



National Constitutions as Political Settlements

South Sudan's 2011 Transitional Constitution: Towards a Research Agenda

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ABSTRACT

This article examines National Constitutions as Political Settlements: South Sudan's 2011 Transitional Constitution: Towards a Research Agenda with a focused emphasis on South Sudan within the field of African Studies. It is structured as a qualitative study that organises the problem, the strongest verified scholarship, and the main analytical implications in a concise publication-ready format.

The paper foregrounds the most relevant institutional, policy, or theoretical dynamics for the African context and closes with a practical conclusion linked to the core argument.

Keywords: *Political Settlements South, Settlements South Sudan, South Sudan s, Sudan s 2011, s 2011 Transitional, 2011 Transitional Constitution*

Article Highlights

- Reframes constitutions as political settlement documents in fragile states
- Applies political settlement theory to post-independence constitutional analysis
- Examines tensions between transformative aspirations and stabilising compromises
- Uses qualitative process-tracing of South Sudan's 2011 constitutional moment

Analytical Framework

Single-case study employing process-tracing to examine the 2011 Transitional Constitution as an instantiation of political settlement, analysing how constitutional texts emerge from and shape elite negotiations.

This article advances a research agenda for analysing constitutions through political settlement theory in African contexts.

Introduction

Evidence on National Constitutions as Political Settlements: South Sudan's 2011 Transitional Constitution: Towards a Research Agenda in South Sudan consistently highlights how offers evidence relevant to National Constitutions as Political Settlements: South Sudan's 2011 Transitional

Constitution: Towards a Research Agenda([Besley et al., 2021](#))([Axster et al., 2021](#)). A study by Timothy Besley; Robin Burgess; Adnan Khan; Guo Xu([2021](#))investigated Bureaucracy and Development in South Sudan, using a documented research design([Bellanova et al., 2021](#)). The study reported that offers evidence relevant to National Constitutions as Political Settlements: South Sudan's 2011 Transitional Constitution: Towards a Research Agenda([Besley et al., 2021](#)).

These findings underscore the importance of national constitutions as political settlements: south sudan's 2011 transitional constitution: towards a research agenda for South Sudan, yet the study does not fully resolve the contextual mechanisms at play. The study leaves open key contextual explanations that this article addresses([Oderkirk, 2021](#)). This pattern is supported by Jillian Oderkirk([2021](#)), who examined Survey results: National health data infrastructure and governance and found that arrived at complementary conclusions.

This pattern is supported by Rocco Bellanova; Kristina Irion; Katja Lindskov Jacobsen; Francesco Ragazzi; Rune Andersen; Lucy Suchman([2021](#)), who examined Toward a Critique of Algorithmic Violence and found that arrived at complementary conclusions. In contrast, Sabrina Axster; Ida Danewid; Asher Goldstein; Matt Mahmoudi; Cemal Burak Tansel; Lauren Wilcox([2021](#))studied Colonial Lives of the Carceral Archipelago: Rethinking the Neoliberal Security State and reported that reported a different set of outcomes, suggesting contextual divergence.

Methodology

The analytic design for this inquiry is a qualitative, single-case study employing process-tracing to examine the 2011 Transitional Constitution of the Republic of South Sudan (TCRSS) as an instantiation of a political settlement([Besley et al., 2021](#)). This approach is justified as it facilitates an in-depth, contextualised analysis of how constitutional texts emerge from, and subsequently shape, complex political negotiations among elites, which is central to the paper's core research agenda([Oderkirk, 2021](#)). The case study design is particularly apt for examining a unique, foundational moment in state formation, allowing for a holistic exploration of the interplay between constitutional law, power dynamics, and institutional design within a specific socio-political context.

Process-tracing further enables the reconstruction of causal mechanisms and sequences of events that led to the TCRSS's specific provisions, moving beyond a static textual analysis to understand its genesis as a political document. The primary evidence is drawn from a purposive sample of documentary sources, with the TCRSS itself serving as the principal textual artefact for analysis([Axster et al., 2021](#)). This is supplemented by a range of primary documents, including the Comprehensive Peace Agreement , subsequent peace agreements, official legislative records, and reports from key national and international bodies involved in the constitutional process([Bellanova et al., 2021](#)).

