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IFF Working Paper Online No 21

South Sudan Governance: A Call for Federalism to Address

Marginalization and Prevent Armed Conflict Recurrence

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March 2017

Citation: Laku, J., South Sudan Governance: A Call for Federalism to Address, Marginalization and Prevent Armed Conflict Recurrence, IFF Working Paper Online No 21, Fribourg, March 2017.
<https://doi.org/10.51363/unifr.diff.2017.21>

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DOI: <https://doi.org/10.51363/unifr.diff.2017.21>

ISSN: 2813-5261 (Online)

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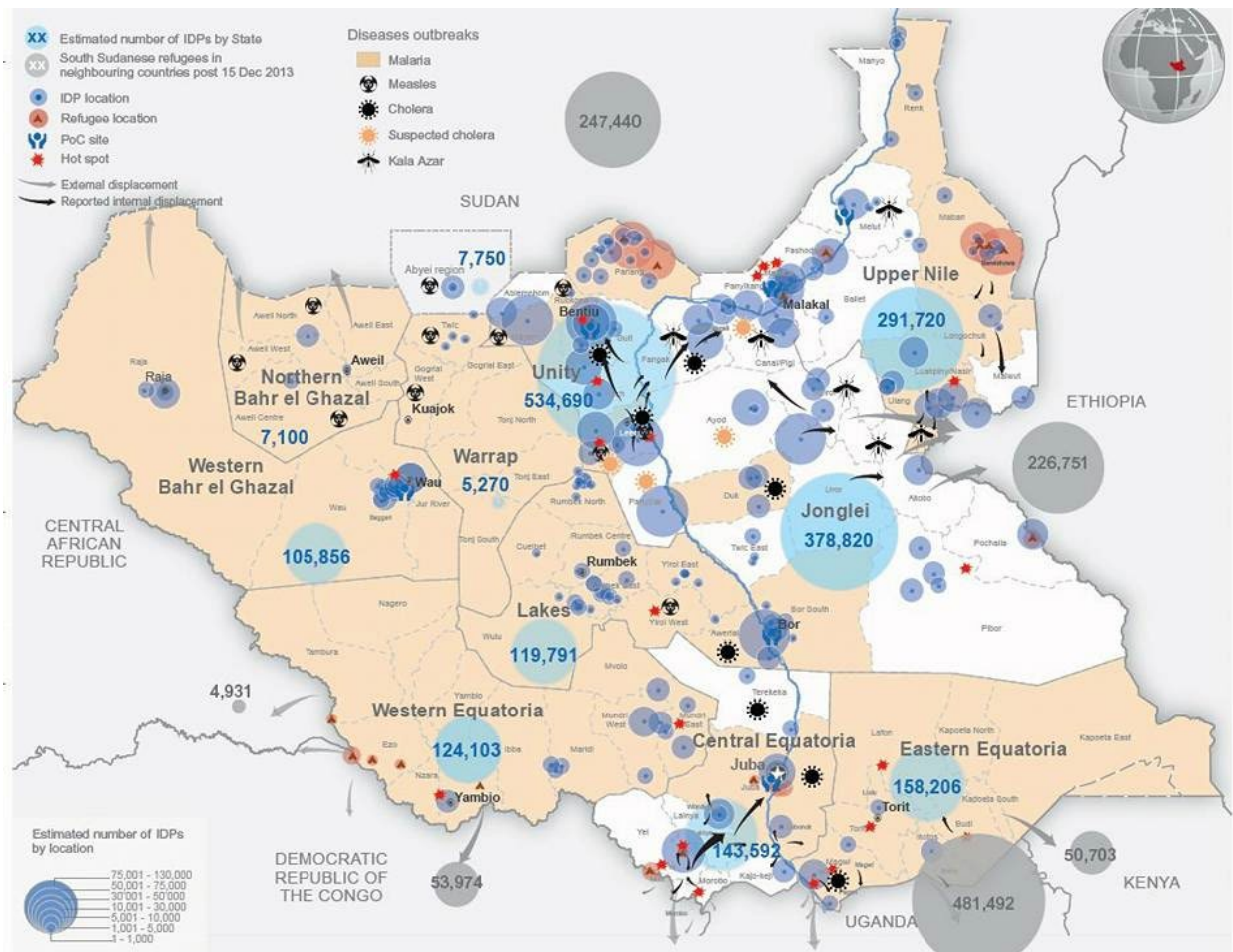
Abstract

