national census in line with Articles 16.2, 16.4 and 16.9 respectively are still pending. As the NEC is yet to be reconstituted, it has not made any requests to the United Nations and the African Union for support towards the organization of credible

¹² The National Electoral Commission and the Political Parties Council are some of the institutions which require reforms. See Art.16 of the Chapter for more details.

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elections as provided for in Art.16.7. In addition, the voter register is yet to be updated and published.

Invitation of competent and impartial local, regional and international observers that will be accredited by the NEC to monitor the conduct of the electoral process is also pending.

CHALLENGES

The following are some of the challenges that impacted the implementation of the provisions of the Chapter:

- Lack of political will on the TGoNU to undertake the implementation of essential tasks of the ARCSS such as enacting legislation, reconstitution of existing Commissions and Institutions, for examples;
- Limited funding for the implementation of the ARCSS has negatively affected the TGoNU's capability to effectively undertake its tasks;
- The changing realities including the expansion of the states from 10 to 32, emergence of armed groups and disagreements within some of the Parties to the ARCSS;
- Slippage in the timelines for the implementation of Chapter I of the ARCSS has meant that the TGoNU is behind schedule in executing its mandate;
- Lack of mechanisms provided for in the ARCSS to enforce compliance with the implementation of the tasks in the Chapter;
- Lack of technical expertise for the implementation of some of the provisions of the Chapter.



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OBSERVATIONS

- The Committee noted that since July 2016 there were new political developments¹³, including splits within some Parties to the ARCSS. These have resulted into lack of inclusive implementation of the ARCSS.
- The expansion of the States from 10 to 32 was not in conformity with the ARCSS.
- The TGoNU adopted a new power-sharing arrangement to reflect the new political context in the country.
- The TNLA continued to conduct business in Parliament and also elected its representatives for the first time to the East African Legislative Assembly (EALA).
- The Committee noted that the decision making procedures of the Executive are not visible to them.
- The normal functions of the Judiciary were undermined when it went on strike from May 2017.

RECOMMENDATIONS

The following specific recommendations are offered for considerations:

The TGoNU should:

- Demonstrate the political will to cease hostilities, restore the Permanent Ceasefire and fully commit to the implementation of the ARCSS.
- Develop revised realistic timelines for the implementation of the remaining tasks of Chapter I;
- Adhere to the power-sharing arrangements at the state level to ensure inclusivity in the implementation of the ARCSS;

¹³ New armed groups and developments emerged including the National Dialogue, the IGAD-led revitalization and the SPLM reunifications.

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- Appoint more women political representatives at all levels of power-sharing as provided for in the TCRSS and ARCSS; and
- Expedite the reform process for all outstanding transitional institutions and mechanisms.

IGAD should:

- Put in place mechanisms to enforce compliance with the implementation of the ARCSS;
- Ensure a funding mechanism is in place to support full implementation of the ARCSS;
- Ensure there is inclusivity and full implementation of the ARCSS by all South Sudanese stakeholders;
- Mobilise international support for the implementation of the ARCSS.

Signed:  **Date:** 18.09.2017

Hon. Alokiir Malual Aguer
Chairperson, Governance Working Committee



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ANNEX 1: DETAILED M&E MATRIX FOR CHAPTER 1

Reference and Tasks	Party Responsible for the implementation	Time Frame	Start Date	Completion date	Implementation Status	Remarks	Recommendations
Establishment, Seat and Term of TGoNU							
Signing of this Agreement	Negotiating Parties, Stakeholders, Adherents, Guarantors and Witnesses of this Agreement	D-Day	8/26/2015		Implemented		
Power-sharing ratio in the Executive of the TGoNU (53%, 33%, 7%, and 7 % for the GRSS, the South Sudan Armed Opposition, Former Detainees and other political parties respectively).	TGoNU		4/29/2016		Implemented	Power-sharing arrangement was based on the spirit of the ARCSS	Adhere to the power-sharing arrangement as provided for in the ARCSS to ensure inclusivity.
Mandate of TGoNU							
Facilitating and overseeing a process of national reconciliation and healing through an independent mechanism in accordance with this Agreement including budgetary provisions for compensation and reparations.	TGoNU		4/29/2016			This relates to the provision of Chapter V of the ARCSS	



