

## The politics of constitution-making: An analysis of political parties and groups in post-conflict South Sudan

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1	Introduction.....	29
2	The politics of constitution-making: Actors and contestation.....	30
3	Political parties' predominance in constitution-making ...	36
4	The implications of political-party predominance in constitution-making.....	39
5	The challenges of constitution-making .....	44
6	Opportunities for inclusive constitution-making.....	52
7	Influencing constitution-making during peace agreements.....	54
8	Conclusion.....	59
9	References.....	59

### Abstract

*This chapter critically examines the role of political parties and groups in constitution-making processes. It analyses how political parties and groups contribute to the success or failure of such processes. The chapter argues that political parties and groups in South Sudan should be actively involved in and committed to the constitutional reform process if it is to be successful. To this end, they should focus on building a shared vision of the country's political and socio-economic political future and promoting a democratic ethos that fosters constitutionalism, political stability, and peace in the country.*

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**Key words:** *politics; constitution-making; political parties; South Sudan; post-conflict*

## 1 Introduction

South Sudan gained independence in 2011 after decades of civil war. However, it soon descended into political violence in 2013, a state of affairs that persisted until 2018 when it was brought to an end with a peace agreement. The 2018 Peace Agreement paved way for revitalising a transitional government and making a ‘permanent’ constitution. Along with other political forces, signatories to the peace deal are expected to participate in the constitution-making process. For this process to be effective, political forces would need to form coalitions and cut ties with their armed wings.<sup>1</sup> To this end, they may need to formulate guidelines on inclusive political participation in the constitutional reform process. In particular, they would have to pay attention to issues such as party representation, enter into transparent and impartial political dialogues, and consulting with a broad spectrum of society, including the public and civil society organisations. Doing so could usher in a consensual constitution acceptable to the country’s polity and thereby foster stability, peace and development. To achieve this, stakeholders would need to engage in non-violent politics that promote dialogue and consensus-building.

Countries that have experienced prolonged conflict often need new institutional arrangements in order to lay the basis for lasting peace and stability. In post-conflict contexts, constitution-making processes are seen as more than a matter of creating a regulatory framework for power-sharing, governance, and state-building: they are an opportunity to change societal norms and values and move towards democratic practices.

In this context, political parties play a vital role in shaping the constitution, as they represent the aspirations of the people whom they represent. Post-conflict constitution-making requires a careful balance between accommodating the demands of diverse political parties and

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1 L Munabi & B Senyonyi ‘The politics of constitution making processes: A critical analysis of political parties’ predominance and landscape in post-conflict South Sudan’ (2019) 38 *Politikon* 114.

ensuring that the constitution reflects the national interest. Constitution-making, after all, is a critical process that establishes the foundation of a country's political, social, and economic institutions. The involvement of a variety of stakeholders, including political parties, is thus crucial. In post-conflict countries like South Sudan, however, the role of political parties in constitution-making is often overshadowed by elite-driven and centralised approaches.

Against that backdrop, this chapter critically analyses the role of political parties in the constitution-making process of post-conflict South Sudan.

## **2 The politics of constitution-making: Actors and contestation**

Constitution-making is critical for establishing democratic institutions and protecting citizens' rights. However, the associated processes are often complex, influenced by numerous factors, and subject to power dynamics. In many countries, the ruling party dominates constitutional negotiations and seeks to shape the outcome to reflect its interests and policy preferences. Indeed, it often tries to strengthen its grip on power by introducing provisions that limit opposition parties' ability to compete, or by increasing the presidential powers that are to be enshrined in the constitution. Where there is no dominant political party, multiple political parties engage in competitive negotiations to achieve their respective objectives. This could be constructive and lead to consensual outcomes that reflect the interests of different stakeholders, or it could be destructive by heightening societal tensions and causing political deadlock.

Political parties use their representation in parliament, the executive branch, and societal organisations to influence the process of constitution-making. They express their interests in various ways, including through policy proposals, negotiation strategies, and the formation of alliances with other groups. Parties can also provide a conducive environment for citizens' participation in the process by availing spaces and platforms for debate and consultation. Their role in constitution-making is shaped by several factors, including the country's political system, the level of institutionalisation of political parties, and the degree of societal

polarisation.<sup>2</sup> In some countries (as already noted), constitution-making may be dominated by a single political party, while in others, multiple political parties engage in the negotiation process. This section discusses the role of political parties in constitution-making, the impact of power dynamics and negotiations, and the influence of parties on these factors.

## **2.1 The meaning and nature of politics of constitution-making**

The politics of constitution-making refers to the intricate interactions between political forces and interests that influence the process of drafting and ratifying a constitution. This process is essential for creating a state's fundamental legal framework, and typically involves a variety of stakeholders such as political parties, civil society organisations, interest groups, and the general public. Constitution-making is always a political game, one in which different political actors with varying degrees of power and influence negotiate to find common ground on contentious issues such as rights, freedoms, the distribution of power, and the structure of government. Compromise is key to achieving consensus and ensuring broad acceptance of the constitution.<sup>3</sup>

Each party has an opportunity to enshrine its ideology during the drafting of the constitution, a process which might be centred on debates on issues such as secularism versus religious governance, federalism versus centralism, or individual rights versus collective rights. Yet even once a constitution is adopted, the politics surrounding it are far from over. The effectiveness of the constitution depends on the political climate it engenders, with a critical aspect of this climate being the extent to which political leaders are committed to the constitution's values and institutions are able to implement them. Since a society aims to create a governing structure that strikes a balance between authority, rights, and duties, the politics of constitution-making are dynamic, often contentious, and reflective of the constitution's goals, conflicts, and complexities. Indeed, making a constitution frequently entails a divisive

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2 A Cohen, 'Political parties and constitutional change: The role of political parties in constitution-making processes' in M Rosenfeld & A Sajó (eds) *The Oxford handbook of comparative constitutional law* (2014).

3 Article 16 details how political parties are represented in South Sudan's governance structures. It specifies the requirements for their participation in all political spheres, including in constitution-making processes.

political process; here, elites motivated by power dynamics and personal interests seek to arrive at a constitution that strengthens their power. This could endanger the legitimacy and efficacy of the constitutional system by instituting a culture of elite capture in which leaders put their own interests ahead of those of the public.

In post-conflict South Sudan, the politics of constitution-making will embody the struggles and aspirations of a nation seeking to rebuild itself after years of turmoil. It is a process that carries profound meaning, symbolising hope for unity and stability while also presenting significant challenges shaped by historical grievances and contemporary power dynamics. It is thus imperative that constitution-making be inclusive, transparent, and responsive to the needs of a diverse population. If this permanent constitution is crafted well, it would serve as a cornerstone for peace, governance, and socio-economic development in the world's youngest nation.

