



THE SUDD INSTITUTE

RESEARCH FOR A PEACEFUL, JUST AND PROSPEROUS SOUTH SUDAN

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POLICY BRIEF

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Federal Democracy: A Strategic Institutional Choice for South Sudan

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Summary

This policy brief attempts to draw public attention to an important debate on the question of the system of government in South Sudan. This is essential, as there has been a growing trend towards the concentration of authority at the center with power being increasingly centralized in the hands of a few, generating a proportional crisis of governance across the country. This deviation from the federal system established during the interim period threw the country off balance.

This debate is necessary because throughout the years of liberation struggle, the dream of many South Sudanese had ever been self-determination or self-rule. The SPLM, the champion of South Sudan's independence, resolutely led this mission, culminating in the declaration of independence in July 2011. Though the same party championed all these democratic aspirations to which all the citizens have subscribed, it now seems to have turned its back on the very principles it once espoused. This, the paper argues, unwisely sets the precedent for renegeing of the government on democracy and could ultimately lead to an intractable concentration of power at the center, the Khartoum model of misrule that is all too familiar to many South Sudanese.

The way forward for South Sudan is to commit itself to a full federal democracy in the new constitution. This could be advanced through steps that include repealing Article 101 (r and s) in Transitional Constitution in order for the state and county governments to enjoy sufficient amount of autonomy from the center, phasing out Khartoum style of governance, promoting equal participation of all government levels, resourcing and improving the capacity of local administrations. This, we believe, will set the country on the path towards a stable democracy and development.

Introduction

This brief is an attempt to draw public attention to an important debate on the question of the system of government in South Sudan. Other than the financial crisis emanating from the oil shutdown, the ubiquitous insecurity and starvation that have plagued this country for a long time, one of the major concerns in the transitional period is the issue of governance. There is a growing trend towards the concentration of power at the center and as power is increasingly becoming centralized in the hands of a few, it tends to generate a proportional crisis of governance across the country. The drafting and the final passage of the Transitional Constitution (TC) saw a sharp digression of the central government's commitment to federal provisions. This deviation from the federal system established during the interim period threw the country off balance.

The Transitional Constitution gave the central government every reason to meddle in the affairs of states. Likewise, political entrepreneurs at the state and county levels are exploiting some of the provisions in the TC and are continually lobbying for the removal of state and county officials and making it difficult for the governors, county authorities and even the President to govern. This seems to have created a sense of weariness about the direction of the country, so the South Sudanese, both in formal and informal forums, are constantly debating the system of government that the country needs. Fittingly now, since the permanent constitution is being reviewed and is being debated, it is essential to place the question on the system of government at the center of this discussion.

This debate is necessary because throughout the years of liberation struggle, the dream of many South Sudanese had ever been self-determination or self-rule. The SPLM, the champion of South Sudan's independence, resolutely led this mission, culminating in the declaration of independence in July 2011. Its vision of taking towns to the people was practically predicated on the idea of popular participation and equitable provision of essential basic services to all the citizens of South Sudan. Translating this vision into practical policy instrument, the SPLM postulated a five-layered government that emanates from the people at various levels: national, state, county, payam and boma. In essence, the SPLM was responding to people's urge to establish a federal system. This vision was readily accepted and enshrined in the Interim Constitution of Southern Sudan and for the first time ever, the people of South Sudan had a government that was made in their image and reflected their diversity and aspirations. This euphoria and sense of inclusivity carried over to the 2010 elections and the referendum in which South Sudanese from all walks of life overwhelmingly participated with unprecedented resolute to define their future. The referendum results unquestionably speak volumes about the aspirations and expectations of the masses in South Sudan.

The six years of the Interim Period gave both the government and the people of South Sudan an opportunity to learn so much about self-governance and there was yet another opportunity to reset and start afresh with the declaration of independence. Despondently, the incorrigible elites instead, fed on people's anxiety and fears and drafted a constitution that ensured their grip on power, backtracking on the promises of federalism and

decentralization and by extension, dimmed the lights of democracy. This is what has renewed the debate on the question of governance in South Sudan, which is a popular desire aimed at strengthening and advancing democracy and self-rule in the country.

