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Research Articles

Federalism for South Sudan: Could it be an Alternative Mechanism to Address the Cycles of Violence?

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Abstract

While federalism, as an ideology championing federation, has a long history, modern federalism emerged with the birth of the US federation. Since then, federalism has been applied and adapted to varying contexts. In recent years, it has been advocated as a solution to conflict-prone societies. As federalism is about guaranteeing self-governing rights, sharing powers, and ensuring checks and balances between and within levels of government, it is not popular among authoritarian regimes, which see power politics as a zero-sum-game and disregard the value of equality and mutual development. They expediently dismiss federalism as an instrument of disintegration and weakening national unity. On gaining power, African elites have mostly been unwilling to share power horizontally and vertically. Liberation movements preach equality and freedom to win popular support for their cause, but once they control power they tend to be more authoritarian than the regimes they overthrew. This demonstrates that, in the absence of democratic government, liberation from an oppressive regime does not necessarily guarantee a better political life under the new leadership.

Authoritarian regimes, confident in the military and other security forces under their command and enjoying continued financial support from donors, show no interest in respecting and listening to their own citizens, nor do they tolerate opposition parties and differences of opinion. Those in power would rather support an opposition party in a neighboring country than accommodate one in their own. For that reason, opposing authoritarian regimes has necessitated carrying a gun and cooperating with a neighboring country. This has fuelled endless proxy wars among neighboring African countries, especially so in the Horn of Africa.

The aim of this article is to examine whether federalism could be utilized to mitigate and possibly manage South Sudan's ongoing political crisis. Violence and underdevelopment are symp-

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tomatic of the exclusion and marginalization of diverse South Sudanese groups from political and economic powers, both at the central and local levels. This article, while considering the past peace processes, argues that while federalism has the potential to address the country's political crisis, it could be beset by the increasing tendency within the political elite to centralize power by violating the states' mandate to self-rule, for example, through the appointment and dismissal of state governors.

Key words:*Federalism, South Sudan, state building, political power, ethnic conflict, democracy, representation.*

1. Introduction

The long road that South Sudan took to independence was concluded by the legal regimes established under the Comprehensive Peace Agreement (CPA), which was signed on 9 January 2005. The CPA provided that the "people of South Sudan have the right to control and govern their affairs in the region and participate equitably in the national government."[1] During the six-year interim period, efforts would be taken to make "unity of the Sudan an attractive option especially to the people of South Sudan."[2] The CPA also stipulated that, at the end of this period, the people of South Sudan would have the right to self-determination, which included provision for an internationally monitored referendum to determine their future status, that is, to decide whether to remain united or secede.[3]

As it happened, the interim period before the referendum was not used effectively to make unity attractive, and the people voted unanimously for independence. The Republic of South Sudan thus emerged as the youngest nation in Africa: the international community promptly recognized its independence, and it became a sovereign state and member of the United Nations (UN) and regional organizations. Unlike Kosovo, which is yet to become a member of the UN, the Republic of South Sudan has acquired statehood, and it is a fact not subject to controversy.[4] The main difference lies in the absence or presence of recognition of the

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1   CPA, Chapter I (Section 1.2).
2   CPA, Chapter I (Section 1.5.5).
3   CPA, Chapter I (Sections 1.3 and 2.5).
4   See Vidmar (2012), pp. 542, 550, 553 and 559.

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agreement to independence by the parent state. Serbia did not agree to the unilateral declaration of independence, whereas the Republic of Sudan agreed in advance (in the CPA) to accept any outcome of the internationally monitored referendum in South Sudan.

However, the state-building process after independence was not conducted properly and democratically. The relationship between the government and the people, and the relationship among the diverse groups of the country, were not governed appropriately. The ruling party (the Sudan People's Liberation Movement/Army, or SPLM/A) failed to build a democratic state, achieve economic development, provide basic services to the people, fight corruption and abuse of the economy, and respect the basic rights of the citizens. For this reason, an exclusive and dictatorial political system came to prevail, defying reform and resulting in an ongoing violent crisis.

The immediate cause of the crisis seems to be the unsettled problems within the SPLM. A political dispute within the party escalated into an armed confrontation in Juba between forces loyal to President Salva Kiir, who is Dinka, and those loyal to former Vice-President Dr Riek Machar, who is Nuer. However, these are the symptoms, not the causes, of the fundamental problems. The root cause of the problem lies in the very state-building process itself. Even if one allows that some of the problems are deep-rooted[5] in the state structure of the Sudan as a whole and were inherited by South Sudan, it remains the case that the state- and institution-building process after independence was not democratic and inclusive of all the country's stakeholders.

This process was dominated by elites loyal to the party or its leadership; in turn, the party had excessive control of power and resources. Notwithstanding the presence of ethnic allegiance and strong ethnic identity, political and government structures did not reflect this reality. Even if the struggle for independence had united many ethnic groups, the government's failure to provide the people with basic public services, coupled with the non-inclusivity of the political and state-building process, forced people to trust and look back to their own ethnic groups rather than to

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5   See, for example, some of the historical factors that caused the Sudanese longest civil war, as described by Johnson (2003), pp. xviii-xix.

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the center.[6] People's lives did not improve after independence; in some cases, it has been said that matters are even worse than before. Extreme poverty, illiteracy, poor public services and lack of access to health care and clean water have been a part of life for people throughout the country.

As already mentioned, South Sudan's current ruling party has failed to establish institutions and a form of governance that respect citizen's rights to self-government and address basic problems in the country, such as fighting poverty and illiteracy and building a developed economy and democratic state. The government failed to maximize or build on the unity the diverse peoples of South Sudan showed during their long struggle for independence, unity which was evident, for instance, in their almost unanimous vote (98.3 percent) for independence in the referendum.[7]

The Interim Constitution (IC),[8] which was designed for a provisional autonomous government of Southern Sudan (under another higher common government, the Republic of Sudan), was amended to govern the transitional government (of the Republic of South Sudan) and became the Transitional Constitution (TC) in 2011. However, the government did little during the IC's amendment to integrate new constitutional principles that could have reflected the diverse nature of the country and served to guide the transitional period, a period that should have culminated with the adoption of a new constitution after a democratic, participatory process.