## 2.2 A framework for consensus-building

In post-conflict constitution-making, political parties can influence the process significantly, as they have a vested interest in building consensus around the constitution they are shaping to suit their ideologies, values, and principles. As Roeder argues, political parties play a crucial role in bridging the gap between the state and the citizenry: consensus can be built only if the parties' interests, needs, and aspirations suit those of the people they serve.<sup>4</sup> Parties can hence provide a framework for consensus-building among different groups and facilitate the engagement of various stakeholders in the constitution-making process.

## 2.3 A channel for popular participation and mobilisation

During constitution-making, political parties have the opportunity to create forums for discussing provisions, articles and sections of the constitution, forums that provide citizens with spaces in which to express their views and concerns. As such, parties provide a channel for

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<sup>4</sup> PG Roeder 'Political parties and conflict resolution' in TD Mason & JD Meernik (eds) *Conflict prevention and peacebuilding in post-war societies: Sustaining the peace* (2007).

popular participation and mobilisation in constitution-making,<sup>5</sup> thereby enabling individuals to aggregate their interests and engage in collective decision-making.<sup>6</sup> Political parties, in short, can provide a platform for the expression of different viewpoints and interests in constitution-making. Pillay notes in this regard that

political parties have a significant impact on the process as they influence the selection of delegates and shape the content of the Constitution. In many instances, political parties are involved in drafting or amending the Constitution. Thus, it is vital to ensure that political parties are representative and inclusive, as this will enhance the democratic legitimacy of the constitutional process.<sup>7</sup>

## 2.4 The emergence of roadblocks in the process

Constitution-making is a complex undertaking that involves striking a delicate balance between accommodating the demands of stakeholders and upholding the national interest. Political parties can impact on the legitimacy of the constitution, particularly when they play an exclusionary role in the processes surrounding it. In post-conflict situations, the constitution-making process should address the root causes of the conflict, promote national reconciliation, and prevent future conflict. Moreover, it should reflect the values, principles, and aspirations of the people that the resultant constitution is meant to represent.

In some cases, parties are influential in creating a healthy environment for an effective and people-centred constitution; in other cases, where their interests have not been accommodated, they are likely to undermine the process of constitution-making by putting their interests above the national interest. In post-conflict situations, political parties may represent particular ethnic, religious, or linguistic groups, and their agendas could be in conflict with the need for national reconciliation and unity. For instance, they can hinder the progress of post-conflict

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5 Article 15 of the Interim Constitution of South Sudan of 2011 describes the role that political parties play in promoting democratic governance, political participation, and the representation of diverse interests in society.

6 C Kukathas & P Pettit *Rawls: Political liberalism* (2010).

7 K Pillay *The role of political parties in constitution-making: Options for democracy assistance* (2016).

constitution-making by making demands that are incompatible with the overall objectives of the process.<sup>8</sup>

Furthermore, it may be argued that post-conflict constitution-making requires a careful balance between accommodation and transformation. In other words, it should seek to accommodate the demands and interests of different groups while also transforming the existing power structures and institutions that contributed to the conflict and, in so doing, promoting democracy and positive social change.<sup>9</sup> As noted already, political parties play an instrumental role in post-conflict constitution-making in that they represent the diverse interests, values, and aspirations of the people they serve; however, they can also hinder the process by putting their interests above the national interest. Constitution-making thus involves finding a balance between accommodation and transformation that serves the national interest and helps ensure a durable peace.

## 2.5 Power dynamics in constitutional negotiations

Drafting and adopting a constitution often involves a range of actors, such as civil society organisations, interest groups, and political elites, who have varying interests and objectives. In post-conflict societies, power dynamics can be especially problematic, with powerful groups or vested interests tending to exert significant influence over the process.<sup>10</sup> Power dynamics and negotiations in constitution-making are critical in laying the foundation for a stable and democratic society. In South Sudan, the constitution-making process has been complicated by both the dynamics among political parties and actors and the power struggles and personal interests of the negotiators. This section thus explores how power dynamics and negotiations can pose a challenge to constitution-making processes in South Sudan.

In South Sudan, power dynamics are influenced by a complex web of political, social, and ethnic factors, as observed by Ogeno, who reiterates

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8 M Siems 'Political parties and the rule of law in post-conflict societies' (2006) 13(5) *Democratization* 776.

9 S Stroschein & M Verloo 'Power-sharing, post-conflict governance and inclusive constitution-making' (2012) 10(3) *Comparative European Politics* 261.

10 D Olowu & JS Wunsch *Local governance in Africa: The challenges of democratic decentralization* (2004).

that the power struggle among political parties, actors and ethnic groups can complicate the constitution-making process; this struggle often centres on the question of who holds power in the country, and can ultimately result in flawed or incomplete implementation of the constitution due to lack of enforcement.<sup>11</sup>

Furthermore, power dynamics can affect the legitimacy of the constitution. If one party or interest group has a greater say in the drafting and negotiation of the constitution than others, some groups may consider the result illegitimate and reject it, leading to further political instability.<sup>12</sup> Negotiations in the constitution-making process are also clearly significant, as they play a vital role in shaping the content of the constitution. However, negotiations in South Sudan's constitution-making processes have often been affected by the shifting power dynamics and a lack of political will among parties to reach a compromise. Negotiations are, as such, complicated by deeply entrenched ethnic divisions and interests.<sup>13</sup> Additionally, South Sudan's weak institutional framework and limited technical capacity have made negotiations challenging, with parties relying on external support and mediation to reach consensus.<sup>14</sup>

In South Sudan, adverse power dynamics among various political parties who were signatory to the Revitalized Peace Agreement would complicate the constitution-making processes because each principal signatory will be pushing for its interests to be enshrined in the constitution. Lack of trust and cooperation among political parties, the risk of marginalisation and exclusion, and the potential for renewed conflict serve to undermine the legitimacy of the constitution-making process. If certain groups believe that the constitution does

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11 CP Ogeno 'Constitution-making in Africa: A contextual analysis of the case of South Sudan' (2018) 12(4) *African Journal of Political Science and International Relations* 55.

12 P Aroca 'Ethnic politics and constitutional reform in South Sudan' (2017) 3 *Conflict Trends* 22.

13 A Al-Mubarak 'Constitutional dialogue for building consensus and credibility in Sudan and South Sudan' in *The Nile River and its economic, political, social and cultural role* (2018).

14 KR Makuer & AG Ododa 'Constitutional review process in South Sudan: An overview' (2017) 3(2) *International Journal of Law* 34.



not accommodate their interests and perspectives, they may reject it, a situation leading in turn to continuing instability in the country.<sup>15</sup>

As such, the power dynamics that were at work during peace negotiations will be critical in shifting parties' alignment with constitutional provisions key to the legitimacy of the constitution. Similarly, negotiations are complicated by deeply entrenched political, social and ethnic interests. It is thus imperative that parties work together to build trust, promote inclusivity, and reach compromises that reflect the views and aspirations of all South Sudanese citizens.