Alongside the alterations in the Transitional Constitution as alluded to above, deliberations on the question of governance are necessary because South Sudan inherited a vestigial federal system from the old Sudan and after independence, it needs to be revisited and contextualized to meet the needs and aspirations of the South Sudanese people. The debate is also necessitated by a latent apprehension among some in the government to treat or call the current system in South Sudan by its correct name—federal system—at least as it appears on the surface. Adding a sense of urgency to this quest is the recent call by the three Greater Equatoria states for federal democratic system of governance in South Sudan, which suggests that the current system is not on a par with people’s expectations; it is distortive, with a central government sorely overreaching. So where are we and where should we go?

The Current System

South Sudan has a decentralized system of government, which is a hybrid taking characteristics of both unitary and federal systems. Although decentralization, as laid out in Article 47 of the Transitional Constitution¹, does characterize to a larger degree the system of governance in South Sudan, still it is a misleading characterization. Properly understood, decentralization is a feature that characterizes both the unitary and federal systems of governance. The existing structure in South Sudan is a fusion of the SPLM vision and what was inherited from the old Sudan. This arrangement was meant to be temporary and it was expected after independence that South Sudan was going to shift to a full federal system of governance. To the contrary, what has emerged is a departure from the path towards a full federal democracy to a quasi-federal democracy. After the successful conduct of general elections in 2010 and the referendum in 2011, it was hoped that the new independent state would build on to this democratic foundation to strengthen federal democracy. It was also popularly anticipated that the declaration of independence and the Transitional Constitution would serve as turning points to right all the institutional missteps and ineptitude of the interim period. Regrettably, the Transitional Constitution of South Sudan took a wrong turn and was used to solidify the same old mistakes and it became actually elites’ instrument to capture the state.

In the new constitution, South Sudan now has a chance to choose whether it should embrace a federal democracy or a unitary system. If it decides on federalism, it is a system of government under which sovereignty and authority are shared across different levels, for example, among central, state, and local governments. The federal constitution distinctively defines the powers and responsibilities of each level of government. As such, the power at both the state and local government levels is not delegated by the central government; it is inherently guaranteed by the constitution.

On the contrary, if South Sudan chooses a unitary system, it is a system whereby sovereignty, power, and authority exclusively belong in the domain of the central

government. The central government can only delegate powers to the lower levels of government for ease of administration. In proof of which, the central authority can rescind or take back any power it delegates to the lower levels, if it so chooses. In our case, it may actually be cheaper as there would be no need for state ministers, legislative assembly, or the judiciary.

The two systems are not really different when it comes to the concept of decentralization. Decentralization is just a matter of public administration arrangement rather than a constitutional one and it can happen in both systems. The stark difference between the two systems is the question of whether sovereignty and power are kept at the center or shared with subnational governments. The current practice in South Sudan falls far short of measuring up to a true federal democratic system. It is also difficult to describe it as a unitary system because the constitution allotted some powers exclusively to the states and the central government. It may have been purposely designed this way, or maybe it is just federalism haphazardly conceived.

The Flaws of this System

In a rush to produce a new constitution on the eve of the country's independence, the Transitional Constitution was hastily drafted and the parliament almost under duress was made to pass it with controversial articles that shook the foundations of the federal system of governance. Article 101 (r and s) for instance, was interleaved into the TC to guarantee the meddling of the central government in the affairs of the state governments. Under this perfunctory arrangement, the president can remove duly elected governors from office and can dissolve elected state legislatures. A perfect example is the recent unseating of the Lakes State Governor by presidential decree, a decision that is antithetical to the principles of federal democracy. Above and beyond destabilizing the federal principles, the article alienates the citizens as it undoubtedly invalidates their voices and by extension, shakes their confidence in the government.