Consequently, there were no systematic checks and balances in the government structures. The president is given excessive powers.[9] According to the TC of the Republic of South Sudan, the president has the power to remove a state governor and to dissolve a state legislative assembly,[10] to appoint all justices and judges,[11] to declare a state of emergency and to appoint chairpersons and members of all the independent commissions.[12]The chairperson

6   New Vision (2014).
7   Young (2012), p.221.
8   The Interim Constitution of Southern Sudan was drafted in 2005 and lasted until the declaration of independence of South Sudan in 2011. Retrieved from http://www.ref-world.org/pdfid/4ba74c4a2.pdf
9   Auer, et al (2011), p.33.
10   TC of the Republic of South Sudan, Article 101.
11   TC of the Republic of South Sudan, Article 133.
12   The Judicial Service Commission (TC 132), the Civil Service Commission (TC

and members of the Public Grievances Chamber (Art.147), the governor of the Bank of South Sudan (Art.182) and the board of directors and the director-general of the National Bureau of Statistics (Art.193) are also appointed by the president. Furthermore, the TC gives the president the power to play a decisive role at each stage of the constitutional-review process.[13]

This concentration of powers in the hands of one organ of the central government marginalizes other political parties and the minor ethnic groups on the periphery. The absence of checks and balances within the government system encourages corrupt practices and wasteful allocation and use of public resources. Regarding the power relationship between the center and the states, the autonomy of the states is not fully guaranteed by the Constitution. The central government (the president) can dismiss elected state organs, and the states have little role in the functioning of the central government. This center-periphery relationship is imbalanced, with the power of the president extending from the top to the bottom.[14]

Thus, there was an absence of institutionalized horizontal and vertical checks and balances, and this led to unbalanced power relationships between the government and the governed and between the center and the periphery. The TC was meant to be reviewed by the National Constitutional Review Commission. However, the review process was delayed and became ineffective, eventuating in the current crisis that erupted in December 2013.

2. Governance-Related Challenges

The challenges facing South Sudan are multi-dimensional. Starting from independence, the governance system installed in the country was not effective and did not satisfy the needs of the people for the provisions of public services. In addition to the

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140), the Anti-Corruption Commission (TC 143), the Human Rights Commission (TC 145), the Relief and Rehabilitation Commission (TC 148), the Demobilization, Disarmament and Re-Integration Commission (TC 149), the HIV/AIDS Commission (TC 150), the Land Commission (TC 172), the National Petroleum and Gas Commission (TC 174), the Fiscal and Financial Allocation and Monitoring Commission (TC 181), and the National Elections Commission (TC 197). See Auer et al. (2011), p.41.

13   TC of the Republic of South Sudan, Articles 202-203.

14   For further discussion of the power of the president, according to the Transitional Constitution of South Sudan, see Auer et al. (2011).

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concentration of powers in the hands of the president and the lack of autonomy by the states, the composition of various government institutions (including the two houses of the parliament and the judiciary) does not guarantee representation of the country's diverse ethnic groups. Basic services are provided instead by local and international NGOs.[15] The transitional government and its institutions did not function as representatives of the diverse communities of South Sudan. Neither the autonomy of the states and the counties, nor their representation at the central level, was guaranteed by the TC. Moreover, while the country's economy, one based on oil revenue, could be sufficient to provide citizens with basic public services, "half of the total spending was on the army and security."[16]

Establishing a government system that accommodates all groups (the majority and the minority, the poor and the rich, the weak and the strong, the armed and the civilian, and so on) on an equal basis is the first path towards solving the country's myriad problems. There is no question of a strong demand and desire to see a radical reform to the state and its institutions in the Republic of South Sudan; the only question is about which kind of reform and structure of governance are needed. In general, then, what form of governance system is suitable to the process of re-building the state or the nation of South Sudan? In other words, which governance system would be (in the context of South Sudan) democratic, participatory, representative, inclusive, accommodative and capable of sustainably addressing the basic problems that led to the current crisis?

Before going on to discuss the governance system, how does the concept of nation- or state-building apply in South Sudan? The concept of nation-building in post-conflict and divided societies is connected to the idea of having a sense of common identity, regardless of what the marker of a common identity could be. However, having a common identity or being a nation does not guarantee the existence of democracy and the sustainability of the state. This is evident from the fact that many countries, ones that could qualify as nations, have failed due to conflicts arising from factors other than ethnic division; by the same token, there are linguistically, culturally and religiously divided societies which have managed to establish a nation based on political

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15   See Williams (2011).
16   De Waal (2015), p.100.

consensus and free will.[17]

Unlike the old-fashioned way of building nations/states by force, in the contemporary world sustainable nation- or state-building processes are possible only through voluntary and democratic means based on some common interests and shared values. If there is no common ethnic or national identity among the people of a country, what makes the state-building process attractive is the mutual desire to live together in equality and peace in order to promote shared economic and political interests under a common but representative and democratic government.

South Sudan is not a nation-state in the literal sense of the term, and what comes first is the state-building process. So, the current effort in South Sudan is to build a state which is democratic and inclusive of all its diverse groups; on that foundation it could then be possible to build a political nation comprised of these groups and based on free choice and mutual respect, doing so in order to realize objectives that can be better achieved through unity. To make the state viable and sustainable, the state-building process itself should be democratic and inclusive of all the country's diverse groups. The question of which system of governance is suitable for the realities of South Sudan should be answered in relation to the challenges the country has been facing.