## 2.6 The influence of international actors

International actors can have a significant influence on constitution-making processes, particularly in fragile and conflict-affected states. While international actors such as the United Nations provide technical expertise and support to these processes, their influence is not always positive. It is essential to ensure that they respect the sovereignty of the state and do not seek to impose their own agendas and priorities on the process.

Donor countries and organisations are increasingly providing funding and technical assistance to constitution-making processes. However, their role is often controversial, with some arguing that their interventions can be perceived as external interference and that they hence undermine the legitimacy of such processes.<sup>16</sup> Thus, it is vital for international actors to engage in a consultative and participatory process that builds local ownership and legitimacy. By acknowledging these issues, constitution-making can be made more inclusive, legitimate, and representative.

## 3 Political parties' predominance in constitution-making

As mentioned, political parties play a significant role in constitution-making, a role shaped by various factors (the country's political system, the extent of party-political institutionalisation, societal polarisation).

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15 SO Oyombe & MA Abusharaf 'The constitutional review in South Sudan: An analysis of transitional governance' (2020) 9(1) *Open Journal of Leadership* 10.

16 TL Karl 'The hybrid regimes of Central America' (2007) 18(2) *Journal of Democracy* 98.

Understanding the role and influence of political parties in constitution-making is crucial for promoting inclusive and democratic governance in the long run.

In the case of South Sudan, the Sudan People's Liberation Movement (SPLM) has dominated the political sphere since independence. It has played a significant role in the country's constitution-making processes, with other opposition parties playing a vital role in critiquing and amending the existing Constitution. However, parties in South Sudan face multiple challenges that hamper their effectiveness in promoting democracy and good governance. This section examines the predominance of political parties in South Sudan, the role of the SPLM in constitution-making, the influence of opposition parties on constitution-making, and the challenges that have arisen.

### **3.1 Ruling-party predominance**

The ruling party in South Sudan, the SPLM, emerged in the 1980s as a rebel movement opposing popular marginalisation and Islamisation by the Sudanese government in Khartoum. With the signing in 2005 of the Comprehensive Peace Agreement (CPA), the SPLM and the ruling party in Khartoum, the National Congress Party, entered into a power-sharing deal.<sup>17</sup> The SPLM later emerged victorious in the 2010 general elections and the 2011 referendum on independence, forming a government in the newly independent Republic of South Sudan.<sup>18</sup> It has remained predominant in South Sudan's politics since then. Indeed, as part of the peace agreement reached in 2005, a transitional constitution was drafted and then later ratified after the 2011 referendum. The SPLM was at the centre of this constitution-making process, with key members, such as President Salva Kiir and the party's former secretary-general, Pagan Amum, overseeing it. The party's goal was to promote democracy, rule of law, and respect for human rights.<sup>19</sup>

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17 DH Johnson *South Sudan: A new history for a new nation* (2016).

18 ØH Rolandsen 'War and peace in South Sudan: A new history of the SPLM/A' (2015) 9(2) *Journal of Eastern African Studies* 195.

19 FM Deng *South Sudan: The case for independence* (2010).

### 3.2 Opposition parties' influence on constitution-making

Opposition parties play an essential role in constitution-making by ensuring that the constitution reflects the aspirations and values of broader society. In South Sudan, they have major potential to shape the constitution-making process. Although the SPLM dominated the country's earlier constitution-making process, opposition parties played an important role in critiquing and amending the document so as to help ensure that it reflected diverse perspectives. Parties such as the National Salvation Front, South Sudan Democratic Movement, and South Sudan United Front were critical of the SPLM's handling of governance issues like corruption, human rights abuses, and the management of federalism. They advocated for stronger federalism and criticised the SPLM's centralised control of power.

The presence of opposition parties has become more pronounced since the adoption of the CPA in 2005. They have been active in challenging the ruling party's dominance and arguing for greater democratic representation in the constitution-making process.<sup>20</sup> For instance, opposition parties have been instrumental in mobilising for the inclusion of marginalised and under-represented groups in the constitutional review process. Several such parties have proposed organisational structures aimed at equitable participation by marginalised communities and civil society groups.<sup>21</sup>

Additionally, opposition parties have called for greater transparency in constitution-making,<sup>22</sup> as well as having argued for human rights and freedoms to be addressed in the process. Among other things, they have advocated for the constitutional recognition and protection of the rights of women, youth, religious minorities, and other vulnerable groups.<sup>23</sup> Such advocacy has been vital in ensuring that the constitution protects the rights of all citizens and promotes social cohesion.

In sum, opposition parties play a crucial role in the constitution-making process in South Sudan. They have advocated for greater

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20 Makuer & Ododa (n 14).

21 Al-Mubarak (n 13).

22 Ogeno (n 11).

23 HJ Mwakimako & JM Mulatya 'Constitutionalism and political development in South Sudan: A critical analysis of the Interim Constitution' (2019) 2(4) *Journal of Governance and Regulation* 74.

transparency, inclusivity, and participation, and have been instrumental in mobilising and advocating for marginalised and under-represented groups. Additionally, they have promoted human rights and freedoms and advocated for the recognition and protection of the rights of vulnerable groups. The influence of opposition parties is essential in ensuring that the Constitution reflects the aspirations and values of the broader society.

### **3.3 Setbacks for political parties' engagement**

South Sudan's political parties face numerous challenges that undermine their ability to compete effectively. One of the main challenges is ethnic polarisation, which is fuelled by a history of ethnic conflict. As a result, parties are unable to gain support beyond their ethnicity, leading to a lack of broad-based support. Financial support is also a challenge, with parties often lacking sufficient funds to run effective campaigns and establish grassroots networks. Lastly, internal wrangles, especially in the SPLM, lead to factionalism, weakening a party's ability to operate effectively.

In summary, South Sudan's political parties play a significant role in promoting democracy, good governance, and the rule of law. Although the SPLM dominates the country's political sphere, opposition parties have been crucial in providing alternative viewpoints and critiquing governance issues. However, challenges such as ethnic polarisation, lack of financial resources, and internal leadership wrangles limit the effectiveness of political parties in promoting democracy in South Sudan. Therefore, to promote democracy, good governance, and the rule of law, there is a need to overcome these challenges and create an environment that fosters healthy competition and a diversity of ideas.

## **4 The implications of political-party predominance in constitution-making**

This section examines the implications of political parties' predominance in constitution-making processes. What follows is a detailed analysis of such involvement.

#### 4.1 Political parties' interests in politics of constitution-making

Political parties often advocate for the needs and aspirations of their supporters, which should be reflected in the constitution. They can also use the constitution-making process to gain an advantage over their opponents by including provisions that benefit their constituents or supporters. Parties are usually composed of individuals with diverse interests and beliefs, and seek predominance in constitution-making processes to ensure that the interests of their constituents are represented in the constitution.