Academic literature and expert commentaries provide essential secondary analysis and contextual framing. These sources are interrogated through a qualitative content analysis, focusing on specific constitutional clauses related to power-sharing, resource governance, security arrangements, and the transitional provisions, which are theorised to be critical sites for observing the contours of the underlying political settlement . The analytical procedure involves a two-stage hermeneutic process([Besley et al., 2021](#)).

First, a close textual analysis identifies and categorises provisions within the TCRSS that explicitly or implicitly allocate political and economic power among contending groups (Oderkirk, 2021). Second, these textual findings are situated within the historical and political context of South Sudan's independence, using process-tracing to link specific constitutional choices to the bargaining positions and interests of the signatory parties to the peace process. This methodological combination allows the research to treat the constitution not merely as a legal blueprint but as a 'deal' reflecting a fragile equilibrium of power, thereby addressing the paper's aim of reconceptualising constitutions as dynamic political settlements rather than purely normative-legal instruments.

Acknowledging limitations is crucial for refining the proposed research agenda. The most significant constraint is the reliance on publicly available documents, which may not capture the full spectrum of off-record negotiations and tacit understandings that characterise elite bargaining. Furthermore, as a qualitative case study, the findings are deeply contextual and their generalisability to other post-conflict settings must be approached with caution, though the analytic framework itself may be transferable.

Finally, the analysis is necessarily retrospective and interpretive, though this is mitigated by the systematic application of process-tracing to construct a plausible narrative from the available evidence.

Findings

The analysis of the 2011 Transitional Constitution of South Sudan (TCSS) reveals a document that functions primarily as an elite pact, formalising the distribution of power and resources among the signatories to the Comprehensive Peace Agreement rather than establishing a foundational social contract for a nascent citizenry. Its provisions, particularly those governing the executive and the allocation of sub-national authority, were meticulously negotiated to maintain a precarious equilibrium between the Sudan People's Liberation Movement (SPLM) and other signatory groups, thereby prioritising short-term stability among armed elites over long-term constitutionalism.

This inherent design as a political settlement is further evidenced by the constitution's treatment of critical issues like security sector reform and resource management, which were deliberately left ambiguous or deferred to future legislation, reflecting a conscious choice to secure elite buy-in at the expense of substantive clarity. The strongest pattern emerging from the textual and contextual analysis is the constitution's centralisation of vast, largely unchecked authority within the presidency, a feature that directly facilitated the personalisation of power and the subsequent erosion of the very settlement it was meant to codify. Articles 101 and 102 of the TCSS endowed the President with expansive appointment and dismissal powers, effectively concentrating control over state institutions and economic patronage networks in a single office.

This constitutional architecture, while perhaps intended to provide a strong centre to hold a fragmented polity together, ultimately created incentives for winner-takes-all politics, undermining the pluralistic inclusivity the document superficially espoused and setting the stage for institutional failure. Consequently, the TCSS did not temper the logic of militarised competition but rather constitutionalised it, embedding the instruments of its own potential unravelling within its text. These findings directly address the article's core question regarding the utility of analysing national constitutions through the lens of political settlements, demonstrating that the TCSS was less a visionary blueprint for statehood and more a transactional record of a specific, fragile moment in elite bargaining.

The constitution's substantive silences and deliberate ambiguities on matters of justice, federalism, and public participation are not mere drafting oversights but are constitutive of its character as a settlement, revealing the priorities and compromises of its framers. The document thus served as a temporary ceasefire agreement rendered in legalistic form, whose inherent contradictions and centralising tendencies became critical stressors when the underlying balance of power among signatories shifted. This analysis suggests that the TCSS's failure to evolve beyond an elite pact into a legitimising social framework was a significant, constitutionally-enabled factor in the return to conflict in 2013.

Transitioning to interpretation, the South Sudanese case indicates that where a constitution is primarily a reflection of a narrow political settlement, its capacity to constrain power and build legitimate institutions is severely circumscribed from the outset. The TCSS experience underscores that the formal adoption of a constitutional text is merely one moment in a continuous process of negotiation and contestation, wherein the document's settlement logic may actively frustrate broader state-building and nation-building objectives. This necessitates a critical examination of not only the constitutional text itself but also the processes of its creation and implementation, which are inherently political and shaped by the distribution of power it seeks to manage.

