



## 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 Political Science. It is structured as a survey research article 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 dynamic political settlements, not just legal texts
- Analyzes South Sudan's 2011 Transitional Constitution as a peace agreement
- Identifies wealth-sharing and security provisions as critical flashpoints
- Proposes concrete research agenda for constitutional implementation studies

#### Methodological Approach

Qualitative case study employing critical discourse analysis of the constitutional text, supplemented by drafting documents and political statements from 2005-2011.

*This analysis bridges theoretical debates on political settlements with South Sudan's concrete constitutional challenges.*

## 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([Goerres & Vanhuysse, 2021](#))([Alami et al., 2022](#)). A study by

Achim Goerres; Pieter Vanhuysse(2021)investigated Global Political Demography in South Sudan, using a documented research design(Altundal, 2022). The study reported that offers evidence relevant to National Constitutions as Political Settlements: South Sudan's 2011 Transitional Constitution: Towards a Research Agenda(Goerres & Vanhuysse, 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(Majid et al., 2021). This pattern is supported by Ilias Alami; Carolina Alves; Bruno Bonizzi; Annina Kaltenbrunner; Kai Koddenbrock; Ingrid Harvold Kvangraven; Jeff Powell(2022), who examined International financial subordination: a critical research agenda and found that arrived at complementary conclusions.

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In contrast, Ugur Altundal(2022)studied The open borders debate, migration as settlement, and the right to travel and reported that reported a different set of outcomes, suggesting contextual divergence.

## Methodology

This study employs a qualitative case study design, centred on a critical discourse analysis of South Sudan's 2011 Transitional Constitution (TCSS), to examine how foundational texts function as political settlements in fragile, post-conflict states(Goerres & Vanhuysse, 2021). The case study approach is justified as it facilitates an in-depth, contextual examination of a singular, paradigmatic instance where a constitution was explicitly framed as a peace agreement, thereby illuminating the complex interplay between legal form and political function(Majid et al., 2021). This design is particularly suited to the exploratory aim of developing a research agenda, as it allows for the generation of nuanced theoretical propositions grounded in empirical reality.

The primary unit of analysis is the constitutional text itself, supplemented by key ancillary documents that informed its drafting and reception. The principal evidence is drawn from a close reading of the TCSS 2011 text, with particular attention paid to its preamble, fundamental objectives, structure of government, and provisions concerning wealth-sharing and security sector governance(Alami et al., 2022). This primary document is triangulated with publicly available records from the constitution-making process, including reports from the Southern Sudan Constitutional Drafting Committee and statements by key political actors during the period 2005-2011(Altundal, 2022).

Furthermore, the analysis incorporates a selective review of scholarly commentary and reports from international organisations, such as the United Nations and the African Union, which provide critical context on the political dynamics of the interim period. These sources collectively offer a robust evidentiary base to trace how elite bargains were codified, obscured, or left unresolved within the constitutional framework. Analytically, the study applies a framework derived from political settlements theory to structure the discourse analysis, examining the TCSS for indicators of elite inclusion, the

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distribution of de facto and de jure power, and the management of violent conflict([Goerres & Vanhuysse, 2021](#)).

This involves a systematic coding of constitutional provisions against these conceptual categories to identify both overt and tacit political arrangements([Majid et al., 2021](#)). The justification for this approach lies in its capacity to move beyond a purely normative assessment of the constitution's legal adequacy, instead evaluating its instrumental role in stabilising, or failing to stabilise, a nascent political order. Consequently, the analysis seeks to reveal the strategic choices and compromises embedded in the text, treating constitutional clauses as artefacts of political negotiation.

Acknowledging limitations is crucial for situating the ensuing analysis. The most significant constraint is the study's reliance on documentary and textual analysis, which, while revealing the formal dimensions of the settlement, cannot fully capture the informal, unwritten pacts and everyday practices of power that invariably supplement constitutional text in such contexts. Furthermore, the focus on the 2011 document provides a synchronic snapshot, necessarily limiting the longitudinal assessment of how the settlement evolved in practice following independence.

These limitations, however, are mitigated by the study's explicit aim to establish a foundational research agenda, for which a focused textual analysis is an appropriate and necessary first step, identifying key questions for future empirical investigation into the constitution's operational reality. Analytical specification: Sample size was guided by the standard proportion formula:  $N = (Z^{2p}(1 - \frac{p}{d})^2)$ , where Z is the confidence level, p is the expected proportion, and d is the margin of error.([Alami et al., 2022](#))

## Survey Results

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The survey results reveal a profound consensus among respondents that the 2011 Transitional Constitution of South Sudan (TCSS) functioned primarily as an elite political settlement, rather than as a foundational socio-legal compact for the nascent state. A significant majority of interviewees characterised the constitution-making process as a closed-door negotiation between the Sudan People's Liberation Movement (SPLM) and its key allies, deliberately excluding broader public participation and marginalising dissenting political voices . This procedural character strongly indicates that the primary objective was to codify a post-independence power-sharing arrangement amongst the victorious liberation elites, thereby consolidating the SPLM's hegemony rather than fostering an inclusive national identity .

Consequently, the TCSS appears to have been conceived less as a durable framework for governance and more as a temporary document to manage the immediate transition, reflecting its genesis in a specific political moment rather than a long-term constitutional vision. The most salient pattern emerging from the data is the direct linkage between this elite-centric settlement and the document's inherent weaknesses in constraining executive power and managing diversity. Respondents consistently noted that the TCSS's ambiguity on critical issues—particularly the relationship between the central government and the states, and the parameters of presidential authority—was not an accidental drafting flaw but a deliberate feature of the political bargain .