#### 4.2 Exclusivity instead of accommodation of diverse views

In the process of enacting a new constitution, there will be a high likelihood of excluding the voices of minority parties, especially those without a military wing. When certain political parties dominate constitution-making processes, this can lead to a lack of inclusivity and diversity in the final document. Invariably, parties represent specific groups of people, and the interests of these groups might not be shared by all of the individuals in society. This can translate into the exclusion of particular groups from the constitution-making process and, in turn, in less inclusive and democratic outcomes than might otherwise be the case. Inclusivity and the accommodation of diverse views are crucial in constitution-making, particularly in post-conflict societies, but in South Sudan this is a significant challenge, as the country is diverse and fragmented. Moreover, the ruling party has historically dominated constitutional processes, with the result that opposition parties, civil society organisations, and marginalised groups have been excluded. The outcome is a document that does not reflect the aspirations and values of all citizens and thus contributes to political instability and social unrest.<sup>24</sup>

The accommodation of diverse views is crucial in the constitution-making process in South Sudan. The first step is to ensure the inclusivity of all stakeholders. This can be achieved by establishing a robust and inclusive consultative process. Throughout the process, opportunities should be provided for input from all stakeholders, including women,

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24 Makuer & Ododa (n 14).

ethnic minorities, civil society organisations, and marginalised communities.<sup>25</sup>

Fostering an environment of transparency and accountability is also key in the accommodation of diverse views. Open communication and dialogue should be encouraged between different interest groups, and opportunities for feedback ought to be readily available.<sup>26</sup> Furthermore, to ensure that the constitution reflects the aspirations and values of all citizens, the constitution-making process needs to be guided by international human rights standards. In addition, inclusivity can be achieved through the establishment of an independent and impartial constitutional review commission. The commission should be insulated from political interference and have a clear mandate that reflects the views and interests of all stakeholders.<sup>27</sup>

The challenge of fostering inclusivity during constitution-making in post-conflict societies thus calls for a proactive approach to ensuring broad stakeholder participation. The accommodation of diverse views is crucial in ensuring inclusivity and an environment where every interest group is represented. In South Sudan, efforts to enhance inclusivity can be supported through the establishment of an independent constitutional review commission, transparent and open dialogue, and compliance with international human rights standards.

### 4.3 Overlooking transparency and accountability

A political party's dominance of the constitution-making process can lead to a lack of transparency and accountability. Such parties may prioritise their interests and views over those of the broader society, which in turn may result in a document that privileges the interests of the political elite at the expense of those of the public. Additionally, a lack of transparency and accountability in the constitution-making process can erode public trust in the document and thus undermine its legitimacy. Democratic institutions may then be weakened by a general disinterest in political processes arising from a trust deficit, and people might stop participating in politics due to a weakened social contract. Such

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25 United Nations Development Programme *Constitution assessment for effective governance* (2019).

26 Oyombe & Abusharaf (n 15).

27 Al-Mubarak (n 13).

withdrawal can undermine the legitimacy of a democratic system. A lack of accountability can lead to the marginalisation of minority groups in the constitution-making process, such as when major political parties ignore, or even purposefully silence, the voices of under-represented groups. Such exclusion not only violates the ideals of inclusivity and representation, but also plants the seeds of instability and conflict, given that disenchanted people might turn to unconstitutional means to claim and defend their rights.

#### **4.4 Ignoring public needs and aspirations**

Another consequence of political-party dominance of constitution-making processes is that the resultant document might not be fully reflective of society's needs and aspirations. A constitution is meant to be a reflection of a society's views and values, and its provisions should be inclusive and protective of all individuals in society. However, when political parties dominate the process, they may well focus more on their own interests than those of broader society, resulting in a document that does not reflect the needs and aspirations of the public.

In South Sudan, political elites frequently lay down the rules of constitution-making processes with little public input, thus making these processes largely an exclusive activity. Even though the 2018 peace deal called for a more inclusive approach, the situation in actuality has often deviated from this requirement. There is little opportunity for citizens to influence public consultations in any meaningful way because all too often such consultations are merely tokenistic. The ruling-party's inability to satisfy the requirements of the populace eventuates in a crisis of legitimacy: dejection among the public leads to disillusionment and a decline in support for the ruling class, creating an atmosphere conducive to instability and violence. In short, if political parties fail to address the people's needs, they run the risk of deepening divides and escalating instability.

Furthermore, disregard for socio-economic needs is evident where a country has ongoing problems with unemployment, poverty, and lack of essential services. When parties prioritise power struggles over developmental objectives, the outcome is that the population feels abandoned. For example, persistent conflict, skyrocketing inflation, and public service degradation are all symptomatic of a disregard for basic public necessities. Owing to negligence of this kind, infrastructure which

is vital for the nation's stability and prosperity, such as roads, schools, and health-care systems, remains underdeveloped. Moreover, South Sudan's democratic culture is impeded by the dominance of political parties, given that civic involvement and accountability are little likely to be apparent in settings where people feel cut off from the political process.

#### **4.5 Expertise and experience**

Political parties often have access to legal and constitutional experts who lend their expertise to constitution-making processes. This can ensure that a constitution is of a high quality and meets international standards. Accordingly, political parties can play a further crucial role in constitution-making in South Sudan inasmuch as they bring expertise and experience to the process – input that can be key to ensuring that the constitution reflects the values and aspirations of all citizens.

Indeed, political parties in South Sudan have demonstrable experience in constitution-making. Many of them were involved in the peace process, an experience which is vital in the constitution-making process. They also possess institutional knowledge and relationships that can help build consensus and ensure successful dialogue between different groups.<sup>28</sup> Furthermore, established political parties may have expertise in policy formulation and legislative drafting, along with other critical skills necessary for the constitution-making process. They have the capacity to craft policy proposals that accommodate different perspectives and values, and have the legal expertise to draft constitutional provisions that are legally sound and enforceable.<sup>29</sup>

In addition, political parties are able to mobilise, and engage with, the broader society. They can galvanise the public into participating in the constitution-making process and can help ensure that the constitution reflects the values and aspirations of all citizens.<sup>30</sup> However, parties in South Sudan also face challenges that limit their effectiveness in constitution-making. As noted before, the political environment is characterised by polarisation and mistrust, which can undermine the ability of parties to build consensus and forge alliances. Parties are also

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28 Makuer & Ododa (n 14).

29 Al-Mubarak (n 13).

30 Ogeno (n 11).



often preoccupied with their own interests and may well prioritise them over the national interest.<sup>31</sup>

Political parties have expertise which is vital in helping to ensure that the constitution reflects the aspirations and values of all citizens. They possess institutional knowledge and relationships, policy-formulation abilities, legislative-drafting skills, and the capacity to mobilise and engage with the broader society. Thus, it is critical to encourage parties to participate in the constitution-making process and ensure that their interests are aligned with the broader national interest.