The same is true for Article 162 (1 and 2) of the TC, which mandates the establishment of state government organs to exercise only legislative and executive powers and no judicial authority. The judiciary, for unexplained reasons, is centralized. This clearly shows that the powers belong to the center and the structure of the state governments is a gift of the center to the states—a practice that contravenes federal principles. As a result, many legal battles are being fought at the state levels without legal recourse. One prominent example is the current political crisis in Northern Bahr el Ghazal State (NBGS). The crisis started when the Governor by an executive order, sacked the Speaker of the Assembly. For reasons unknown to the public, the case was taken to the Council of States that recommended the President's intervention. Acting on this recommendation, the President instructed the NBGS Governor to reinstate the Speaker and six other MPs. This move seems to have been met with fierce resistance and has thrown the state in serious political predicament. At the time of writing this paper, NBGS MPs are calling for the President to dissolve the Assembly and end the political stalemate between the opponents of the former Speaker (now reinstated) and his supporters.

The purpose of the judiciary, both at the national and local levels, is to handle constitutional or legal disputes in various levels and jurisdictions. Unfortunately, the states do not exercise judicial powers, so the executive both at the states and in the center have decided to have a heavy hand in such affairs, critically putting the country's justice system at risk. It is questionable whether a two-branched state government can govern effectively. Good governance is hinged on a proper system of checks and balances, which is the reason any democratic government must have the three branches.

The states are not exempt from this digression frenzy on federalism and decentralization. While the Local Government Act (2009) stipulates that local government leaders should be elected, the state governors continue to appoint county authorities and remove them at will. It is also the states that hire employees of the counties such as the directors, accountants and payam and boma administrators. Treating counties as mere appendages of the state governments decapitates them and creates dependency—an act that defeats the popular participation vision. Although not plausibly substantiated, multiple sources alleged that commissioners regularly pay tributes to governors in order to keep their jobs, suggesting that bribery buys power in the counties. Self-government is the idea that people at a particular level of government or jurisdiction determine how they want to be governed and who governs them by exercising their citizenship rights through voting and participatory decision-making processes. Continuing to choose and impose leaders on the masses is a great contradiction to and betrayal of South Sudanese revolutionary ideals.

The TC places the states and counties in crisis. Politics at the states level has been disruptive and chaotic since the dawn of independence. There is enough evidence to suggest that Article 101 (r and s) lies at the root of political crises in the states. One of these crises was in Eastern Equatoria where the governor was accused of associating with militia, a case that was later dismissed as having been a politically motivated charge. A case could also be made against political entrepreneurs to have contributed to the recent crisis in Western Bahr El Ghazal, leading to the death of civilians and damaging social relations and cohesion among ethnic communities in the state. In September 2011, just two months after independence, 11 charges were brought against the Governor of Warrap, including her alleged failure to maintain security in the state. The impeachment process was halted when authorities in Juba allegedly intervened. In January this year, the President actually used the provisions of Article 101 of the TC to sack the Governor of Lakes State. The factors that led to the firing of an elected governor were not disclosed, but politics may have been at play. As recently as this month, the people of Northern Bahr El Ghazal State have expressed their dissatisfaction with the current governor and call for his removal from office. All these stories collectively show that there is a developing crisis at the state levels and attributable to the TC provision. What is driving this constitutional crisis?

There are seven reasons we believe are driving this departure from federalism: Fear of secession or disintegration, power of the elites, creation of the states, policy shift within the SPLM, institutional weaknesses in the states, sources of revenue and Khartoum 'aftereffect' (hangover).

Fear of Secession and Growing Influence of Governors

There is fear within the central government that state governments and some governors in particular, are becoming too powerful and influential that they pose a potential threat to national unity, stability and the political establishment at the center. To minimize the influence and rise of these personalities, the central government had to find a way in the TC to keep them at arms' length. The political establishment in the center is also concerned about some purported personalities in some states that harbor secession tendencies. No government in its right conscience would voluntarily allow the country to disintegrate. To render this possibility fruitless, those who believe in this theory are calling for the centralization of the government (unitary) in order to consolidate national unity. Though this is politically risky because states cannot easily disband, a constitutional ploy that undercuts the federal arrangements without dissolution of the states had to be deployed. This is precisely what articles 101 (r and s) and 162 of the TC are there to do. Doing so allows the center to keep its strong grip on power and watchful eyes over the states. The problem with this political policing is that by taking powers away from the states, one is actually giving a platform to the so-called secessionists. They can now claim to be fighting for the rights of their states citing the concentration of power at the center as evidence—a tactic South Sudanese successfully used against Khartoum.

