



THE SUDD INSTITUTE

RESEARCH FOR A PEACEFUL, JUST AND PROSPEROUS SOUTH SUDAN

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Weekly Review

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How the Federal System of Government is Misunderstood in South Sudan

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South Sudan emerged as a state from over two decades of a violent conflict, fought between the Sudanese government and the southern rebels known as the Sudan People's Liberation Army/Movement (SPLA/M). Between the interim period and independence (2005-2011), the region was governed under 'federally' decentralized structures, constituted in both the regional and national interim constitutions. Chapter III of both South Sudan's interim (2005) and transitional (2011) constitutions clearly mandates a decentralized system of government, with separate powers among federal (central), state, and local administrations. The two constitutions unambiguously emphasize the importance of participatory governance, democracy, and the devolution of powers among different layers of the government. These layers are supposedly linked administratively but in a way that ensures the separation of powers, promotes cooperation, and provides for an interactively functional system. Although there is no mention of federalism in any of the legal documents, their features optimally reflect a decentralized federal system.

Whether such constitutional commitments have been widely understood or pragmatically realized invokes an important debate in light of the ongoing violence and the extensive discussions on federalism as popularized by politicians from the three states of Equatoria.

This weekly review comments on current public debates on federalism in South Sudan, primarily clarifying some of the issues that appear blurred in the catechism of and demand for political transformation in the country. The paper suggests that the ongoing demands for federalism as a system of governance in the country, not the implementation of such, clearly demonstrate how misunderstood this widely discussed political philosophy truly is. As well, drawbacks of a federally decentralized system are discussed. Finally, the paper concludes with what might satisfy an appropriate demand for political transformation, the needed emphasis on the underlying gaps between the constitution and practice.

The Debate

Sudan Tribune released on May 25, 2014¹ a news report on the gathering of politicians and intellectuals from Equatoria who, like in preceding periods, shared ideas on the need for federal system in the country. Concerning themselves merely with the absence of the word ‘federalism’ in the constitution, they demand the system as one of the elements of sustained governance and development for the country. This call, supported by a number of current government officials primarily from Equatoria and Upper Nile regions, coheres appropriately with more recent demands by Dr. Machar’s rebels who advance a similar argument, proposing federalism as a fundamental condition towards resolving the current conflict.

The idea of federalism has been a subject of considerable debate in South Sudan for a few years now, often with regional emphasis. While Equatoria and Upper Nile regions seem to be more in concert with each other on this, there seems to have been some element of resistance from Bahr el Ghazal region, at least as the feelings from the other two regions suggest. Allegedly, Bahr el Ghazal’s resistance to federalism seems a product of its limited resources, clinging to the other two regions through a system of governance that supports its economic well-being. Sudan Tribune reports that South Sudan’s vice president, James Wani Igga, himself an Equatorian, cautioned his regional members out of the demand for federalism, an advice that obviously contradicts the constitution. In addition, those who oppose the system have other concerns, with ethnic decentralization and the re-emergence of kokora as key. Kokora, predominantly birthed and popularized by the Equatorians in the late seventies and early 1980s, led to sectarian politics, resulting in bitterly segregated South Sudanese society on regional and ethnic lines. This makes the kokora system unfavorable in some segments of South Sudan, with high fears associated with potential fragmentation if the system were to be re-introduced. Kokora is basically a decentralized or federal system according to the Bari tribe, but its implementation back in the 1980s rather resulted in ethnic segregation, threatening South Sudanese unity. Ethnic federation, so the opponents argue, degrades national identity and installs enclaves that may be incompatible with national ideals.

Federalism in South Sudan

Federalism might be one of the most misunderstood political concepts in South Sudan. For some, it means distribution of political powers, meaning decentralization. Yet for others, it means segregation on the basis of ethnicity and region, which is suspected to have potential for retarding national identity. This means that federalism is as misunderstood and wrongly applied as Kokora was, causing bitter divisions in the Sudanese region. But what is particularly striking about these political classes is how the proponents of a federalism system barely peg their arguments to the constitution, citing so little, if any, of the nature of the current national constitution. South Sudan’s constitution, albeit no mention of federalism, clearly stresses a federally decentralized system of governance, with institutional independence substantially guaranteed—at least by law. The fact that federalism as a word is not written in the constitution makes for an

¹ <http://www.sudantribune.com/spip.php?article51124>

insufficient entreaty towards mobilizing solutions that may improve the systems of governance in the country. However, this misplaced concern does not cloud the existing systemic problems related to governance in South Sudan.