This paper is an attempt to explain why federalism could be a response to governance crises in fragile states such as South Sudan, and Sudan. It aims to discuss the history of the *call for federalism in Sudan and South Sudan*. It argues that If Khartoum leadership had adopted federalism as system of governance right after independence in Sudan, that could have prevented a half a century of civil war between the Arab-North and the Christian South, and consequently the current Darfur and Nuba Mountains ongoing civil wars. These civil wars could have saved lives and the countries' economy. The paper makes the case that the centralized system was instrumental in plunging the newly independent state of South Sudan into the devastating three-years conflict that has displaced 2.4 million people, killed 50,000; and in Sudan it has displaced 6 million, and 2.6 million killed in South, and 300,000 killed in Darfur (De Waal, 2007, p.317) and drove South Sudan and Sudan into dire economic straits. The paper draws federalism benefits that will help move the country forward.

Abbreviations

JCE	Jieng Council of Elders- the newly formed Dinka tribal advisory that offers one sided tribal advice to the President
CPA	Comprehensive Peace Agreement 2005 – the agreement signed between northern and southern Sudan which ended the second civil war
NCP	National Congress Party – the current government of Sudan under al-Bashir; renamed from NIF after 2005
NIF	NIF National Islamic Front – government in Sudan
OCHA	United Nations <i>Office for the Coordination of Humanitarian Affairs</i>
SPLA/M	Sudan People's Liberation Army/ Movement
SPLA/M-IO	Sudan People's Liberation Army/ Movement in Opposition-the current Opposition faction formed under leadership of the Second Vice President

1. South Sudan Map



Source: OCHA

2. Introduction

Immediately after South Sudan became independent in 2011, SPLM/A began to exhibit characteristics that closely mirrored those of NCP based in Khartoum, the capital of its predecessor Sudan. These characteristics are manifested in activities encompassing a multi-faceted marginalization scheme, an exclusion policy, and consistently tribalism peripheral governance.

Marginalization, exclusion policy, and tribalism peripheral governance defined NCP operations under the government of Omar Al-Bashir. That government of Sudan, along with these three defining characteristics served as an incubator for armed rebellions in the peripheries of the country, which government was also instrumental in precipitating the secession of South Sudan in 2011. This paper compares how SPLM/A governs South Sudan to the way NCP governed in Sudan and argues that the former is a replica of the latter.

As did NCP before it, with wholesale abuses of power, SPLM/A displayed two fundamentally damaging factors of marginalization, and power governance, with the latter combining both an exclusion policy and bad governance.

2.1 Marginalization

Based on party affiliations, only SPLM cadres or those connected to them have secured jobs, contracts, and access to financial benefits. Similarly, in Sudan only Muslim Brothers affiliated to NCP could secure employment, contracts, and loans. Marginalization in South Sudan follows lines of ethnicity, favouring the Dinka and Nuer two ethnicities. For NCP, it was the Shaygiya and Jaaliyin. All top level officials in SPLM are Dinka or Nuer, with the top ranking officer corps being predominantly Dinka (*a dinkocracy, see Alhaj Paul*)¹. Heads of all parastatals and 70 percent of the diplomatic corps are from Warrap, a Dinka state. During the decolonization period there were over 800 public service positions held by Britons that were scheduled to be filled by Sudanese, and indigenes of southern Sudan received only six of these, with the remainder going to the northerners (Poggo, 2009). The northern political leadership had excluded southerners under the pretext that they did not participate in the Sudan's liberation from the British, and a similar argument was made by the Juba regime claiming that the Dinka and Nuer, alone, had liberated South Sudan from the north; therefore, these two ethnicities had the right to monopolize and dominate all public services under a Dinkocracy project.

The objective of the Dinkocracy project under SPLM/A is to create one ethnic hegemony in the South, as the Arabization and Islamization project had established Arab domination in Sudan. A core goal of the Dinkocracy project is to have political power over 64 ethnic groups so as to control resources and tax revenues.