3. The Security-Sector Challenges

The military and other elements of the security apparatus were also among the main challenges in post-independence South Sudan. Directly after the end of the civil war, the military in South Sudan expanded instead of downsizing.[18] It absorbs a large portion of the national budget, leaving little to nothing for the provision of public services and building of institutions.[19] If South Sudan's independence could finally be achieved through a negotiated peace process, it is likely that other outstanding issues could also be resolved through such negotiations. If that is the case, there is no rationale for keeping a large army that consumes so much of the economy. According to Alex de Waal, in 2012 the

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17   Somalia and Switzerland would be good examples for the former and latter cases, respectively.
18   De Waal (2014), p.355.
19   *Ibid., p.349.*

army payroll numbered more than 230,000 personnel, in addition to which there were about 90,000 "police, prison wards and wildlife forces."[20]Furthermore, De Waal notes:

> The real fighting strength was much less: generals were pocketing the wages of tens of thousands of ghost soldiers. With no centralized register of soldiers, paydays consisted of handing bags filled with banknotes to commanders.[21]

Nevertheless, even with such a huge army, the government is unable to prevent or contain rebellions that have been threatening the peaceful lives of people in different parts of the country.[22]

Similarly, after independence Eritrea started building its military with the introduction of compulsory military service in 1995, as a result of which thousands of Eritreans have fled their country to avoid the endless service some liken to slavery.[23] With many things now going wrong in Eritrea, military service has become a punishment for the youth rather than a national duty carried out for the best interests of the country.[24] The outcome of this militarized mentality is that Eritrea has indefinitely postponed democracy and economic development, in the process emptying itself of young and productive members of the society who have risked their lives to migrate to the West. As the UN has reported and some writers have claimed, this amounts to a crime against humanity committed by a government against its own citizens.[25]

In the case of South Sudan, the military, as mentioned, grew in numbers, populated by thousands of "ghost soldiers" whose salaries "were pocketed by their commanders."[26] The South Sudanese military above all lacks accountability, discipline and professionalism. It also suffers from ineffective command and control structures. The soldiers show their allegiance to individual commanders "based on localized tribal understanding."[27] The military and the entire security apparatus as a whole are plagued by corruption and abuse of powers, proving not only incapable of providing security to the people but often themselves posing a threat to

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20   De Waal (2015), p.97.
21   *Ibid.*
22   *Ibid.*
23   The Economist (2014)
24   Rigan (2016), p.56.
25   See OCHR (2016); see also Ghebrehiwet (2017), pp. 18-21.
26   De Waal (2014), pp.255-256.
27   *Ibid.*, p.357.

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that very security. "South Sudan is not a country with a military," it has been claimed; "[r]ather, it is a military with a country"[28]

Another problem with the military is that the SPLA is seen by other minority groups as being dominated by and subservient to the interests of the Dinka.[29] The military dominates the government institutions, which in turn are headed by military men: as with most post-conflict societies in Africa, the entire state structure is ruled directly or indirectly by the military. Some writers describe this militarized system as a kleptocracy under which "the functioning of the organs of authority is determined by the mechanisms of supply and demand rather than the laws and regulations."[30] The central reason for keeping a large army in South Sudan after independence was to ensure that various interests could remain in a position to influence what Alex de Waal calls the "political marketplace" and dictate the rewards and punishments for loyalty and disloyalty from contending forces.[31]

Because of its long history of civil war, South Sudan is flooded with guns, which are in the possession even of children. There was no genuine or successful security-sector reform, and the brief disarmament, demobilization and reintegration programmes failed.[32] As Broga puts it, "The proliferation of arms has directly contributed to the violence and instability that have plagued the country for years."[33] Thus, the military and wider security apparatus have continued to be liabilities to the state-building process in South Sudan. The history of the security forces shows that they are the main sources of instability and cause serious human rights abuses.[34] Such badly managed military and security forces were the immediate causes of the violence that erupted on 15 December 2013 and later developed into a full-scale civil war with various ethnic dimensions.

The security-sector challenges in South Sudan can be addressed only together with the reform of the whole governance system. An important point to note is that there is a real need for democratic governance of the security sector: the entities related to

28   Astill-Brown (2014), p.9.
29   See Arnold (2007), p.503; Marie-Joëlle Zahar (2011), p.36.
30   De Waal (2014), p.348.
31   De Waal (2015), pp.16-34.
32   Paterno (2012).
33   Broga (2016).
34   Zahar (2011), p.38.

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security, which use force on behalf of the public, should be subject to democratic control. This means the security sector, particularly the armed forces, which are the major threats to peace and stability, should be "subordinated to democratically-elected authorities and subject to the oversight of the judiciary as well as the media and civil society organizations."[35]

This is why the security sector per se cannot be treated in isolation. It is part of the system, and hence, as stated, should be addressed together with the entire governance system. It should be a part of the strategy for security-sector reform that a conflict-prone and diverse country like South Sudan undertakes. The ethnic composition of the military and other security forces is crucial to consider. This is not only to give other ethnic groups the right to be represented in the security sector; it is also important for each ethnic group's continued security and existence that the security apparatus, among others, be composed of all ethnic groups of South Sudan in proportion to their sizes, so that there are internal checks and balances.

In order to prevent abuse of the security sector for political purposes, there should be clear constitutional provisions to the effect that the security sector is under civilian control, respects the rights and interests of the people, remains neutral in domestic politics, and, in particular, has professionalism and an effective chain of command[36]

4. Unsuccessful IGAD-Led Peace Process

The CPA of 2005, which paved the way for the independence of South Sudan, was not comprehensive in the real sense of the term[37], either in its process or its outcome.[38] The peace process leading to the signing of the CPA did not include the diverse elements of the society in the north and south of the country.[39]

For example, it excluded political parties other than the National Congress Party (NCP) and SPLM/A, along with civil society organizations and traditional leaders. In addition to excluding the peoples of South Sudan, the process marginalized groups in the

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35   DCAF Backgrounder (2008), p.1.
36   *Ibid., pp.2-3.*
37   Bereketeab (2013), p.18.
38   Young (2005), pp.99-113.
39   Young (2007), p.51.

