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## Federalism in the 2015 and 2018 Peace Agreements in South Sudan – But What Kind of Federalism?

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## Abstract

The last six decades of the history of what was formerly the Southern Sudan region, now officially called the Republic of South Sudan, have been characterised by conflicts and the concomitant displacement of people and influx of refugees into neighbouring countries and beyond. The Southern Sudan region was a battleground for multiple rounds of civil war. A federal or federal-type arrangement was proposed as the appropriate institutional response for dealing with the civil war, but rebuffed by those at the helm of the political affairs of Sudan. South Sudan became an independent state following an internationally supervised referendum on 11 July 2011. However, barely less than two years after the declaration of independence, South Sudan was once again embroiled in civil war. One of the fundamental causes was the split within the governing SPLM, the ruling party of South Sudan, over what kind of system of governance South Sudan should follow. The civil war has for now ceased, thanks to several rounds of peace talks and extremely shaky peace agreements, which were signed in 2015 and 2018 under the auspices of the Inter-Governmental Authority on Development (IGAD). In the process of peace negotiation, the establishment of a federal system in South Sudan has again emerged as an important political and constitutional agenda. This article explores the options on the table regarding the institutional design of the federal system that South Sudan wants and the prospects of the proposed federal system in resolving the conflict in South Sudan.

## Key-words

South Sudan, civil war, federalism, ethnicity, peace agreements



## 1. Introduction

The last six decades of the history of what was formerly the Southern Sudan region, now officially called the Republic of South Sudan, were characterised by conflicts, the concomitant displacement of people, and an influx of refugees into neighbouring countries and beyond. The Southern Sudan region was a battleground in two rounds of civil war between the government of Sudan and two armed movements (the Anyanya Movement and later the South Sudan Liberation Movement/Army (SPLM/A)), until South Sudan became an independent state in July 2011. The principal cause of the two civil wars was the economic and political marginalisation of and racial and religious discrimination against black South Sudanese by the Arabised Sudanese-dominated government of Sudan.<sup>I</sup>

A federal or federal-type of arrangement was proposed as the appropriate institutional response for dealing with the civil war, but rebuffed by those at the helm of the political affairs of Sudan.<sup>II</sup> The northern authorities even reneged on several agreements and pledges to grant regional autonomy to the Southern Sudan region.<sup>III</sup> The unwillingness of the government of Sudan to grant the Southern Sudan region even a modicum of autonomy led to, as mentioned above, two rounds of civil war, which resulted in the secession of the region from Sudan and the declaration of an independent South Sudan as the result of an internationally supervised referendum on 11 July 2011. However, barely two years after the declaration of independence, South Sudan was once again embroiled in civil war. One of the fundamental causes was the split within the governing SPLM party over what kind of system of governance South Sudan should follow.

After the signing of the peace agreement in 2015, known as the Agreement for the Resolution of Conflict in the Republic of South Sudan (RACSS), the demand for a federal system has now re-emerged following, and as a way out of, the conflicts in the country that began in December 2013. The principal parties to the civil war are Salva Kiir (the president of the country) and his government, and the SPLM in opposition (SPLM-IO), which is led by Riek Machar, the former deputy president of South Sudan. Other smaller groups – which oppose both the government and the SPLM-IO – are also involved.



The causes of the conflict are numerous and complex, and can be linked to elite competition for access to power and resources and to the country's violent history of civil war.<sup>IV</sup> The immediate cause of the conflict was, however, linked to the struggle of Kiir and Machar for the chairmanship of the SPLM. This led to the sacking of Machar and the entire cabinet by Kiir under the pretext of foiling a coup which the former had supposedly plotted.<sup>V</sup> The conflict initially had little to do with ethnicity or federalism. It however took on the characteristics of an inter-ethnic conflict at a later stage, especially after Dinka militias attacked Nuer civilians, and Kiir (a Dinka) and Machar (a Nuer) solicited support from their respective ethnic communities. This then led to a wider conflict between the Dinka and Nuer communities.<sup>VI</sup>

The civil war has for now ceased, thanks to several rounds of peace talks leading to extremely shaky peace agreements, which were signed in 2015 and 2018 under the auspices of the Inter-Governmental Authority on Development (IGAD).<sup>VII</sup> In the process of peace negotiation, the establishment of a federal system in South Sudan has again emerged as an important political and constitutional agenda. In the light of the above, this article raises two questions:

- What are the options on the table regarding the institutional design of the federal system that South Sudan wants?
- What are the prospects of the proposed federal system resolving the conflict in South Sudan?