Distribution of resources is concentrated around close cronies of the leadership and those areas of the country from which top officials originate. NCP in Sudan had concentrated all governance resources and benefits in and around Khartoum while periphery areas suffered. Now, in South Sudan, tax collections, oil revenues, and foreign currency management at the Central Bank are all controlled by the President's associates and senior government officials who can manipulate foreign currency exchange rates, and transfer pilfered foreign currencies to neighboring countries (Enough Project 2016). Currency devaluation and the growth of a currency black market have led to the benefit of only a select few individuals at the expense of the ordinary citizens.

2.2 Power governance

NCP and Sudan's former regimes had always centralized political, military and administrative powers in Khartoum in the hands of a few select families, such as those led by Sadiq Al-Mahdi and Osman Al-Mirghani. As earlier stated, the current NCP centre of power is dominated by the Shaygiya and the Jaaliyin. Other Sudanese 571 ethnic groups, in the meantime, were excluded from the administration of country affairs and that exclusion resulted in the first civil war in Sudan and the formation of SPLM/A. The SPLM/A vision and previous Southern movements were justice and equali-

ty for all and not for a select few, power and resources sharing, inclusion and respect, liberty and dignity under federal democratic state.

However, this vision was dashed and never realized throughout CPA and Post-CPA, the concentration of political, military and administrative powers always rested in the hands of one or few corrupt ethnic group leaders (either Salva Kiir or Riek Macher). The absence of inclusiveness in the administration of South Sudan suggests that the current SPLM/A leadership transferred Khartoum's exclusionary policies to Juba during CPA and in the post-Independence. It was very clear to most on-lookers aware of this history, that the 2013 war resulted from an absence of equitable resource allocation, the continued SPLM/A policy of marginalization and the exclusion of the other 64 ethnic groups from the centre of political power in Juba, and resulting control of natural resources, tax and oil revenues. This struggle over inequity had the Nuer and Dinka on one side, along with scores of illiterate bush SPLA Generals – each of whom had their own loyal ethnic militias numbering from the hundreds to the thousands; and illiterate educated elites alongside all the other ethnicities of South, on the other. Added to this mix is a lack of respect for institutions, rule of law and the constitution, and a leader acting with a very high degree of impunity. The President declined to follow the constitution which stated that the firing of an elected state governor would have the President appoint a caretaker governor who called for by-elections within 60-days. The President sacked state governors in January, 2013 and July, 2013, but then both he never called for by-elections within 60 days, which is contrary to the constitution (the African Union Commission's Report, 2016).

3. Statement of the Problem

The Independence of South Sudan in 2011 was accompanied by both great joy and great expectations amongst South Sudanese and their friends in the international community. Thereafter, SPLM embarked on activities similar to those conducted by NCP. Firstly, a Constitution was written that had no term limits for the president and gave the presidency immense powers. *Article 101 of the Transitional Constitution* provide the president the Right to fire elected governors for vaguely defined "national security" reasons; appoint governors, ambassadors, attorney general; and call for a state of emergency, suspend parliamentary activities, and promote both soldiers and civilians to the rank of major general, regardless of their degree or lack of basic military training (Sudan Tribune, Sept 21th, 2014). It is little wonder, then, that the most contentious bad governance issue in post-independence South was a demand for true federalism by the nascent political parties; a provision which had been unceremoniously deleted from the first draft of South Sudan's Constitution (Poggo, 2009). As with Khartoum's rejection of federalism before it, SPLM first blocked all discussion of federalism in July, 2011 parliamentary debate and now proposes that SPLM/IO agree to suspend the federalism question during implementation of the *2015 Agreement on the Resolution of the Conflict in South Sudan*. *Article 2 of the 1998 Constitution of Sudan* states that the nation be governed by a *federal system*; and have *CPA Interim Constitution* of one country, and two distinct systems of governance for north and south respectively. The *Interim Constitution of 2005* and *1998 Constitution* thereby enshrine federalism de jure.

4. The Research Question

The paper examines the “project” of South Sudan’s state formation which was built on a party and ethnic basis. Therefore, question is how can the nation best and most conclusively address its many political problems and bad governance challenges and can federalism resolve them?