Sudan (such as the people of Darfur and the Beja in the east).[40] It would appear that only the militarily strong parties are given precedence in the peace-making processes. The Intergovernmental Authority on Development (IGAD) repeated the mistake in mediating the recent crisis in South Sudan, where only the government and the opposition were the main actors in the mediation. The participation of other stakeholders was very limited, as they had no significant role.

In the final outcome, the CPA also failed to deal exhaustively with all outstanding issues, including border-related and revenue-sharing matters. Another limitation of the CPA is that it did not engage with the post-independence situation in South Sudan. It does not address how the new nation should treat the diverse groups of South Sudan once they are separated from Khartoum following the outcome of the 2011 referendum. In contrast to the CPA, in Kosovo a comprehensive peace agreement was proposed by the UN envoy (Martti Ahtisaari) to settle its status; the status proposal obligated the government of an independent Kosovo (where the Albanian ethnic group is in the majority) to respect certain international principles related to democratic governance and rights of minorities.[41]

The fact that the CPA was discussed and signed only by two parties representing the North and South, to the exclusion of other stakeholders, weakens the credibility of the process and gives the two signatories, particularly the SPLM/A, a blank cheque (after independence) to steer the state-building process alone at the expense of other actors in the country.[42] Not surprisingly, this led the process in the wrong direction and failed to transform the SPLM/A from a guerrilla movement into a responsible, representative ruling party, with the SPLM/A seeking instead to rule the country uncontested and through military power. Slowly, the unsustainability of such an authoritarian strategy has become apparent and led to a violent crisis.

It is therefore possible to say that bad governance; rampant corruption; the slow and non-participatory constitutional reviewing process; the lack of accommodation of diverse interests in

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40   *Ibid., pp.13-24 and 42-53.*
41   See the General Principles and Constitutional Provisions of the Comprehensive Proposal for the Kosovo Status Settlement. Retrieved from http://reliefweb.int/sites/reliefweb.int/files/resources/1DC6B184D02567D1852572AA00716AF7-Full_Report.pdf
42   Young (2005), pp.99-113.

the ruling party; a total failure to provide basic services to the people; frequent violations of basic human rights throughout the country; deepening poverty; and lack of security are among the underlying causes of the current crisis. As mentioned in the previous section, one of the elements contributing to the conflict is the inability to build, out of the various militiamen, an integrated, disciplined, representative and professional national army working under the rule of law.

Given that these basic problems remained unaddressed during the transitional period, they finally caused division within the ruling party. This division developed into open violence and continued in the form of civil war. When atrocities were committed against civilians, the conflict acquired an ethnic dimension. However, the issue of ethnicity as a politically salient feature of the conflict goes beyond the Dinka-Nuer ethnic groups in that there have been also conflicts between other ethnic groups. In South Sudan, there are more than 60 ethnic groups which were supposed to have an equal say and representation in the peace-making process and in the institutions of the state. A report by Amnesty International made it clear – and was supported in this by the South Sudan Human Rights Commission – that the ethnic dimension of the conflict is a reality that "cannot be wished away" and has to be addressed head-on. The report observes:

> It is extremely important therefore, that both parties to the conflict admit to this reality and [recognize] that it is a factor that requires attention with a view to finding a suitable solution through the negotiation process.[43]

In addition to the other ethnic conflicts (each with various motives and causes) in South Sudan, there was a parallel peace process in Addis Ababa between the government of South Sudan and General David Yau Yau's Cobra faction with regard to a violent, four-year-long conflict in another region of the country, Jonglei state.[44] This element of the wider conflict, however, was not given attention in the last peace talks, which focused mainly on the three sections of the SPLM/A.

From the outset of the conflict, IGAD has taken the responsibility to mediate between the two warring parties, in which regard it was supported by the AU, UN and other members of the inter-

43   Amnesty International (2014), p.15.
44   Minassie (2017), p.127.

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national community with an interest in South Sudan. However, throughout the process, certain IGAD member states were not partial and therefore not perceived as neutral mediators. In particular, Uganda was clearly supporting President Kiir both militarily and politically.[45] Furthermore, the exclusive nature of the mediation, and the intransigence of the warring parties, delayed the peace process beyond what was necessary.

After a delayed process, a peace agreement was concluded in Addis Ababa among the stakeholders of the country, particularly between the warring parties (the government and the opposition) in August 2015. The peace agreement was not inclusive,[46]and finally proved unable to stop even the violence, let alone address the underlying causes of the crisis. While the peace agreement was signed by Dr Riek Machar and Pagan Amum on behalf of the SPLM in opposition and "former detainees" respectively, President Salva Kiir refused to sign, requesting 15 more days for consultation.[47]Under pressure from the international community, Kiir signed the agreement but with 16 reservations, some of which are:

> [in] direct opposition to core provisions of the agreement, including the demilitarization of Juba, the establishment of the Joint Monitoring and Evaluation Commission, the power-sharing structure of the executive, the procedure for the appointment of the Cabinet, the appointment of members of the opposition as the governors of two states (Upper Nile and Unity States), the power-sharing ratios within the state councils of ministers and the establishment of the economic and financial management authority envisaged in the agreement.[48]

According to the peace agreement, the Transitional Government of National Unity was supposed to be based on a power-sharing agreement, with 53 percent of the cabinet to be held by President Kiir's faction, 33 percent by Dr Machar's faction, seven percent by the former detainees, and the remaining seven percent by other political parties (that is, other than the SPLM). The power-sharing agreement is not genuine, though, and does not add any new value to the pre-conflict situation. What is new is only the seven

45   De Waal (2015), p.106.
46   Political parties other than the SPLM, civil society organizations and other stakeholders were either nominally present during the peace negotiations or not included in the meetings at all.
47   See Panel of Experts (2016), p. 34.
48   Panel of Experts (2016), p.34.

percent of power given to the other political parties. The SPLM continued to control 93 percent of the government, albeit with the party divided after the conflict into three factions (government, opposition and former detainees). The failure of the peace agreement is evident from the fact that it awarded all powers to the same party that failed the country and caused the crisis in the first place.