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Reference and Tasks	Party Responsible for the implementation	Time Frame	Start Date	Completion date	Implementation Status	Remarks	Recommendations
Conducting reforms of public financial management; civil service; Security sector reforms and security sector transformation	TGoNU	Transmitted a matrix for implementation to various institutions for review			No reforms undertaken as yet	Follow-up if TGoNU has Concept Papers for reforms	TGoNU to expedite the process of enacting all necessary legislation for reforms
Conducting National Population and Housing Census before the end of the Transitional Period	TGoNU				Not implemented	There is need to know the cost implication and timeframe for conducting a census.	Prioritize restoration of peace and stability as a prerequisite for a conducive environment for conducting a national population and housing census i.e. after IDPs and refugees have returned home
Composition of the TGoNU:							
The composition of TGoNU shall include the GRSS, South Sudan Armed Opposition, Former Detainees and Other Political Parties.			4/29/2016		Implemented	According to the TGoNU, Power-sharing was based on the spirit and not letter of the ARCSS	
Decision Making and Consultation Procedures in the Executive of the TGoNU							
The President and the First Vice President seek to reach agreement on matters of Executive Administration and where appropriate involving the Vice President.					Ongoing	Refer to reports from TGoNU to JMEC Plenary	



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Reference and Tasks	Party Responsible for the implementation	Time Frame	Start Date	Completion date	Implementation Status	Remarks	Recommendations
Consultation procedures between the President and Vice President					Ongoing	Refer to reports from TGoNU to JMEC Plenary	
Council of Ministers							
Adherence to the power-sharing formula to the Council of Ministers and any other institution reconstituted by this Agreement	TGoNU, Parties		4/29/2016		Implemented but not through the letter of ARCSS	The TGoNU agreed on a power-sharing formula.	Strictly adhere to the power-sharing arrangement as provided for in the ARCSS to ensure inclusivity.
Deputy Ministers							
Eight (8) Deputy Ministers shall assist their respective Ministers in the performance of the Ministers' functions and duties Deputy Ministers shall be appointed on rotational nominations of Ministerial portfolios by the GRSS and South Sudan Armed Opposition.			4/29/2016 4/29/2016		Appointments were through the spirit of the ARCSS	Deputy Minister of Foreign Affairs not appointed (FDs' allocation)	TGoNU to fill in the vacant position. Adhere to the consensus among the Parties to the ARCSS
Participation of women in the Executive shall be 25%.			4/29/2016			6 out 30 Ministers are women (20%)	Strive to adhere to full women political representation as provided for in the TCRSS and ARCSS



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Reference and Tasks	Party Responsible for the implementation	Time Frame	Start Date	Completion date	Implementation Status	Remarks	Recommendations
Adherence to the women quota for Deputy Ministers						No female Deputy Minister appointed	Appoint no less than 2 Deputy Ministers as provided for in the ARCSS
The Transitional National Legislative Assembly and the Council of States							
Reinstatement of members of the Transitional National Assembly and Council of State and expansion of the Assembly to 400 members to be known as the TNLA, including the prior 332 members and an additional 68 appointed representatives of South Sudan Armed Opposition (50); Former Detainees (1) and Other Political Parties (17).	NLA, President and the Parties to this Agreement	No later than ninety (90) days from the signing of this Agreement	4/29/2016	7/28/2016	Implemented	The TNLA has been expanded. There is confusion regarding which constituencies the appointed members of TNLA represent and how they relate to state formations and expansion of political constituencies.	
Selection of the Speaker of the TNLA	TNLA	Upon the completion of expansion of the TNLA	No time	No time	Implemented		
Support this Agreement and enacting legislation that enables and assists the transitional processes and reforms described in this Agreement.	TNLA, President, NCAC				In progress		Ensure that the TNLA enact laws and provide oversight functions.