5. Analytical Framework

In order to advance my hypothesis, I adopted “Political Theory of Covenant” Theoretical Approach to Federalism, which is the most appropriate theoretical framework to advance this thesis. Elazar defines Federalism as *non-centralized power-sharing*, emphasizing the combination of *self-rule plus shared rule*. *Non-centralized power* means diffused of power that it could not be ‘legitimately centralized or concentrated without breaking the structure and spirit of the constitution’ (Elazar, 1979). *Self-rule* suggests a sharp focus upon autonomy, separateness, independence, rulemaking, and the capacity to govern a political community, while *shared rule* implies *power-sharing*, intergovernmental relations (*both vertical and horizontal*) between multi-level governments in the same community or state together with the recognition of the need to forge a general government or political authority for common interests. In this definition, Elazar distinguishes between ‘*self-rule/shared rule relationships*’ and ‘intergovernmental relations’, the latter having to do with ‘particular ways and means of operationalizing a system of government’ while the focus of the former was ‘a prior and more comprehensive concept to which intergovernmental relations is *subsidiary*’ (Burgess, 2012,p.5). The characteristics of federalism of non-centralized involves powers of government within them are diffused among many centers, whose existence and authority is guaranteed by the general constitution, rather than being concentrated in a *single centre*...contractual *non-centralization*, the structured dispersion of powers among many centres whose legitimate authority is *constitutionally guaranteed*, is the key to the widespread and entrenched *diffusion of power* and *political culture* that remain the principles characteristics of argument for *federal democracy* (Elazar,1979).

Elazar traces the origins of federalism back to *Biblical* times of Israelite tribes and the early Judaea-Christian era. He argued that federal theology emerged in the sixteenth century in four separate places in Switzerland (Zurich, Basel, Berne, and Geneva), where confederal political arrangements had been dominant since the late thirteenth century (Elazar, 1980). The federal theology is derived from the Latin word “foedus” which means “covenant.” The covenant idea stimulated the renewed political application of the first expression by political theologians and then by political philosophers such as Althusius and others such as Hobbes, Locke, and Spinoza in fourteenth century (Elazar, 1980). Elazar develops his well-known theory based on the *covenantal* idea which was the foundation of federalism. He believed that political science scholars had identified three basic ways in which polities had come into existence: Conquest (force); organic development (contingency); and covenant (choice) (Elazar, 1980, p.13).

His central argument is around the *covenant* which is associated with *compacts* and *contracts*, both *compacts* and *contracts* are in a sense derived from the *covenant*, and used interchangeably. Elazar argues that both *covenants* and *compacts* differ from *contracts* in that they are constitutional or public in character and contracts are private. As such, *covenantal* or *compactual* obligation is broadly

reciprocal. Those bound by one or the other are obligated to respond to one another beyond the letter of the law rather than to limit their obligations to the narrowest contractual requirements. *Covenant* and *compacts* are inherently designed to be flexible in certain respect as well as *firm* in others (Elazar, 1980, p.9). As expressions of private law, contracts tend to be interpreted as narrowly as possible so as to limit the obligation of the contracting parties to what is explicitly mandated by the contract itself. Elazar reasoned that a covenant differs from a compact in that its morally binding dimension takes precedence over its legal dimension. In its heart of heart, a covenant is an agreement in which a higher moral force, traditionally God, is either a direct party to or guarantor of a particular relationship. Whereas, when the term compact is used, moral force is only indirectly involved. A compact based as it is on mutual pledges rather than guarantees by or before a higher authority, rests more heavily on a legal though still ethical grounding for its politics. In other words, compact is a secular phenomenon. Covenant is also related to constitutionalism. Normally, a covenant precedes a constitution and creates the people or civil society which then proceeds to adopt a constitution of government for itself. Thus, a constitution involves the implementation of a prior covenantal effectuation or translation of a prior covenant into an actual frame or structure of government (Elazar, 1980). For instance, covenant links consent and kinship. In the biblical-covenantal view of marriage, two independent and otherwise unrelated persons consent to become "one flesh" and establish a family. Abraham Lincoln fondly described the union created by that act as "a regular marriage." The partners do not automatically live happily ever after, but they are bound by covenant to struggle toward such an end, a commitment well understood and made explicit by Lincoln during the Civil War (Elazar, 1980). South Sudan can learn much from, and by adopting and honoring, some of these key federal covenant principles.