The article begins with a brief discussion of the debate on federalism as an institutional mechanism for resolving ethnic-based conflicts. This is followed by an introduction to South Sudan and a discussion of the place of federalism in the political discourse of the country. The article then highlights alternative federal designs being proposed by the contesting groups and examines whether they have taken the ethnic factor into account, and if so, how. Finally, it reflects on the prospects of the envisioned federal system contributing to a resolution of the conflict.



## 2. Federalism and prevention or resolution of conflicts in a multi-ethnic society

Let's Ethnic-based conflicts often arise when a state fails to properly manage the ethno-cultural diversity of its people. Whether and how to deal with diversity has been a major topic of political and scholarly debate for decades. States initially sought to deal with ethnic diversity by eliminating all forms of difference and creating a common national identity. This was especially the case after the birth of the 'nation-state' in the mid-17<sup>th</sup> century, which led European countries on the quest of nation-building.<sup>VIII</sup> African states also embraced the notion of the nation-state and began implementing a project of nation-building soon after they gained independence from colonial rule. This was underpinned by the belief that diversity of any form was a threat to the very existence of the state.<sup>IX</sup> A demand for the recognition of ethno-cultural diversity was often associated with 'sectarianism, parochialism, narrow-mindedness, and chauvinist bigotry'.<sup>X</sup> States, including independent African states, took various measures to this effect, ranging from imposing the language and region of the majority through a centralised administration and education system, to physically eliminating those having different ethnic or cultural identity.

After the carnage of World War II, which was essentially waged in the name of nation-building, states began reconsidering their stance on ethnic diversity. They implemented various institutional mechanisms ranging from simply recognising the individual equality of members of minority ethno-cultural groups, to restructuring their territories and government institutions to accommodate ethno-cultural minorities. A federal arrangement was among one of the institutions adopted for the purpose of managing diversity.

A federal system principally seeks to balance autonomy with unity. It thus involves the establishment of at least two levels of government, constitutional division of powers and resources between federal and subnational levels of government, and a constitutional scheme for sharing federal institutions by members of the federation. Federal systems are broadly classified into geographic and multi-ethnic, or multi-national.<sup>XI</sup> In the first group are those federations that use federalism for territorial power distribution without considering the territorial management of a people's ethnic and cultural diversity. The US, Australian and the



German federal systems fall in this category. On the other hand, the multi-national federations (also called ethnic or ethno-federal systems), which include Ethiopia, Belgium and Switzerland, are designed with a view to territorially accommodating the ethnically and culturally diverse communities. The defining character of the latter federal system is that subnational units of the federations are ‘intentionally associated with a specific group’s identity and functional competences are devolved to such units that are relevant for protecting and developing the culture of the relevant ethnic community’.<sup>XII</sup> The composition of shared institutions, such as federal legislative, executive, and administrative organs, is also expected to reflect the ethno-cultural diversity of the relevant country.

Scholars of federalism are not in agreement about the wisdom of adopting ethno-federalism. Proponents of the system defend it by claiming that it allows ethnic communities to autonomously decide on ‘affairs of emotional concern’ such as education, language, and/or religion. It thus removes ‘sources of conflicts’, reduces ‘ethnic tensions across the system’, and therefore ‘diminish[es] enthusiasm for secession and preserve[s] the territorial integrity of the common state’.<sup>XIII</sup> Anderson, based on an empirical study of all post-1945 ethno-federations, maintains that ethno-federal systems have been more successful than admitted by their critics. While admitting there are instances where such systems failed to prevent conflicts, or led to the disintegration of countries, he however contends that these occurred mainly in political contexts where no alternative institutional systems would have succeeded in preventing the conflicts or the disintegration. Besides, he maintains that ethno-federal systems have succeeded in political contexts where alternative institutional systems have or would have failed.