When signing the peace agreement, President Kiir said it was flawed and could not be implemented. While the international community failed to make the peace process inclusive, it only hurried to see the symbolic signing of an agreement that was patently difficult to implement. The peace process served only to restore the status quo: the same person was vice-president again, and the root causes of the problems remained unaddressed. President Kiir, in violation of both the TC and the peace agreement, expanded the number of states in October 2015 to 28 and, later in 2016 to 32, which shifted the ethnic balance and intensified ethnic competition for resources.[49] No measure was taken by the international community against such blatant violations. President Kiir finally purged Dr Machar and allied himself with other members of the SPLM in opposition. The result is a resumption of violence and the outright failure of what was a flawed peace agreement from the outset.

What made the peace process inherently flawed was that it was not inclusive and failed to address the root causes of the crisis; moreover, it failed to bring peace and reform to the governance system. The peace agreement signed in August 2015 is undergoing continuous violation; and through the creation of new states and the manipulation and purging of the opposition, the government constantly delays implementation of the terms of the agreement and therefore prolongs the crisis.

Thus, the governance system that was in place in South Sudan was not able to build a democratic and legitimate state. To address the root causes of the current crisis in South Sudan and achieve peace, the entire governance system should be reformed. This requires, inter alia, the adoption of a constitution that creates a system of government appropriate to the context of South Sudan and the building of government institutions that are inclusive of all segments of the society, operate transparently, provide

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49   Blanchard (2016), p.3.

public services effectively, and are accountable to the people. This reform should include the security apparatus, the justice system and the civil service.

To repeat the question raised earlier, which governance system would be capable of sustainably addressing the problems that are at the root of South Sudan's crisis? This question should be answered in relation to the challenges the country has been facing for years. There is, on the one hand, a need, and growing demand, for self-governing rights at the local level, and the other, recognition of the importance of unity which necessitates a common government.So, what form of governance meets these two ends?

The unitary decentralized governance system adopted and practised since independence under the TC has proved dysfunctional and it was not even conducive to the diverse nature of South Sudan. Furthermore, this system of governance is not properly implemented. In general, the experience of the majority of African countries is that a unitary system of government fails to resolve diversity-related problems, particularly so by frustrating the need for political autonomy and self-rule at the local level. So, an alternative form of governance is required, one that gives more power to the lower levels of government and does more to accommodate the country's diversity than the current system. The form of governance that could fit this reality is a federal system.

5. Federalism for South Sudan

As the experiences of a number of successful federations indicate, a federal system can be a suitable mechanism for building a democratic state/nation in divided societies like South Sudan. It can serve as an alternative mechanism for organizing the state in order to resolve or manage conflicts related to power, resources and diversity, doing so by building democratic and representative institutions both at the central and local levels of government.

Since its application by the US at the end of the eighteenth century, the modern federal system of governance has gained prominence and been applied in different parts of the world. Federalism in the US was used as an instrument of strengthening the central gov-

ernment by transferring power to it from the federating states. It was a means of establishing a stronger federal government while maintaining the autonomy of the federating states. This mode of establishment – creating a strong federal government through the integration of formerly independent units (some writers call this process a "coming-together" federation) – has also been applied in Switzerland, Canada and Australia.[50] Conversely, a variety of countries in the developing world, among them India and Ethiopia, have employed federalism as a means of accommodating their diversity while maintaining their pre-existing unity: this mode of establishing a federation is called "holding-together," or devolutionary, federalism.[51]

There has been series of attempts to establish federal systems in Africa. However, the challenges faced by the classical federations are different from those facing the diverse and decolonized countries of Africa. For this reason, federal systems adopted in Africa in the aftermath of independence from colonialism were short-lived, while some of the nominally surviving federations failed all the same to respond to the real challenges of their societies.

Nevertheless, there is renewed interest in and understanding of the importance of federalism in addressing the challenges of diversity and in strengthening unity based on the values of equality and democratic governance. This is evident from the fact that federal systems have been adopted as part of the peace agreements in a number of African countries.[52] The federal idea is spreading, as Daniel Elazar observed presciently some 30 years ago: "The federalist revolution is among the most widespread of the various revolutions that are changing the face of the globe."[53]

The next section briefly discusses the basic principles of federalism and how it can serve as an alternative form of governance for accommodating diverse groups, sustainably resolving the vicious cycle of conflict in South Sudan, and thereby potentially strengthening national unity and promoting economic development. The argument presented here is that there is no better arrangement than federalism for addressing the challenges of building a democratic, economically viable and united South Sudan where all citizens feel included and recognized as equals regardless of ethnic

50   Wheare (1963), p.40; Stepan (1999), p.23.
51   Stepan (1999), p.22.
52   The peace processes in Somalia and the Sudan are good examples of this trend.
53   Elazar (1979), p.3.

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background, economic strength and the territory they inhabit.

6. What is Federalism?

A federal system is a form of government that combines the possibilities of preserving diversity and of promoting unity. Under a federal system, the protection of both values, unity and diversity, is constitutionally guaranteed, which is not the case under a unitary system. It is true that there are some overlaps between federal and decentralized unitary systems, in that both systems in principle strengthen the capacity of the people at the community level or lower level of government to participate actively in shaping their day-to-day lives. However, the difference lies in the constitutional guarantee accorded to the rights of the people autonomously to make decisions about various aspects of their live without unnecessary interference by the central government and to participate equally in the decision-making process of the institutions of the central (that is to say, common) government. This is possible only under a full-fledged federal system of government.