6. Analysis

The people of South Sudan unanimously chose independence from war-torn Sudan in response to a history of injustice, inequality, the monopolization, centralization of powers and resources in Khartoum at the hands of a Arab political elites. Additional, grievances involved the inseparability of religion and state, and the indiscriminate application of *Islamic Sharia laws* on non-Muslims from the South Nuba Mountains, and Blue Nile. This power centralization led to the first and second Sudanese civil wars, consequently the current Darfur and Nuba Mountains ongoing civil wars and South Sudan's independence in 2011. It festers-on in Sudan, with rebel groups in Darfur fighting for federalism. Adding insult to injury, it remains an open secret that successive Sudanese governments and political parties in Khartoum had dishonoured multiple agreements signed with former rebel movements (Alier, 1999).

The struggle of the southerners in the first and the second civil wars was a struggle for equality, social justice, liberty, and sharing of powers and resources and to create federalism that reflected the values of diversity and inclusiveness in decision-making. The federalism debate; however, goes back to a time before Sudan gained independence from Britain in 1956, as the result of a *Juba conference in 1947* - attended by both local leaders and senior British officials, was strong recommendation for a federal future (Embassy, 2011.p.16). Unfortunately; however, the northern members of Parliament in its first session had deleted the Article on federalism from the first draft of the constitution, leading to the southerners suspecting that the northerners wanted to dominate the south. This

maneuvering, the resulting sentiment and its non-repudiation, led directly to the first Sudanese civil war. Although federalism was dead on paper, the conference had brought southerners together for the first time as a political bloc, encouraging them to see themselves as “Southern Sudanese” united for one purpose, and not as Dinka, Nuer, Zande and Bari.

This unity of the Southerners gave them the strength and determination to fight for federalism in united Sudan, but the common purpose was curtailed with the *1972 Addis Ababa agreement* that gave Southerners regional autonomy with promises of financial assistance from Khartoum, and international aid. Ultimately, the agreement failed to release centralized political power from the hands of the few in Khartoum and federalism as the southern political leadership continued to feel that administrative, economic, military, and political powers still rested in Khartoum, with the country rule under a unitary system.

As a result of this unitary centralized power, a second phase of civil war started in 1983 and ended with the *2005 signing of CPA between SPLM/A, and NCP*. Having missed the opportunity to settle the federalism question, yet again, and avoid a return to conflict with the Nubians and Fur, the second phase of civil war in South and Darfur cost two million and 300,000 lives, respectively.

As though with a twin, Juba like Khartoum, missed the opportunity to implement federalism as a system of governance when it left Sudan. During CPA negotiation process, federalism was the first demand of SPLM/A.

Unfortunately; however, it was thrown out by SPLM/A in the very first session of South Sudan’s Parliament. That first Parliament passed a Transitional Constitution that centralized administrative, executive, economic, military and political powers in the hand of president, led directly to the 2013 war and an outbreak of a long-festering internal conflict.

The civil war that commenced in 2013, still ongoing and the many subsequent and related political crises in South have many causes, but they were ultimately precipitated by a political culture that promoted tribalism as a means of governance, corruption, patronage, nepotism, favoritism, led to successive rebellions, centralized ever more power in the hands of the President and his Dinka Council of Elders (JCE); all at the expense of federalism. The 2013 civil war in South and subsequent inter-tribal violence in Upper Nile and Equatoria states have made it very clear that the way South was ruled by SPLM in a centralized unitary system, is no longer acceptable to the majority of citizens– if indeed it ever was, and that country requires federalism, as was very clearly demanded by Southern Sudanese in 1947, 1955, 1977, 1982, 1992, 2005 and 2011 (Alier, 1999; Deng, 1995; Poggo, 2009; and Wawa, 2005) during a prolonged and overly-bloody period of nation-building.

The success or failure of this nation-building process rests on whether or not SPLM/A will share its power and apply authentic federalism in the makeup of the new nation, being an idea proposed long ago in Juba. During CPA period of semi-autonomy, the Southerners realized that there has been no decentralization of power, and it became stridently clear that SPLM leadership in Juba had absolutely no interest in federalism. SPLM leadership abjectly failed to envision the advantages of federalism in the prevention, management of armed conflict and diversity accommodation, in negation of the need for another civil war, and as an instrument for nation building.

Federalism emerged as an important instrument for building nation states immediately after the Second World War, and during the decolonization era in the Third World (Watts, 1994a:2). As a result, those newly independent countries in Africa and Asia adopted federalism as a system of governance and although with imperfect results in the realm of good governance, federalism² has remained vital in balancing the competing and conflicting demands between unity, and for autonomy by constituent regions and peoples in India, Malaysia, and Nigeria (Rothchild, 1966).