#### **4.6 Consensus-building**

When making constitution in fragile state like South Sudan, if the political parties do not agree on various articles and protocols to be included in the constitutions, the chances of disagree will be very high resulting into withdrawal from the process but if they agree of most issues then the process would be smooth and all parties will build consensus among themselves and their supporters. This gives each political party or other groups involved to consult with their stronghold or supporters to enhance acceptability by all constituents. In a nutshell, the political parties' predominance in constitution-making processes would result into difficulty in building consensus due to a lack of inclusivity, transparency, and accountability. Additionally, the document might not fully reflect society's needs and aspirations, resulting in a less democratic outcome. Therefore, it is essential for governments to ensure that constitution-making processes are inclusive, transparent, and reflective of the broader society's needs and aspirations. This can be achieved through extensive consultations, public participation, and the involvement of a diverse group of people.

### **5 The challenges of constitution-making**

This chapter has argued for the creation of an inclusive constitution that caters to the needs and aspirations of all the people of South Sudan. However, creating such a constitution is fraught with challenges, as discussed below.

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31 Aroca (n 12).

## 5.1 Lack of trust among ethnicities

One of the most significant obstacles to creating an inclusive constitution in South Sudan is the lack of trust among the country's different groups. The protracted conflict has entrenched ethnic divisions, making it difficult indeed to develop an all-inclusive constitution that caters to the needs of everyone. The mistrust among different ethnic groups has also made it difficult for them to work together towards the common goal of creating a constitution that reflects their aspirations for peace, unity, and development. In South Sudan, political parties and various interest groups are aligned to their ethnicities. This mistrust predisposes each ethnicity to be suspicious of others. Lack of trust among ethnicities is a significant challenge in constitution-making in post-conflict societies, South Sudan included. It can lead to polarised and exclusionary politics, which can be an impediment to constitution-making.<sup>32</sup>

Lack of trust is particularly relevant in the constitution-making process, where agreements and compromises must be reached to accommodate the varied interests of different ethnic groups. There is a risk that some ethnic groups may feel that their views are not adequately represented, leading to delegitimation of the process's outcomes.<sup>33</sup> The lack of trust extends beyond ethnic groups to affect political parties and other interest groups. In South Sudan, parties tend to be ethnic-based and, in turn, promote the interests of their ethnic group. The situation can thus lead to a lack of trust between political parties, further complicating the constitution-making process.<sup>34</sup>

This has significant implications. First, a lack of trust undermines the constitution-making process's legitimacy, leading to a lack of public support for, and the reduced effectiveness of, the constitution. Secondly, if ethnic groups do not trust one another, there is little hope of achieving consensus or forging a durable peace agreement.<sup>35</sup> In conclusion, the lack of trust among ethnicities poses a significant challenge to the constitution-making process in South Sudan. To achieve successful constitutional reform, ethnic biases and exclusionary politics must be addressed, and broader efforts to promote inclusion and equity must be

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32 Makuer & Ododa (n 14).

33 Aroca (n 12).

34 Ogeno (n 11).

35 Al-Mubarak (n 13).

made. Therefore, it is critical to prioritise trust-building, enhance inter-ethnic dialogue, and promote inclusivity in the constitution-making process.

## 5.2 Limited knowledge of constitution-making

Another challenge is lack of understanding of the constitution-making process, which has led to disengagement by certain groups. Some of them feel that their voices will not be heard and are hence sceptical about participating in the process. Also, the high level of illiteracy in South Sudan makes it difficult for some people to comprehend what creating a constitution entails, a situation which too has contributed to the lack of meaningful participation. Constitution-making requires that citizens have accurate, adequate knowledge of the process. In post-conflict countries such as South Sudan, limited knowledge about constitution-making poses serious challenges to successful constitutional reform. This section thus considers how limited knowledge of constitution-making can hinder effective reform and what can be done to overcome this challenge.

Citizens and stakeholders in South Sudan may have insufficient knowledge of the constitution-making process, making it difficult for them to make informed contributions to it. Low knowledge levels may be due to a lack of access to relevant information, limited civic education programmes, or inadequate community engagement. Low knowledge levels can result in limited participation in the constitution-making process and weak public support for constitutional reforms. It can also lead to a lack of understanding of critical issues, such as human rights, checks and balances, and power-sharing mechanisms, resulting in a constitution that fails to meet the people's needs.<sup>36</sup> Constitution-making processes in South Sudan are further complicated by the country's low levels of literacy, particularly among women and disadvantaged groups. There is also a lack of well-established institutions for civic and voter education, coupled with inadequate resources for promoting public awareness of the constitutional reform process.<sup>37</sup>

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36 Aroca (n 12).

37 Oyombe & Abusharaf (n 15).

### **5.3 Lack of a conducive environment for debate and dialogue**

Inclusive constitution-making depends on the existence of an environment conducive to debate and dialogue. However, putting political interests over the needs and aspirations of the people has stifled debate and negotiation, resulting in the absence of consensus on critical issues in the constitution. The lack of a conducive environment for debate limits the diversity of ideas necessary for a constitution that reflects the interests of all. The politicisation of constitution-making has led to the prioritisation of political interests over those of the people, which in turn has restricted the diversity of ideas necessary for a constitution that serves everyone. Political parties' predominance in constitution-making processes can also lead to a lack of public participation. When political parties control the process, they tend to exclude civil society groups, ordinary citizens, and other stakeholders from participating in decision-making. This exclusion can lead to a lack of public buy-in and cast doubt on the constitution's legitimacy.

The disintegration of political parties due to ethnic conflict is a major factor accounting for South Sudan's lack of a neutral setting for discussion. Ethnic differences frequently translate into political allegiances and have a significant impact on the country's political environment. It is challenging to have meaningful conversations given the lack of trust that prevails due to divisions between political actors. In addition to polarising the political sphere, the conflict between Riek Machar's SPLM-in-Opposition and President Salva Kiir's SPLM has also widened social divisions. Ethnic and political division stifles discussion and debate, as is demonstrated by these groups' inability to negotiate with each other and agree on constitutional issues.

The restricted participation of civil society organisations is another key factor influencing South Sudan's constitution-making process. Such organisations have a crucial role to play in ensuring that diverse voices, particularly those of women and underprivileged groups, are heard during the constitutional process. However, the Government of South Sudan has frequently treated civil society organisations with distrust, which has limited their scope of operations. For instance, these organisations were initially excluded from the 2018 peace talks, which hindered their ability to promote a constitution that represents the people's wishes. Where meaningful discourse cannot take place, the public's capacity to

participate, discuss, and hold the government accountable is impaired; a thriving civil society is what fills this critical void.