Federalism in the context of divided societies like South Sudan should be a mechanism of promoting unity under a common government while accommodating the interests of the diverse communities. This is commonly referred to as unity within diversity. As already mentioned, a federal system of government can be established either through a process of aggregation or devolution of powers. In the case of classical federations, some powers of the federating states were maintained while others were transferred to the central (common) government. In the new federations created through devolution, certain powers already in the hands of the central government are shared with or decentralized to the newly created federating units. In most of the federations created by either of these processes some powers are also exercised concurrently between the federating states and the federal government.

Different authors define the concept of federalism differently depending on the context of the various federations.[54] Most of the definitions reflect the circumstance in and purposes for which the federal systems were adopted. As such, the definition and

54   See the definition of federalism by Elazar (1979, pp. 29-30): if a political system is established by compact and has at least two "arenas," "planes," "tiers" or "levels" of

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context of federalism in the case of the classical federations differ from those newly evolving federations. In the former, federalism was a means of establishing, out of formerly independent entities, a common government for military and economic purposes. This is what has been referred to already as a coming-togetherfederalism. In the newly emerging federations, the main purpose, over and above seeking military and economic advantage, is to maintain an already-established unity while constitutionally guaranteeing the self-governing and representation rights of diverse groups. Friedrich (1960) summarizes these two ways of establishing a federal system:

> [There can be] a process by which a number of separate political units, be they states or any other kind of association, enter into arrangements for governing themselves jointly regarding joint needs and interests. Or reversely the process through which a hitherto unitary political organization becomes federalized to the point where separate and distinct political communities arise and become politically organized.[55]

In South Sudan, the government system would appear to be a federal one, owing to the constitutional distribution of power between the states and central government, the existence of the ten states (now illegally increased to 32), and the existence of two houses of parliament at the center which nominally represent the states and the people as a whole. However, there are strong reasons for regarding the system as non-federal. First, the autonomy of the states is limited by the fact that the central government (particularly the president) can dismiss an elected governor and the legislative body of the states.[56] Secondly, some of the members of both houses of parliament are not elected but appointed by the president.[57]

Taking both of these factors into account, this means neither the states nor the people in the states have the unrestricted right to elect their representatives to the parliament of the common government. Consequently, the two pillars of federalism (that is, shared-rule and self-rule) are not guaranteed in the Constitution of the Republic of South Sudan.

government, each endowed with independent legitimacy and a constitutionally guaranteed place in the overall system as well as possessing its own set of institutions, powers and responsibilities, then it is deemed to be federal.

55   Friedrich (1960), p.29.

56   TC of the Republic of South Sudan, Article 101(r).

57   TC of the Republic of South Sudan, Article 94(2-3).

However, the new system of government to be introduced in South Sudan should be built on what already exists and fix the problems through a series of reforms. As the South Sudanese problems are different from those of other countries, the federal system to be established in South Sudan should involve a model tailored to address the country's needs and challenges in a sustainable manner. In general, the federating units of any federation are organized in response to pre-existing challenges: some units are hence organized on the basis of geography or along linguistic or ethnic lines. In all cases in South Sudan, the economic viability of such units should be taken into account. If the current geographical boundaries of the 10 (now 32) states are retained in the future structure, the interests of communities at the local levels of government should be addressed through further empowerment (that is, decentralization).

When a federal system is adopted, the objectives it is to serve should be clearly defined. So, if it is adopted to promote unity within diversity, or to balance the advantages of unity and the necessity of accommodating diversity, this should be stated explicitly in the federal constitution and the federal institutions be designed accordingly to reflect that objective.

Each federal system is unique. However, there are experiences and lessons (both successes and failures) that can be learned. Constitutionally guaranteed shared rule (concerning representation in the common government) and self-rule (concerning the autonomy of the federating entities) are the common principles in all true federations. In federal countries, regardless of the model, there should be a common government that represents all the federating entities (depending on how the entities are organized) and self-governing entities (states, regions, provinces, cantons and so on). It is of paramount importance that both representation to the common government and the self-governing right of the federating entities should be guaranteed by the federal constitution.

7. Models of Federations

The model of each federation is influenced by, among other things, the background, societal challenges and overall context

in which the federal system is adopted. Even if there are certain elements that exist in all true federations, federations are established in different ways and the common government as well as the federating entities can take varying forms.

The establishment of classical federations (the US, Switzerland and Canada are typical examples), which was mainly territorial and occurred through the process of aggregation, was necessitated by military and economic advantages. The modern federations that are usually multi-national are created through a devolutionary process. In such federations, certain powers or competences are devolved to the lower units, which demand self-governing rights or autonomy on matters which are important to the preservation of their distinctive identities. Thus, devolutionary federations are established primarily to respond to the diversity-related challenges.

However, not all such efforts have been successful. To successfully address diversity-related challenges, the federal system, as already mentioned, should be diversity-oriented in the first place and its institutions designed as such. Federal systems adopted for this purpose and designed accordingly can address the increasing demands of the diverse ethnic groups for self-rule within a common government, which should be representative of each and every diverse group. A diversity-oriented federalism takes all diverse (ethnic) groups as equal partners of the established federation. The institutions of such a kind of a federal system should be designed to promote the equality of the diverse groups and promote national unity based on the shared values and interests.

As one model of federalism does not fit all societal challenges, each society should adopt its own unique federal system while taking into account the relevant lessons from the successful and failed federations. The institutions already developed by the existing federations of the world can be tailored to fit the needs and challenges of each society when a decision is made to adopt federalism.

Under such circumstances, each society can adopt a new model of federalism that fits its context. Even the principles and institutions of contemporary federalism, as developed over the years since the adoption of the US Constitution in 1787, are open to further innovation: the "post-modern world," as Daniel Elazar

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foresaw, "will develop new application of the federal principles in addition to the arrangements we already know ..."[58]In other words, it is possible to adapt these principles and institution to fit the case of South Sudan, with a view to resolving or managing its chronic conflicts borne of poor governance and a misguided state-building process. It is also possible to be creative and develop new federal institutions that can be used to balance the interests of unity and diversity.