Federalism has some limitations, but it proved to be a good balance-point for good governance after the collapse of the Socialist federations of the USSR, Yugoslavia, and Czechoslovakia; provides consistent political stability in Canada despite Quebec's referendums; and strengthened stability in such multi-ethnic countries as Belgium and Spain. In Africa, Nigeria adopted federalism after almost three years of civil war of 1967-1970, and a system of ethnic federalism in Ethiopia first set-out in 1991 on the collapse of a deadly military dictatorship was formalized into a Constitution in 1995 (Alem, 2003). In light of the foregoing examples, the chance is strong that ushering-in federalism for Sudan and South Sudan, torn apart by decades of bitter armed conflicts and civil wars (Watts, 1998), would bring economic stability, economic development, and lasting peace. As a further testament to federalism, one must also consider that despite a few disparities or local failings (contrast the Scottish referendum in a unitary U.K., with resource "ethnic nationalism" in Nigeria), the most stable countries by political, economic, and social measures are federal ones.

Federalism; therefore, seems to work because it creates stability, prevents secession, manages conflict, and benefits all, not a few. If federalism fails, it is not because federal system itself is the problem, but rather because there is a lack of compromise (flexibility) from parties in giving their consent to abide by that federalism covenant.

Federalism limitations and failures otherwise occurred whenever a federal arrangement was imposed by the outsiders without any advance consultation with, and the serious internal support of political elites as well as absent of political culture from within. For instance; the Cameroun federation was a device developed by the two colonialist powers of England and France, and it failed to unify the country due to conflict interests of the French and the British (Elazar, 1991, p.263). Likewise, In Ghana and Uganda the colonial power tried to impose a federal solution to accommodate very real ethnic claims which it perceived to be both important and a threat. However, those solutions were rejected by the time of Ghana's independence and immediately aftermath by Kwame Nkrumah who wanted to concentrate power in his own hands, and not disperse it (Elazar, 1991). On the other hand, in the case of Sudan and South Sudan there was strong widespread internal support from constituent ethnic and political units that already had some form of federal political culture and were; therefore, open to additional or enhance federal arrangements to accommodate 573 ethnic groups.

Around the world today, there are some of 3,000 ethnic or tribal groups that are conscious of their respective identities. Of the more than 160 politically "sovereign" states now in existence, the vast majority of these-more than 140 are multiethnic in composition. In addition, more than one-third of those 160 states-58 to be exact, are structured using formal and informal arrangements under federal principles in order to contain or accommodate demands for self-rule or shared rule within their boundaries, or in partnership with other polities across borders (Elazar, 1991, p.25).

Like most of their fellow African nations, South Sudan and Sudan must come to term with *multiple ethnicities* issue. It is an issue that can certainly be accommodated peacefully, but only

through the application of federal principles that will combine kinship (the basis of ethnicity) and consent (the basis of democratic government) into politically-viable, constitutionally-protected arrangements involving both territorial and non-territorial polities (Elazar, 1991, p.26).

The just resolution of issues that are essentially political, ethnicity-based, linguistic and racial is consensual resort to an authentic federalism, as it offers one possible resource for resolving these problems. The very essence of federalism is found in the institutionalization of particular relationships among the participants in political life. Consequently, federalism provides many options for the organization of political authority and power; as long as the proper relations are created as a foundation, a wide variety of political structures can thence be developed that are consistent with those federal principles (Elazar, 1991).

The advantage of federalism is that it attempts to prevent the abuse of power derived from inherent deficiencies in human nature, and wherever possible, direct the results of those deficiencies to useful ends, because federalism has its basis in efforts to deal with the multiple realities of human nature within a firm, constitutional framework (Elazar, 1991, p.298).

Federal systems have worked very successfully and managed ethnic and intercommunal conflicts in countries such as India. In India, the commitment to managing ethnic conflict through federal arrangements involves a constitutionally protected series of diversities (linguistic, religious, and cultural) on a federal and national basis. In addition, Nigeria has used federalism as a successful device for ethnic conflict management as well as for the accommodation and recognition of several intrinsic diversities – linguistic, religious, and cultural. In the Middle East, the one successful federal experiment in the Arab League is the United Arab Emirates (UAE), which is based on a federal principle of share powers, as opposed to the “one strong man” syndrome (Elazar, 1991).