Elite Forces Pulling Power to the Center

Second, by sheer power of the central government as provided for in the TC, there are perhaps inadvertent elite forces at the center with intrinsic wincing propensities that are concentrating power at the center as states lack equivalent centrifugal forces to resist such a recoiling pressure. In other words, the central government is controlled by powerful elites predisposed to pull power back to the center from the states and the states lack countervailing forces to resist such a pull towards the center. Evidently, the deafening silence of states during the drafting and adoption of the TC and subsequent actions of the central government meddling in the states' affairs only serves to corroborate this point. This imbalance of power between the states and the center is probably a product of the states' creation process and the sources of revenue. But the whole affair is detrimental to stability and the growth of democracy in South Sudan.

How States Were Created

The states in South Sudan were created by the central government. In most federal democracies, states pre-exist as independent entities before they join in a union under federal arrangements. This process enables states to retain significant autonomy and wield the power to resist any encroachment by the federal government. They act and behave as equal to the federal government. In South Sudan, however, states were inherited from the old Sudan, after having been created as a kind of hollow political show by one of the world's most oppressive governments. This act of the center creating the states is the source of an unequal power balance between the center and the states, with the whole authority tilting in favor of the central government. Consequently, the central

government considers the sharing of power with states as a charitable act, making the center both a giver and a taker of such powers so given to the states. Regardless of the model of creation, the principle is the same: the states should be independent of the center.

Sources of Revenue

Where and how the central government gets its revenue affects how it treats and relates to its citizens, it seems. Governments that seem to rely heavily on tax money tend to be accountable to citizens and are most likely to adopt democratic systems to manage the state affairs. Research shows rent-seeking states that are endowed with natural resources such as oil tend to be autocratic and unaccountable and have tendencies to concentrate power at the centerⁱⁱⁱ. South Sudan is unfortunately an oil dependent state. Before its shutdown, oil provided 98 percent of South Sudan's revenues. As such, the recession of democracy during this transitional period may be related to the central government getting its large share of revenue directly from the oil sales. Consequently, because it transfers money to states, the central government assumes the role of a giver and the states, by virtue of this relationship, become subservient to it. To guard against this malfeasance, oil money should be appropriated in a manner that does not leave states at the mercy of the center.

Policy Shift and Internal Woes in the SPLM

The 2010 general elections, particularly what happened during the SPLM congresses, were indicative of the ideological or political shifts within the party. The Political Bureau, the highest decision-making body of the ruling party, in a move that bewildered its members and supporters, disregarded duly nominated party flag bearers in state congresses and handpicked candidates of its choice. This led to a widespread discontent among the citizens and politicians who felt abandoned or rejected by the party. Though the same party championed all these democratic aspirations to which all the citizens have subscribed, it now seems to have turned its back on the very principles it once espoused. This, the paper argues, unwisely sets the precedent for renegeing of the government on democracy and could ultimately lead to an intractable concentration of power at the center, the Khartoum model of misrule that is all too familiar to many South Sudanese.

Lack of Capacity at State and Local Levels

It is no secret, states and local governments in South Sudan lack the capacity to govern and fulfill their constitutional mandates, though the same could be said about the central government. Lack of capacity at the state and local government levels is multifaceted. Primarily, states lack sufficient human resource capacity to manage a well-oiled bureaucratic system. This, of course, results from the history of South Sudan where the central government in Khartoum denied capacity strengthening opportunities to South Sudanese. Consequently, South Sudan inherited a large percentage of the population without any formal education. Likewise, decades of marginalization produced very few South Sudanese civil servants, as government jobs were reserved for northern elites. There was virtually no government at the local levels, hence, no cumulative experience in

this area. After independence, those who took up government jobs at the states and local levels had little experience in government. For true federal system to take hold, these levels of government must be constitutionally empowered, sufficiently staffed, and resourced, all to ensure inclusive governance in South Sudan.