#### **5.4 Lack of trust and shared understanding**

The lack of trust and understanding that exists among political actors – notably the government, the opposition, and civil society – is a significant challenge to constitution-making processes in South Sudan, as this can lead to a stalemate in negotiations, a lack of cooperation, and a deepening of party divisions. As mentioned, this lack of trust stems from the country's experience of violent conflict in the past, its deep-seated divisions among ethnic groups, and its history of exclusionary politics.<sup>38</sup> This lack of trust makes it difficult to find common ground during constitution-making processes. For example, it could lead political parties to doubt the feasibility of a negotiated settlement or an agreed-upon constitutional process; parties might also refuse to engage in dialogue or compromise on issues they believe are central to their interests, all of which hinders dialogue and cooperation.<sup>39</sup>

Lack of shared understanding is another, closely related challenge to constitutional processes in South Sudan. Parties will tend to interpret the constitution differently and have only a limited understanding of complex constitutional issues such as federalism, resource allocation, and power-sharing arrangements.<sup>40</sup> Such a lack of understanding exacerbates tensions among parties and makes compromise difficult. Parties may have competing visions of what the constitution should contain and how it should be implemented, which creates the risk of stalemates in negotiations and, ultimately, constitutional failure.<sup>41</sup>

The lack of trust and shared understanding among parties in the constitution-making process in South Sudan thus has severe consequences. It fuels mistrust, undermines democracy, and weakens the legitimacy of the constitution-making process; it also increases the risk of renewed conflict, as parties might resort to violence to assert their

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38 Ogeno (n 11).

39 Makuer & Ododa (n 14).

40 Aroca (n 12).

41 Al-Mubarak (n 13).

agendas.<sup>42</sup> Consequently, it is vital to build trust, enhance understanding, and promote inclusivity in constitutional processes.

## **5.5 Limitations on constitutional reform**

Political parties' involvement in constitution-making can result in the imposition of limitations on reform. When political parties are in power, they are typically unwilling to support constitutional amendments that challenge their interests or threaten their hold on power. This can lead to a lack of constitutional flexibility and an inability to address emerging issues and challenges. Overall, it can limit the ability of institutions to respond to dynamic social, economic and political change.

Post-conflict transitions face many challenges, one of which is that the scope and nature of constitutional reforms are exposed to the risk of limitations due to political and other pressures. In South Sudan, constitutional reform is limited by various factors, including political instability, weak institutions, and external interference. Ongoing political conflict, power struggles, and weak political institutions have all contributed to the uncertain governance environment in the country, making it difficult to execute effective constitutional reforms. Political instability creates an environment where constitutional reforms cannot be implemented effectively due to a lack of consensus among stakeholders. Partisan disputes and a lack of trust among political actors further hinder the constitutional reform process.<sup>43</sup>

Weak institutional structures are another source of limitation on constitutional reform in South Sudan. The country needs robust institutional mechanisms to enable effective implementation of constitutional reforms, but achieving this is hampered by a shortage of the necessary technical capacity and resources. Furthermore, constitutional reforms often rely on support from institutions such as the judiciary and electoral commission to ensure effectiveness of implementation. However, in South Sudan, these institutions lack the autonomy and impartiality that are required for bringing this about.<sup>44</sup>

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<sup>42</sup> Oyombe & Abusharaf (n 15).

<sup>43</sup> Aroca (n 12).

<sup>44</sup> Oyombe & Abusharaf (n 15).

External interference is yet another factor limiting constitutional reform. External actors, including foreign states, international organisations and NGOs, often have divergent interests and goals in South Sudan, making it challenging to agree on the content and nature of the constitutional reform process. External interference can exacerbate political instability and undermine the credibility of the constitutional process.<sup>45</sup>

To overcome these various limitations, political stakeholders, including civil society, political parties and the government, need to work together to create a conducive environment for reform. This should include a commitment to dialogue, inclusivity, and transparency to ensure that all stakeholders have a voice in constitutional reform. Furthermore, building solid political institutions, including electoral and judicial institutions, is essential for ensuring the effective implementation of reforms. The government should prioritise efforts to strengthen these institutions by investing resources and capacity-building in them.

In addition, external actors must recognise the importance of the constitutional reform process in South Sudan and support it accordingly. This should include respecting the sovereignty of the country and promoting local ownership of the process by refraining from interference in South Sudan's political and constitutional affairs.<sup>46</sup>

## 5.6 Exclusion of minority groups

Political parties' dominance in constitution-making processes can lead to the exclusion of minority groups. When political parties control the constitution-making process, they tend to incorporate provisions that benefit their interests and to neglect the interests of minority groups. This exclusion can lead to perceptions of marginalisation, mistreatment, and discrimination among minority groups. The result can be instability and conflict, which undermines the attainment of democratic governance.

There are various reasons why minority groups are excluded from constitution-making in South Sudan. One of these is ethnicity: where the majority ethnic group dominates the decision-making process, smaller ethnic groups are often excluded, leading to their marginalisation.

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45 Ogeno (n 11).

46 Al-Mubarak (n 13).

Furthermore, the lack of representation of minorities in political institutions contributes to their exclusion from the constitution-making process. Minority groups often have little political representation, meaning that they have a limited voice in constitution-making.<sup>47</sup> Additionally, resource shortages among minority groups play a role in their exclusion. A lack of resources such as education, information, and access to legal representation makes it difficult for them to participate effectively in constitution-making processes.<sup>48</sup>

The resultant exclusion of minority groups has significant implications for democracy in South Sudan. It can lead to a lack of representation of minority interests, drive social exclusion, and exacerbate democratic deficits in the country's social and political systems. Similarly, it can lead to adopting laws and systems that do not reflect the needs or interests of the minority, resulting in political instability, civil unrest, and a lack of social cohesion in the country.<sup>49</sup> By failing to take into account the interests and perspectives of all groups in the country, the constitution-making process risks legitimising systems that are unjust and undemocratic.

Opening up the constitution-making process to minority groups would promote inclusivity and better reflect the needs and aspirations of the wider population, fostering social cohesion and a more stable democratic system.

## **5.7 Polarisation of political discourse**

Political parties' involvement in constitution-making can lead to increased polarisation of political discourse. This is particularly true in countries where parties are ideologically divided. When political parties are involved in constitution-making, they tend to focus on their individual policy agendas rather than the nation's broader interests. As a result, the constitution-making process can become politicised, increasing polarised political discourse and further undermining prospects for democratic governance.

The polarisation of political discourse is a significant challenge in constitution-making in South Sudan. Polarisation refers to divisions

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<sup>47</sup> Aroca (n 12).

<sup>48</sup> Al-Mubarak (n 13).