Federalism has; therefore proved itself to be a useful device for accommodating diversity; with the opposite being true, in that most of the resistance to federal solutions has come from those who do not wish to accommodate diversity, but to eliminate it. “Federalizing” involves both the creation and maintenance of unity, and the diffusion of power in the name of diversity, and at the same time. For example, being similar to Sudan, Nigeria is one of the most ethnically diverse countries in Africa, and it has remained strongly committed to federalism as the basis for nation-building and providing opportunities for economic development to the largest beneficiary pool as possible.

Federalism has proved itself to be a very useful mechanism for fostering and filtering economic development opportunities to the grass roots. Due to the existence of federalism, new resources are inevitably spread-out over a larger number of centres. At the very least, the capital of every federated state has some claim on the national resources, and together with the other participants in that federal state, each and every one of these capitals works to prevent the single metropolis syndrome. As a result, more people have the opportunity to benefit from central and regional economic development efforts, liberty, and the rising tide of prosperity and GDP that lifts all ships of the state, within the state, and subject to the state (Elazar, 1991).

Another positive characteristic of federalism is its propensity for the enhancement of liberty or freedoms: whether in the case of India, which has clear democratic aspirations, or in the cases of Malaysia and the UAE which in these latter cases downplay the classic federalism in seeking to preserve the power and seats of the current rulers of their several constituent states with far less of a push for popular freedoms.

It is; therefore, fair to suggest that there is a growing interest in the federalism as an instrument of good governance in managing ethnically diverse countries, preventing civil wars, and stemming the recurrence of armed conflicts. Watts had argued that in ethnically divided countries such as the Sudans, the hope is that political recognition of cultural and ethnic pluralism through federalism will reduce ethnic tensions and conflicts. For this reason, federalism has often been presented as a compromise between ethnic nationalism – which, like nationalism in its classical form advocates congruence between nation and state (Gellner 1983: 1; Hobswam 1990: 9), and assimilationist centralization by dominant ethnic groups in multiethnic countries. Others such as Brancati, remain in agreement that federalism simply decreases ethnic conflict and prevents secessionism. Federalism was and remains a response to deep-rooted national diversity in several countries, and “may well” have contributed significantly to their sustained existence as single and undivided entities.

It is my personal call for South Sudan to adopt federalism. This federalism should be accompanied by strong commitments to consociational governance mechanisms to ensure: (i) the inclusive and effective representation of the 66 ethnic groups of South Sudan in its core executive institutions; (ii) the proportionate representation of these ethnic group in public bureaucracies and legal institutions; (iii) national autonomy in all cultural matters deemed of profound cultural significance such as language and education; and (iv) protection of the interests of minority ethnic groups against majoritarian rule. Consociational practices remain relatively undisputed in the cases of Canada, Switzerland, and Belgium (Lijphart 1981; Noel 1993; Steiner 1989; Hooghe 1993; Watts, 1999: 88), and Lijphart has recently claimed that India had effective consociational traits during its most stable period under Nehru (Lijphart 1996). Since the decline of the Congress party; however, India has been governed by a broad multi-party coalition representing its diversity. I favour a legal and constitutional foundation over the consociational as the most appropriate path for South Sudan in a call for implementation of federalism that is long overdue, and I am confident that federalism can adequately address the governance challenges and political problems South Sudan, Sudan, and elsewhere.

7. Conclusion

In conclusion, the consequence of centralization of power in Juba has been successive new rebellions in Equatoria. Federalism; however, if sincerely emplaced, widely-adopted, credibly maintained, offers the best way of preventing and managing the recurrence of armed conflicts. It is critically important to make this call for federalism as a sincere attempt to release South Sudan from its cycles of violence.

Endnote:

1. Dinkocracy is defined as a system of rule that can be found in South Sudan based on tribalism whereby parliament is either wholly or partially filled by appointment of corrupt members. Institutions and structures that are presently in place are just for face saving purpose. In this system consultation and citizen's rights are not respect. Dinkocracy cannot give birth to democracy because it is the antithesis of democracy. For this reason dinkocracy can only give birth to dinkocracy and this is what we have here in South Sudan.
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