Khartoum Aftereffect (Hangover)

Lastly, but not least, the challenge to people's democratic aspirations and the backtracking on federalism has something to do with "Khartoum aftereffect." In all honesty, South Sudan by a large measure is a product of Khartoum. Almost all the elites came through Sudanese institutions of learning. Although they did not necessarily embrace the practices of successive regimes in Khartoum, they have subconsciously internalized some of these practices, unfortunately. The civil servants and bureaucrats managing our public institutions brought their little institutional knowledge with them from Khartoum. Majority of government structures currently in place were either inherited or inspired by Khartoum. Psychologists and sociologists suggest that children who grow up under abusive parents are likely to become abusive as adults; alternatively, an oppressed is likely to be an oppressor. This is not any different with countries. Countries breaking away from rogue states may not transfer the whole culture, but are certain to retain some of such behaviors. The point is, when our politicians are faced with serious decisions, they are most likely to reference pages from Khartoum's discredited books and so it is not surprising that the state is beginning to look more and more like Khartoum.

For the purposes of illustration, the philosophy in Khartoum is that when the government is challenged politically, the response has always been the use of disproportionate force to suppress dissent. When freedom is demanded, the response is to give more and more powers to the security sector to squeeze the air out of the few vocal voices. When there is a call for self-governance and power sharing, the response is usually tight grip on power by the center, which is controlled by minority cliques. When there is a call for constitutional overhaul, the response is usually the elites getting together to massage their egos and settle on a document that guarantees a piece of cake for each of them. Efforts must be exerted to avoid the emergence of such practices in this newfound country.

Where Do We Go from Here?

South Sudan has no choice but to embrace full federal democratic system of governance. There are many reasons to choose federalism over the unitary system. First, our ethnic diversity makes the federal system the only choice because it allows wider participation of citizens at all levels of government. Second, it is what the South Sudanese fought for against Khartoum—the freedom to self-government and gaining sound participation in the state's affairs by influencing policy-making and decision-making processes. Third, it guarantees equitable distribution of power and resources and this may be the cheapest system to run socially. Fourth, it brings the government closer to the people—the government is no longer seen as a foreign looting force, the government emanates from the people and it exists to ensure that their interests and needs are catered for. Fifth, it

speeds up both human and economic development as each political community decides its own developmental priorities and generates resource to meet those needs. Finally, federal democratic system leads to good governance because each level is accountable to the people and decisions are made openly. To build a strong federal democracy in South Sudan, the following recommendations are provided:

Recommendations

- South Sudan must commit itself to federal democratic system of government in the Permanent Constitution. Hence, Article 101 (r and s) must be repealed and states should enjoy sufficient amount of autonomy from the center. This is a popular demand that should be nurtured and respected. If fully embraced, this system will help solidify national unity, accommodate ethnic communities, and improve governance overall.
- To achieve the true meaning of self-government, counties and payams should be allowed to conduct elections like the states. Local government elections can be conducted at the same time as general elections, or they can be separated. Self-government empowers citizens to participate and hold their government to account, which builds their confidence in the system and the government.
- To put the states at par with the central government as per federal arrangements, the oil revenues should be structured and shared in a manner that reflects federal power arrangements. This means that oil revenues should be split between the states and central government and both levels must use oil resources only for development and levy taxes to pay for running costs of the government such as salaries.
- To phase out the influence of Khartoum over the South Sudanese institutions, education must be reformed and focused on state and nation building and produce potential civil servants and bureaucrats that embrace freedom and participation of all in South Sudan.
- To improve capacity at the states and local levels, the central government must transfer all services to the states and counties. Increase salaries at the local levels to attract skilled personnel and train more people to carry out local government functions.

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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ⁱ South Sudan Transitional Constitution, 2011

ⁱⁱ Collier, Paul. The Political Economy of Natural Resources. Social research Vol. 77: No 4: page 114-115: Winter 2010. Accessed on March 24, 2013 at users.ox.ac.uk/.../PoliticalEconomyofNaturalResources-SocialResearchArticle.pdf