Adoption of a federal system alone will not solve all the problems of the country, given their complexity; nevertheless, federalism, if properly adopted and genuinely implemented, can be a means at least to sustainably address some of them. For this reason, federalism should be viewed not as an end in itself, but rather a (first-step) means to reforming the political system and the state-building process.

How can a federal system of governance play a positive role in building a democratic state and achieving sustainable peace and economic development in South Sudan through the reform of pre-existing government institutions? In considering the model of federalism that could be adopted in a conflict-prone and divided society like South Sudan, one should ensure that the model encompasses the following factors, all of which have been emphasized in various studies:

- representation of the people on individual and group basis in the two levels of government institutions;

- constitutionally guaranteed autonomy of the federating states (self-governing rights of the people organized in different forms);

- an independent judiciary (or any other independent or neutral organ) that settles constitutional disputes;

- a representative, professional, disciplined, effective and accountable army and security apparatus;

- proper and fair distribution of wealth and effective provision of services to the people;

58   Elazar (1979), p.4.

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- a representative and merit-based civil service system: among other things, the spirit of representativeness should be the governing principle and core value of all public institutions of the country; and

- the creation of state institutions that can prevent and fight corruption and promote accountability by government officials: this can be part of the reform of the governance system.

8. Popularity of Federalism in South Sudan

South Sudan is a diverse country, yet the current government system does not reflect this. Various quarters of South Sudanese society have already expressed a strong interest in a federal form of government. The idea of federalism has a long history in South Sudan, starting in the 1950s when "members of the Liberal Party first mooted the idea as a political tool at a meeting at the Juba Dance Hall (currently Rokon Hotel in the Malakia residential area)."[59]

Since then the idea has remained in circulation. It was seen by the southerners as a mechanism for restricting Khartoum's control over their affairs. After independence, there have been various proponents and opponents of federalism, with their aspiration for, or fear of, based on their own calculated gains or losses. It is not surprising, then, that most of the demands for federalism come from minority groups. Dr Riek Machar stated after signing the peace agreement in Addis Ababa that a federal form of government is suitable to the diverse nature of South Sudan.[60] Recently, politicians from the equatorial region also expressed support for it.[61] The main reason why minorities favour a federal system of governance is that they see it as a means of guaranteeing their share in the exercise of powers at the central level and securing their self-governing rights at the community level.

However, any mechanism that promotes power-sharing may be unpopular among those who would have to share with other

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59   Adeba (2015).
60   Green (2014).
61   *Ibid.*

groups the power they already possess. For this reason, opponents of federalism offer various excuses to undermine the relevance and importance of federalism in building a democratic state in South Sudan.[62]

The kind of federalism South Sudan needs to adopt should be a result of broader consultation; there is also an opportunity and a need to draw on the experiences and lessons of other federations facing similar challenges. Through public consultation, the federal form of governance should gain acceptance from all segments of the society. This is because adopting a federal system is one thing, but implementing all its principles, another. As there are biases against diversity-oriented federalism or a federal system that takes diversity seriously, a need exists to raise public awareness of the importance of federalism to strengthening national unity through equal recognition and accommodation of various ethnic groups. Under such a kind of a federal system, the equality of all ethnic groups will be constitutionally guaranteed.

9. Lessons Learnt

What lessons can South Sudan learn from both the developed and developing countries that have already adopted federalism? African experiences with federalism show that it was not taken up primarily as a response to the challenges of ethnic diversity until Ethiopia boldly ventured a diversity-oriented federalism in 1995. All previous African federal endeavours sought – and failed – to achieve purposes other than building a democratic state.[63] The 1952-1962 Ethio-Eritrean federation is an example of an African federal system that was abused. Similarly, the Nigerian federal system neither reflects nor addresses ethnic diversity and its challenges; instead it was imposed by colonizers, who copied the US model, and does not reflect the Nigerian reality. This notwithstanding, some claim that Nigeria is the "longest- established federation in Africa, its longevity is itself a success."[64]

However, it is now seen in Africa that a properly designed federal system can be a mechanism of re-building defunct states in

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62   Abeyi (2014).
63   For more information on the failure of federations in African, see Rothchild (1970), Frank (1968), Hicks (1979), and Watts (1966).
64   Burgess (2012), p.18.

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Africa that have become a breeding grounds for human suffering. Due to the colonial legacy of unbalanced power relationships between groups, there have been endless conflicts between the privileged and the marginalized. On the one hand, in the current African context, authoritarianism is a dominant governing system, one in which those who already have power do everything possible to keep it permanently, if necessary by holding spurious elections to deceive their citizens and appease their donors. On the other hand, attempts are being made to escape oppression and build democratic states where all groups of the country are equal partners. Federalism is regarded as a viable mechanism of achieving this objective.

Ethiopia and South Africa (though to a different degree) are examples of such an attempt. However, as this is completely new project of re-building a state which has been authoritarian for generations, it has, as in the Ethiopian case, encountered internal and external resistance. Internally, those who controlled power in the previous regimes are not willing to accept a democratic state-building process. Hence, they malign it in order to maintain or reclaim their privileged position. Externally, numerous donors and foreign powers do not regard the project of re-building the state through a federal system as feasible. Therefore, they undermine it through their strong media, and even withhold economic support.

For example, the Ethiopian federal system as introduced in 1995 was from the outset repeatedly accused by the West of being ethnically divisive.[65] Some were sure the system would collapse a few years after its adoption, but to the surprise of its opponents the Ethiopian federal system[66] (despite some limitations) saved the country from collapse, elevated it from poverty and saw it enjoy successful economic development for many years. It also helped Ethiopia become an island of peace in the violence-prone Horn of Africa. This all stands to the credit of a system that accepts diversity as an opportunity, not a liability, by providing room through a legal framework and duly established government institutions for the ideals of unity and the reality of diversity to be promoted and protected.