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Reference and Tasks	Party Responsible for the implementation	Time Frame	Start Date	Completion date	Implementation Status	Remarks	Recommendations
The Judiciary							
Judicial reforms to include but not be limited to the review of the Judiciary Act during the Transition.	TNLA				Not implemented		Ensure judicial reforms are conducted for its effectiveness and efficiency.
Efforts to build the capacity of the judiciary	TGoNU, Partners (Donors, UN, etc.)				Ongoing	The ongoing programs include: Rule of law working group(UNDP), Max Planck program with judiciary	Ensure continuous capacity building of the judiciary.
Transitional Institutions and Mechanisms							
The TGoNU Executives shall supervise and facilitate the reforms and reconstitutions of the Commissions and Institutions at national level.	TGoNU Executives	Within the first 30 days of the Transitional Period	4/29/2016	5/29/2016	Not implemented	This is long overdue.	Expedite the reform process by putting in place relevant legislation for reforms.
Structure and Composition of State Governments							
Appointment of Transitional Governors of Jonglei, Unity and Upper States, State Council of Ministers and restoration of the State Legislative Assemblies	President, First Vice President, FDs and Other Political Parties	Within 30 days of the commencement of the Transitional Period	4/29/2016	5/29/2016	Not implemented	New states have been created.	Adhere to the ARCSS.



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Reference and Tasks	Party Responsible for the implementation	Time Frame	Start Date	Completion date	Implementation Status	Remarks	Recommendations
States and appointments of Governors	TGoNU				Not implemented in line with the ARCSS	States were expanded from 10 to 32. Shift and alliance of some Governors from one Party to the other.	Adhere the ARCSS
National Elections							
Amendment of the Political Parties Act, 2012; National Elections Acts, 2012; and the adoption of TNLA.	NCAC and TNA	Six (6) months (180 days) after the formation of TGoNU and adoption of the TCRSS (amended 2015)	4/29/2016	10/26/2016	In progress	The NCAC is reviewing the Political Parties Act and the National Elections Act	Ensure the legislation are enacted once the review process is complete.
Reconstituting the Political Parties Council.	TGoNU Executives, Political Parties	Not later than two months (60 days) after amendment of the Political Parties Act.	10/26/2016	12/25/2016	Not implemented	Pending	Ensure Political Parties Council is reconstituted
Reconstituting a competent and impartial National Elections Commission (NEC).	President, the First Vice President and Parties to this Agreement TNLA	No later than seven (7) months (210 days)	4/29/2016	25/11/2016 NEC formed	Not implemented	Pending	Ensure the NEC is reconstituted once the Permanent Constitution is enacted.



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Reference and Tasks	Party Responsible for the implementation	Time Frame	Start Date	Completion date	Implementation Status	Remarks	Recommendations
Organisation of Elections for President, the National Assembly, State Governors and State Assemblies.	NEC with support from Partners	sixty (60) days prior to the end of the Transition Period	30/08/2018 End of Transition minus 60 days	30/10/2018 Transitional end date	Pending	There is need for adequate preparation for election and conducting a national census.	Enact a Permanent Constitution before holding elections
Reconstituted NEC request for assistance of the UN, AU, and other regional and international partners	NEC, UN, AU, and other regional and international Partners	Immediately after its formation	25/11/2016 NEC formation date	Continuous	Not implemented	Pending the reconstitution of NEC	Once NEC is reconstituted, ensure it requests for necessary support from stakeholders to enable it conduct credible elections.
Establishment of subsidiary electoral management bodies at State level	TGoNU				Not implemented	Pending	Ensure reconstituted NEC establishes subsidiary electoral management bodies at State level.
Establishment of election calendar and timelines	NEC, TGoNU				Not implemented	Pending reconstitution of NEC	
Publishing the Voter Register	NEC	Six months (180 days) before holding of Elections	1/29/2018	To be determined	Not implemented	Pending reconstitution of NEC	Adhere to the provisions of the ARCSS
Invitation of competent and impartial local, regional and international observers	NEC, TGoNU	Determined by Election calendar	To be determined		Not implemented	Pending reconstitution of NEC	Adhere to the provisions of the ARCSS



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Reference and Tasks	Party Responsible for the implementation	Time Frame	Start Date	Completion date	Implementation Status	Remarks	Recommendations
Establishment of Election Disputes Resolution Mechanisms	Supreme Court or Judiciary	Within 30 days from the announcement of Election results	To be determined				Ensure a realistic timeframe for its establishment and reforms of transitional mechanisms.