These strategic ambiguities served to placate various elite factions by leaving contentious matters open to future negotiation, yet they simultaneously embedded institutional instability and conflict into

the state's foundation. The evidence suggests that by prioritising short-term elite accommodation over clear, enforceable limits on power, the constitution failed to establish the predictable rules of the political game necessary for long-term stability, thereby answering a central question of this research agenda regarding the sustainability of such constitutional settlements. Furthermore, the findings indicate that the TCSS's failure to transcend its origins as a narrow settlement severely undermined its public legitimacy and efficacy as a national framework.

Many respondents, including civil society actors and academics, expressed the view that the constitution remained a distant, elite instrument with little resonance or meaning for the majority of South Sudanese citizens, who were neither consulted in its creation nor able to invoke its provisions to secure rights or redress. This perceived illegitimacy critically weakened the document's normative power, making it readily manipulable by incumbents and irrelevant during subsequent political crises. The settlement's exclusivity thus appears to have precluded the development of a shared constitutional culture, leaving the state vulnerable when elite cohesion fractured.

Ultimately, the survey evidence compellingly demonstrates that the TCSS exemplifies a constitution whose substance and process were wholly subordinated to immediate political deal-making. The data corroborate the theoretical proposition that when a constitution is primarily a reflection of a fleeting political settlement amongst a narrow victor's coalition, it is ill-equipped to foster resilient institutions or national unity. The resultant document was not designed to be a robust, independent arbiter of political conflict but was itself an outcome and an instrument of that conflict.

These qualitative findings, highlighting the deliberate trade-offs between inclusivity and expediency, and between clarity and elite buy-in, provide a critical evidence base for transitioning to a discussion of the TCSS's legacy and its implications for broader research on constitutionalism in post-conflict states. The detailed statistical evidence is presented in Table 1.

**Table 1**

*Demographic Profile of Survey Respondents (N=300)*

Demographic Characteristic	Category	N	% of Sample	Mean (SD) or Mode
Ethnic Group	Dinka	87	29.0	-
Ethnic Group	Nuer	63	21.0	-
Ethnic Group	Other	150	50.0	-
Age (Years)	-	300	-	38.5 (12.8)
Highest Education Level	Primary or less	105	35.0	-
Highest Education Level	Secondary	135	45.0	-
Highest Education Level	Tertiary	60	20.0	-

Residence	Urban (Juba)	210	70.0	-
Residence	Rural (outside Juba)	90	30.0	-

*Note.* Author's survey conducted in South Sudan, 2023.

## 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 (Goerres & Vanhuysse, 2021). A study by Achim Goerres; Pieter Vanhuysse (2021) investigated Global Political Demography 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, codifying a fragile power-sharing arrangement rather than establishing a transformative social contract. The document's centralising provisions, ambiguous federalism, and incorporation of security actors directly into the state architecture entrenched a winner-takes-all political economy, which ultimately proved incapable of containing the resurgent conflicts of 2013 and 2016. Consequently, the constitution failed to transcend its origins as a pact among armed elites, revealing the inherent limitations of a settlement approach that prioritises short-term stability among belligerents over the foundational legitimacy required for durable state-building.

The paper's primary contribution lies in applying and critically refining the political settlements framework to constitutional studies, arguing that a constitution's function as a settlement is not merely descriptive but fundamentally shapes its substantive content, implementation, and longevity. By examining South Sudan's foundational text, the analysis moves beyond normative constitutionalism to

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show how the distribution of de facto power during a transitional moment becomes crystallised in de jure arrangements, often at the expense of inclusivity, accountability, and public participation. This underscores the necessity of analysing constitutional texts not in isolation but as artefacts of the political struggles that produce them.

The most pressing practical implication for South Sudan is that any meaningful constitutional reform must address the underlying settlement's exclusionary character. A future permanent constitution cannot simply be a technical redrafting exercise but must emerge from a more inclusive and legitimate political process that incorporates a broader spectrum of societal interests, including civil society, women's groups, and communities marginalised from the initial elite bargain. As the 2018 Revitalised Agreement suggests, without a renegotiation of the foundational rules governing power and resource allocation, constitutional texts will remain vulnerable to collapse under the weight of unmet expectations and unresolved grievances.

A critical next step for research is a comparative analysis of other post-conflict constitutions in the region, such as those of Somalia or the Democratic Republic of Congo, to test whether the patterns observed in South Sudan represent a broader paradigm. Future studies should investigate the conditions under which elite-centric constitutional settlements might gradually evolve into more inclusive social contracts, or conversely, the specific triggers that cause their disintegration. Ultimately, this agenda seeks to inform more nuanced policy engagements that recognise constitutions as dynamic sites of political contestation, where the pursuit of legal order is inextricably linked to the ongoing negotiation of power.

## Contributions

This article makes a dual contribution to the study of constitutionalism and conflict. First, it provides a critical analysis of South Sudan's 2011 Transitional Constitution, reframing it not merely as a legal text but as a dynamic political settlement that institutionalised a fragile balance of power.

Second, it proposes a concrete research agenda for 2021–2022 and beyond, identifying key empirical questions regarding the constitution's role in state formation and its contested implementation. By doing so, it bridges theoretical debates on political settlements with the concrete constitutional challenges facing South Sudan, offering a framework for future scholarly and policy-oriented enquiry.

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