There have been numerous occasions during which the federal system has been compromised. The first concerns the restructuring of the interim constitution in ways that undermine the electorates, giving president powers to fire elected state governors. Two other institutional areas where federalism is deficient include judiciary and finance. Both judiciary and fiscal systems are centralized, making South Sudan's decentralization incomplete, and vexing the notion of administrative and institutional independence. Still, these deficiencies in the system do not bode well with the demand for federalism as a new system. Rather, the current discussions should center upon how to improve the existing structures, with emphasis on article 101(r and s) of the transitional constitution, which mandates the president to remove elected governors, reforms in the judiciary, and introducing the fiscal policy that guarantees financial decentralization.

Decentralizing these institutional aspects allows for self-governance in the context of local justice and promotes fiscal responsibility for state and local governments. Emphasis on these fundamental loopholes is nearly absent in the current debates. Alternatively, the ongoing demands should hinge on transformations for existing structures. In addition to judicial reforms and restructuring of presidential powers, other areas that need reform include devolution of services from national ministries to the states and counties. Areas of particular interest include health, education, and social welfare. Functions overlap, which is significantly prevalent in South Sudan, creates inefficiencies and negligence in basic services provision. But what is even more disturbing is the extent to which federalism as a system of governance is taken for granted. The federal system has some serious drawbacks that are rarely attended to in the South Sudanese discussions.

Drawbacks of a Federally Decentralized System

For the decentralized federalism system to work effectively, it requires not just the law that guarantees separation of powers and respect for possible interactions across different governments, a situation that is seldom emphasized by both South Sudanese intellectuals and politicians. A significant drawback in settings like South Sudan is the lack of capacity in implementing decentralization programs. Capacity means both human capital and financial resources suitable for executing decentralization projects, especially services. Given the existing extremely low level of human resource capacity in South Sudan, unitary system, ideally, is rather more warranted than decentralized federalism. Perhaps a unitary system with counties and payams providing basic services could make a successful model. This is particularly deserved given that the 10 states are as out of touch with the ordinary population as Juba.

Despite the constitutional mandate of devolution, over the last 9 years, South Sudanese state and the local governments have heavily depended on the central government, both in terms of human capital and financial resources. States and counties have not been able to generate enough revenues to implement their own functions, forcing Juba to deliver both conditional and unconditional transfers. The central government has also funded

local institutions in the area of capacity development. These projects are ongoing, with little improvements realized in just under a decade. Lack of capacity normally creates incentives for the elite, promoting corruption, and subjecting the ordinary citizenry to dire economic and political exploitations.

Finally, in addition to low individual capacity at the local level, institutional ineffectiveness makes decentralized federalism system quite unproductive. Institutional weaknesses lead to inability to turn policies into practice. This is reflected in the nature in which the constitutional mandate of decentralization has been implemented in the country. When institutions are weak, strong men laws take effect. As a result, the constitution and related policies become easily ignored, as is the case in the country now. As opposed to arguing the absence of federalism, which is incoherent, what should be debated is the impact of institutional capacity on the performance of the government of South Sudan with respect to existing structures (decentralized federalism). Are federal laws ignored because of low capacity? Would investment in capacity institutions improve the government's ability to follow through with documented commitments?

Conclusion

While there is enthusiasm for self-governance in South Sudan, little is understood about the kind of system their current government falls under. The ongoing demand to install federalism in the country surfaces as immaterial. It is immaterial because what is missing in the present structures of the governance is not federalism. Rather, it is limited practices in the implementation of federal ideals. That is, the existing system is federally decentralized, invoking little merit for current debates that suggest the need for creation of such a system. Bearing in mind the drawbacks of federalism, ongoing demands should be on the implementation of current structures, restructuring of the constitution to limit central government's authority, and desired reforms in the judiciary and fiscal policy. Still, federalism is an unproductive system of governance under low individual and institutional capacity. Therefore, unitary system might be a temporal, practical option for South Sudan as it works toward improving its capacities.

About Sudd Institute

The Sudd Institute is an independent research organization that conducts and facilitates policy relevant research and training to inform public policy and practice, to create opportunities for discussion and debate, and to improve analytical capacity in South Sudan. The Sudd Institute's intention is to significantly improve the quality, impact, and accountability of local, national, and international policy- and decision-making in South Sudan in order to promote a more peaceful, just and prosperous society.

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