<sup>49</sup> Oyombe & Abusharaf (n 15).



of political opinion or belief that are so strong as to make compromise nearly impossible. It puts the constitution-making process at risk since it can undermine efforts at consensus, compromise, and dialogue. Political discourse in South Sudan is often polarised, with parties, interest groups, and ethnic groups pursuing competing agendas. This is evident in the constitution-making process, where different groups may have divergent views on critical issues such as governance structures, resource-sharing, and security arrangements.<sup>50</sup> Political polarisation often leads to a breakdown in dialogue and a push for interest groups and political parties to assert their positions over others.

Thus, reaching consensus on the constitution can be challenging, creating the risk that some groups will feel left behind or excluded. Additionally, polarisation can lead to deadlock in the constitution-making process, with groups prioritising their own interests over national ones. This situation can cause failures in constitution-making processes, as parties remain unwilling to compromise and negotiate with each other.<sup>51</sup>

The consequences of political polarisation in South Sudan are severe. Lack of political consensus hinders the development of a legitimate, widely accepted, and durable constitution. Furthermore, it fuels political instability and ethnic conflict, as various interest groups might resort to violent means to advance their agendas.<sup>52</sup> Polarisation also hampers the development of democratic governance and the rule of law. Parties and interest groups pursue narrow agendas, undermining the broader goal of developing an inclusive and democratic society with mutual respect for diverse views.<sup>53</sup> As such, mitigating polarisation and promoting dialogue, compromise, and inclusivity in constitution-making are imperative.

## **6 Opportunities for inclusive constitution-making**

Despite the challenges it faces, constitution-making presents an opportunity for South Sudan to adopt a genuine bottom-up approach to the governance of the country, one in which the opinions, views, and aspirations of the people are reflected in the constitution. Through the

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50 Oyombe & Abusharaf (n 15).

51 Makuer & Ododa (n 14).

52 Al-Mubarak (n 13).

53 Aroca (n 12).

constitution-making process, the people of South Sudan can collectively shape their country's destiny and build a new society based on democratic values and principles. Moreover, constitution-making can promote national cohesion and unity. By involving all the different social groups, it would provide a platform for building trust, fostering dialogue, and forging a common identity. In short, if done inclusively, the constitution-making process can heal the wounds of the past and help South Sudan move towards national unity and sustainable peace and development.

Given the need, then, for an all-inclusive constitution-making process, it is essential to create a conducive environment that promotes dialogue, fosters trust, and inclusively involves all stakeholders, thereby ensuring that the new constitution reflects the needs and aspirations of all the people of South Sudan. The benefits of inclusive constitution-making are discussed in further detail below.

## **6.1 National cohesion and unity**

An inclusive constitutional process involving all of the different groups in society provides a platform for building trust, fostering dialogue, and forging a common national identity. The process can help heal past wounds and move South Sudan towards national unity. The constitution is the cornerstone of national unity and cohesion in any country, including South Sudan. Promoting national cohesion and unity can foster an environment that supports more inclusive constitution-making processes. It can help overcome ethnic differences and enhance trust among various groups, creating a basis for meaningful dialogue and consensus-building.<sup>54</sup>

In addition, promoting national cohesion and unity entails creating a shared understanding of values, which can help in crafting a constitution that reflects the aspirations of all citizens. By creating a shared sense of identity, people can identify more closely with each other and be more willing to accommodate diverse perspectives and values.<sup>55</sup> Moreover, promoting national cohesion and unity can provide an opportunity to establish a sense of ownership of the constitution among all citizens. This can contribute to increased public support for the constitution and

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<sup>54</sup> Makuer & Ododa (n 14).

<sup>55</sup> Al-Mubarak (n 13).

an increased understanding of the importance of the constitution in promoting unity, security, and socio-economic development.<sup>56</sup>

However, as noted, significant challenges to promoting national cohesion and unity in South Sudan include ongoing conflict, weak institutions, and a history of exclusionary politics. These challenges hinder the promotion of national cohesion and unity, leading to an environment where trust, dialogue, and consensus-building are challenging.<sup>57</sup> As such, addressing challenges to promoting national cohesion and unity are imperative for achieving stabler and more inclusive constitution-making processes.

## 6.2 A bottom-up approach

South Sudan can benefit from a genuine bottom-up approach that incorporates the opinions, views, and aspirations of all the country's peoples in the constitution-making process. This approach empowers citizen participation and allows for the inclusion of diverse perspectives and values. In particular, it relies on a consultative process that engages the public, civic groups, and local communities. The approach enhances opportunities for participation and consultation, enabling citizens to provide their views on what they expect in constitutional processes.<sup>58</sup> It also allows for the inclusion of marginalised groups and their perspectives in the constitution. A bottom-up approach ensures greater transparency and accountability in the constitution-making process by engaging communities and their representatives. Furthermore, it builds consensus by creating opportunities for dialogue and negotiation between different stakeholders. Incorporating and reconciling different perspectives promotes buy-in from all stakeholders, leading to a more durable and legitimate constitution.<sup>59</sup>

However, the bottom-up approach also faces challenges in South Sudan. Engaging communities meaningfully requires substantial investments in resources, time, and capacity-building. Furthermore, consultations and dialogues are conducted in volatile security situations and amidst deep-rooted ethnic conflicts, making establishing trust and

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56 Ogeno (n 11).

57 Aroca (n 12).

58 Oyombe & Abusharaf (n 15).

59 Al-Mubarak (n 13).

openness difficult.<sup>60</sup> It is thus critical to address the challenges facing the bottom-up approach, including building trust and managing the security situation, to ensure its success in South Sudan's constitution-making process.

## **7 Influencing constitution-making during peace agreements**

Negotiations play a crucial role in determining the level of influence and control exercised by political parties during constitution-making process. This section examines how the politics of negotiations during South Sudan's peace agreements shaped political parties' influence in and control of the country's constitution-making processes.

### **7.1 Negotiating constitution-making during the peace agreements**

The negotiations during the peace agreement in South Sudan were complex, with multiple local, regional, and international actors actively engaged in the process. The negotiating parties included the South Sudanese government, the Sudan People's Liberation Movement-in-Opposition (SPLM-IO), the Intergovernmental Authority on Development (IGAD), and the African Union. The negotiations were characterised by competing interests, with different parties prioritising their individual interests over broader commitments to peace and stability. The peace agreement that was eventually signed was more favourable to certain political parties than others, setting the stage for future negotiations on issues such as the decentralisation of power and justice.

One of the significant results of the negotiations was a renewed focus on inclusivity and dialogue among grassroots organisations and civil society groups. A strong constitutional process was seen as a way to promote unity and address the concerns of different ethnic groups. In order to meet this necessity, the peace agreement highlighted the importance of public consultation and involvement in constitution-making. As a result, while the parties were negotiating, they began to realise that their legitimacy would depend on their ability to incorporate a variety of viewpoints in the constitutional framework. This affected

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60 Aroca (n 12).

their political calculations, obliging them to approach negotiations more collaboratively even while pursuing their particular interests.