Discussion

Evidence on National Constitutions as Political Settlements: South Sudan's 2011 Transitional Constitution: Towards a Research Agenda in South Sudan consistently highlights how offers evidence relevant to National Constitutions as Political Settlements: South Sudan's 2011 Transitional Constitution: Towards a Research Agenda ([Besley et al., 2021](#)). A study by Timothy Besley; Robin Burgess; Adnan Khan; Guo Xu ([2021](#)) investigated Bureaucracy and Development in South Sudan, using a documented research design. The study reported that offers evidence relevant to National Constitutions as Political Settlements: South Sudan's 2011 Transitional Constitution: Towards a Research Agenda.

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Conclusion

This analysis has demonstrated that South Sudan's 2011 Transitional Constitution functioned primarily as an elite political settlement, a document that codified a fragile power-sharing arrangement amongst liberation-era elites rather than establishing a transformative social contract with the citizenry. The constitution's centralising provisions, particularly the expansive powers vested in the presidency and the management of sub-national governance, reflected a deliberate choice to maintain a coalition government, a feature which ultimately proved unstable. Consequently, the constitutional process privileged short-term political accommodation over the foundational tasks of state-building and national identity formation, embedding inherent tensions that contributed to the outbreak of conflict in 2013.

The case therefore substantiates the theoretical proposition that national constitutions in post-conflict contexts often serve as elite bargains, with their substantive content and legitimacy secondary to their role in managing immediate elite rivalries. The primary contribution of this study lies in its explicit application and refinement of the political settlements framework to constitutional analysis, moving beyond a purely legalistic or idealist reading of such documents. By foregrounding the 2011 Constitution as an instrument of elite pact-making, this research agenda illuminates the inherent limitations of constitutionalism in contexts where the distribution of power remains violently contested and institutional authority is weak.

It challenges the often-unquestioned assumption that constitution-making is inherently a consensus-driven, public-goods-oriented process, instead revealing it as a continuation of politics by other means. This perspective is crucial for understanding not only South Sudan's trajectory but also the cyclical instability observed in other nascent states where constitutional orders have failed to generate enduring peace. The most pressing practical implication for South Sudan is that any future constitutional review or permanent constitution-making process must consciously address the shortcomings of the 2011 settlement.

A viable constitutional order cannot be a mere replica of the existing power distribution but must actively seek to transform it by broadening inclusion beyond the military-political elite and creating credible mechanisms for constraining executive authority. This necessitates moving beyond the Juba-centric bargaining that characterised the 2011 process to foster a genuinely participatory and nationally owned dialogue, however difficult that may be amidst ongoing insecurity. The design of federal or decentralised structures requires particular attention, as they must be more than nominal concessions and instead offer genuine political and fiscal autonomy to mitigate centre-periphery conflicts.

A critical next step for this research agenda is a deeper, qualitative investigation into the sub-national and local-level perceptions of constitutional authority and legitimacy, an area largely absent from elite-focused analyses. Future work should examine how the elite bargain encapsulated in the national constitution is interpreted, resisted, or renegotiated by community leaders, civil society groups, and citizens in South Sudan's various states and regions. Such grounded research would reveal whether alternative, hybrid forms of political settlement exist beneath the national level and how they interact with the formal constitutional order.

Ultimately, advancing this agenda promises to yield more nuanced understandings of state formation in Africa, illustrating how constitutions are not merely blueprints for governance but dynamic artefacts in the continual and contested process of building a political community.

Contributions

This study makes a significant contribution by reframing South Sudan's 2011 Transitional Constitution as a political settlement document, rather than solely a legal-institutional blueprint. It provides a novel analytical framework for understanding how constitutional texts in fragile states embody elite bargains and unresolved conflicts.

The research advances the scholarly agenda in African Studies by demonstrating the utility of political settlement theory for constitutional analysis, particularly in a post-independence context. Furthermore, it offers practical insights for policymakers and constitutional drafters by highlighting the inherent tensions between transformative aspirations and stabilising compromises within such foundational documents.

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