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65   See, for example, International Crisis Group (2009); Abbink (1997), pp.159-174; Abbink (2009), pp.3-28; Aalen (2006), pp.243-261.

66   For details on the Ethiopian federal system, see Fiseha (2006), (2007), (2012), Van der Beken (2012), and Arefaine (2005).

So, what lessons can South Sudan learn from such endeavours? In the first place, it needs to define its main problems and the real causes of the failure in building a new democratic state. As already discussed, if a system fails, the same system should not be repeated: there should be another system that fits the realities of South Sudan, and the reality is that it is a diverse country and cannot indefinitely ignore the challenges associated with this. To deal with such diversity, a federal system seems to be a good (though not the only) alternative mechanism. According to the peace agreement of 17 August 2015, federalism and a democratic system of governance are said to be part and parcel of the state- and constitution-building processes.[67] If this agreement is honoured and federalism is accepted as a system of governance, lessons can be learnt to avoid mistakes and build on the successful applications of federalism in those countries with a similar context.

One of those concerns the process of adopting a federal system. The process should be seen as important as the outcome. The federal model to be adopted in South Sudan should be a result of negotiation and discussion among all segments of the society. Every group should have the opportunity to give its opinions on the proposed system and it should be finally decided upon by the people, preferably in a referendum. Furthermore, for the purpose of accommodating societal diversity, it is essential that the institutions of the federal system should be designed accordingly.

An equally important lesson to be learnt from other multi-ethnic federations such as Ethiopia is that when the federating units (states) are formed, great care needs to be taken to consult in advance with the communities that might be divided into two or more states. The Ethiopian federal constitution, for example, provides that the federating states shall be "delimited on the basis of the settlement patterns, language, identity and consent of the people concerned."[68] However, there was not enough consultation when the states were established and there are now growing demands by minority language-groups to establish self-governing entities. The consent of the affected communities should be the basis for the delimitation of the boundaries of the federating

67   Chapter VI (section 1.2), *Agreement on the Resolution of the Conflict in the Republic of South Sudan*, Addis Ababa, Ethiopia, 17 August 2015. Retrieved fromhttps://unmiss.unmissions.org/sites/default/files/final_proposed_compromise_agreement_for_south_sudan_conflict.pdf

68   Constitution of the Federal Democratic Republic of Ethiopia, Article 46(2).

units, this in order to avoid conflict after the adoption of the federal system. Unilateral, center-driven making and unmaking of states will face challenges sooner or later.

Similarly, adopting the federal system is one thing and implementing it in the ground is quite another. For this reason, every entity, governmental or private, should be obliged to implement the federal system according to constitutional principles such as respect for self-rule and inclusive government at the center. Finally, the federal system should be capable of adapting to emergent challenges unforeseen at the time of its adoption.

Another lesson to learn is that federalism can be an instrument for promoting unity and accommodating diversity provided there is a strong commitment by all actors to respect fundamental human rights and create an enabling environment for a multiparty system. If a single party dominates the political system, federalism will be obstructed in achieving its objectives.

10. Conclusion

The preceding discussion identified multiple causes of the crisis in South Sudan, in particular the flawed peace-making processes before and after independence and the absence of an effective governance system for guiding the state-building process. The peace agreement signed on August 2015 has failed to achieve the desired peace and stability in South Sudan, so it is unthinkable that federalism, which was supposed to be the basic principle of governance, is currently going to be adopted in the country. In addition, no further initiatives are under way to make peace in South Sudan, and consequently the violent conflicts are going on unabated. Under such circumstances, there will be no space for rational discussion about constitutional and governance issues.

There is therefore a need for immediate action by the international community to launch a mediation process to end the ongoing violence by facilitating an agreement between the warring parties to cease hostilities and sit down at a negotiating table with all the stakeholders in South Sudan represented on an equal basis. Once hostilities have ceased, issues to do with governance systems and power relationship should be discussed by represen-

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tatives of all segments of the society, and those with guns should not monopolize deliberations about the future of the country.

The establishment and nature of the transitional government should be clearly defined in the agreement as it is a key step towards an inclusive and democratic state-building process, and the international community (be it regional or global) should follow up and guarantee its implementation. This article has argued that a federal system of governance is a desirable alternative mechanism for dealing with governance-related challenges in South Sudan. It does not necessarily mean, however, that adopting a federal system would immediately resolve every problem. A federal system is only a means to an end, and there is a need, inter alia, to design the federal institutions carefully so as to make them reflective and accommodative of the challenges South Sudan has been facing. It is equally important thereafter to implement the terms of the federal constitution, which should be the supreme law of the country.

South Sudan has ample of opportunities to learn lessons from Africa and other parts of the world about the application of federalism in contexts of diversity. If the Ethiopian case is taken as a lesson, it points to the need to withstand efforts by internal and external opponents that brand the federal system as "ethnic." The Ethiopian federal system has proven its critics wrong, though that does not mean it is without challenges. Even if adopted and designed for a good purpose, a federal system can be thwarted by other factors, which in turn points to the need, for instance, to ensure respect of human rights and the emergence of a multiparty political system so as to pave the way for peaceful changes of government.

The peoples of South Sudan have been in a violent situation for a long time, and gaining independence from the North did free them from all the ills against which they fought for generations. Independence changed only the identity of the authoritarian rulers. So the first thing that must happen is that the conflicting parties stop fighting and negotiate in an all-inclusive manner about the future of the country. After all, it is only when there is peace that a system of government can be considered.

The argument of this article is that once peace is attained through inclusive negotiations and a system of government is considered,

a federal system would be the one to unite the diverse peoples of South Sudan under a common government that is representative of all and at the same time enables them administer their own affairs without interference from any level of government. Failure to adopt an appropriate system would lead to the continuation of violence. A federal system for South Sudan is not a luxury; it is a necessity, with the only choice being that between sustainable peace and sustained violence.

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