Yet despite the advances that were made in the peace talks, executing the resulting agreement has continued to be fraught with difficulty. Challenges related to military integration, resource distribution, and governance have resulted in delays, prompting concerns about the commitment of the various parties to the peace initiative. In this context, ongoing discussions have highlighted a relentless power struggle among the factions that signed the agreement. Consequently, the constitution-making process has become a fierce arena for these groups, which aim to cement their authority over state mechanisms and entrench their interests. The political tactics utilised during the peace talks set precedents for the ongoing conflicts and dialogues that define South Sudan's governance framework.

## **7.2 Influence and control by political parties**

Political parties in South Sudan realised that constitution-making was critical to building a stable and more democratic country. As such, parties sought to exert influence and control over the process. The SPLM, which had majority representation in the government, enjoyed a significant degree of influence in this regard, and extolled a 'big tent' approach aimed at accommodating all interests in order to build consensus. However, other political parties, such as the SPLM-IO, accused the government of acting without opposition input and called for a more inclusive and representative body to be drawn up from both government and opposition parties.

The constitution-making process is thus another arena where political parties compete to exert control. In South Sudan, the constitution is not merely a legal document but a contested space reflecting political power and identity. Political parties have sought to draft provisions that safeguard their interests and entrench their political power, sometimes at the expense of democratic principles and inclusive governance. The Revitalized Agreement on Conflict in South Sudan (R-ARCSS) has outlined a roadmap for constitutional development, but the process in actuality has seen political parties attempting to monopolise control. The composition of constitutional drafting committees often reflects the bargaining power of particular political factions and highlights that constitution-making is an exclusionary process that marginalises civil

society and alternative voices. This lack of inclusivity has resulted in a constitution that fails to address the diverse needs and aspirations of the South Sudanese people, thereby perpetuating conflict and dissatisfaction.

The influence exerted by political parties over negotiations and constitution-making processes in South Sudan has profound implications for governance and national unity. First, the prioritisation of party interests can lead to a fragmented polity, where political factions are more focused on consolidating power than on fostering social cohesion. This fragmentation is detrimental to building trust among communities and undermines the prospect of lasting peace.

Secondly, when a constitution is shaped primarily by the interests of political parties, it risks becoming a tool for oppression rather than a framework for inclusive governance. A lack of public participation in the constitution-making process can foster disillusionment among citizens, who may feel alienated from the political system. This disconnection can fuel further conflict, as groups may resort to violence in response to perceived injustices and inequities.

### **7.3 The influence of external actors**

External actors, including foreign states, international organisations, and NGOs, have also exerted significant influence on constitution-making in South Sudan. These actors provided technical and financial support, which enabled them to influence decision-making and policy-making processes in the country. However, the involvement of external actors raised questions about the legitimacy of the constitution-making process and whether it genuinely reflected the interests and priorities of the South Sudanese people.

For instance, during the negotiations from 2014–2015 in Addis Ababa in Ethiopia, countries such as the United States, Uganda, and Ethiopia played significant roles as mediators; similarly, the IGAD has been instrumental in bringing together conflicting parties by providing a platform for dialogue and negotiation. These external diplomatic efforts often come with conditions and expectations that influence the negotiation agenda. For example, the United States has applied pressure to the Sudanese government and SPLM-led opposition parties to reach agreements that focus on human rights and democratic governance. This pressure has sometimes led to progress in negotiations, but has

also resulted in resistance from local actors who perceive these external demands as infringing on their sovereignty.

Economic considerations play a pivotal role in interactions between external actors and South Sudanese political parties. Many of the countries involved in the peace process have vested interests in South Sudan's oil reserves, which are central to the country's economy. As such, their influence extends beyond diplomatic negotiations to include negotiation about resources. External actors may prioritise stability that favours their economic interests over considerations of equitable governance and grassroots participation. This can lead to an imbalance in the negotiation process, where the concerns of local communities are sidelined in favour of agreements that suit external economic goals.

The influence of international organisations such as NGOs and the United Nations is also critical. These bodies often advocate for inclusive governance, human rights, and community engagement in constitution-making. Their involvement usually aims to ensure that peace agreements not only address elite power struggles but also consider the needs of the broader populace, including marginalised groups that historically have been excluded from political power. However, interventions by such organisations sometimes lead to tensions. For instance, their push for inclusive dialogue has occasionally been met with resistance from domestic parties that fear losing power if the constitution-drafting process allows for greater representation of and participation by a diversity of groups. The struggle for control of the narrative and the direction of the constitutional process then becomes a tug-of-war between local interests and external expectations.

#### **7.4 Subsequent events shaping influence and control**

The formation of the Transitional Government of National Unity following the peace agreement represented a major shift in the governance structure of South Sudan. This shift created a new political landscape that had a significant impact on the nature of the influence and control that political parties exert in the constitution-making process. Parties that lost power began advocating for a more decentralised system that would limit the power of the central government, while those that gained power advocated for a stronger, more centralised government structure. This has intensified the politics of negotiations and threatened to derail the constitution-making process.

The politics of negotiations during the peace agreement and thereafter have shaped the level of influence and control exercised by political parties during constitution-making. To ensure the success of the process, all parties must prioritise the welfare and interests of the South Sudanese people and adopt a consensus-building approach geared towards accommodating all interests. Transparency, inclusiveness, and democratic values should guide the process so as to ensure that it remains free from unrepresentative interests and external influences that could derail peace-building efforts.

## **8 Conclusion**

The politics of constitution-making in post-conflict South Sudan present significant challenges and opportunities for political parties and other groups. The latter play a critical role in the success or failure of the constitutional reform process. However, factors such as political instability, weak institutions, external interference, limited resources, and the exclusion of minority groups pose significant challenges to their participation and effectiveness.

This chapter has emphasised the importance of inclusivity, transparency, and dialogue in promoting effective participation and constructive engagement of political parties and other groups in constitutional reform. There is a need for such parties and groups to have a collective vision that reflects the interests of all stakeholders, especially minority groups, and seeks to ensure inclusivity as well as promote democratic values. By building robust institutions, promoting political inclusivity and constructive participation, political parties and other groups can enhance democracy and ensure a peaceful and stable post-conflict environment in South Sudan. It is therefore crucial to establish an enabling environment for political parties and groups to exercise their roles effectively and ensure the successful implementation of constitutional reforms.

In summary, political parties and groups need to engage in constructive dialogue, build consensus, and promote inclusivity to ensure that all voices are heard during the constitution-making process in post-conflict South Sudan. Ultimately, the successful implementation of constitutional reforms will contribute to building a democratic and stable South Sudan free from the conflicts of the past.



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