Critics, on the other hand, argue that designing federalism along ethnic lines bears the risk of reinforcing ethnic identities. It locks ethnic and tribal groups into ‘territorial cages’, thereby freezing ‘the historical differences’ among them, enfeebling their unity and emphasising their differences.<sup>XIV</sup> They maintain that ethno-federalism not only increases the desire of certain groups to secede from a federation, but also provides them with the institutional framework and resources to do so.

The scholarly debate regardless, ethno-federalism has emerged, especially in the post-Cold War period, as an alternative institutional mechanism for resolving or preventing inter-ethnic





disputes or violent conflicts in many countries. A growing number of countries, African ones included, have adopted federal/federal type systems that are designed to resolve inter-ethnic conflicts and maintain peace. African post-conflict states that have adopted federal or quasi-federal systems as institutional mechanisms for resolving conflicts include Nigeria, Ethiopia, South Africa, Kenya, and the Democratic Republic of Congo. Many states adopted ethno-federalism not because it was an ideal system, but because they had run out of other feasible institutional options for dealing with ethnic-based disputes and conflicts.

The relevant question here, therefore, is whether there are feasible institutional alternatives for dealing with the conflicts in South Sudan other than a federal system that takes the ethnic factor into account. Before dealing with this specific issue, the article outlines the historical discourse on federalism in South Sudan.

### 3. Ethnic conflicts and federalism in South Sudan's political history

Federalism became a political and constitutional issue in pre-independent Sudan within the context of managing racial and ethnic differences of the population of northern and southern regions in the late 1940s when southern politicians demanded that the southern Sudan region should be given a degree of autonomy in the post-colonial government of Sudan, through some federal arrangement.<sup>xv</sup> It became an especially important political topic for southern politicians when political parties of the northern region of Sudan, for example the Umma Party, began to push the agenda of independence for the Sudan. Southern politicians, such as Both Diu of the Liberal Party, expressed their disagreement with the independence agenda, especially if it meant remaining united with Sudan, which was then also a part of Egypt.<sup>xvi</sup> They also demanded the accommodation of the southern region, which was then divided into three provinces (Bahr el Ghazal, Equatoria and Upper Nile) through a federal arrangement as a condition for remaining part of the Sudan. In November 1955, a month before independence, the Southern Sudanese political parties declared that they were going to endorse the independence only if the South were going to be granted considerable autonomy in the new Sudanese state within a federal arrangement.<sup>xvii</sup>



The calls for federalism were principally driven by the Southerners' fear of Northern domination that had already begun manifesting itself in the numerical disparity between the South and the North in the legislative assembly. In the run-up to the grant of independence, a twelve-person commission was appointed to, *inter alia*, recommend the way to advance towards self-government in Sudan. The Commission produced a draft Constitution which provided for certain safeguards for the South, including the appointment of a minister for Southern affairs who was to be responsible for promoting measures for the economic and social betterment of the peoples of Sudan in the Council and introducing them in Parliament.<sup>xviii</sup> But these recommendations were rejected by the majority Northern representatives during the ensuing debate in the legislative assembly in January 1952. Later in the same year, Southerners were excluded from crucial constitutional talks that took place in Cairo between the Northern political parties and the Condominium powers.<sup>xix</sup>

These events increased Southern apprehension about the Northerners' intentions towards the South. To most Southern Sudanese, this was clear proof that the Northerners wanted to include the Southerners in the new constitution and the new Sudan on the terms of the Northerners, and not on the terms that the Southern Sudanese wanted. This increasingly tense situation was aggravated by the policy of 'Sudanisation' through which the working force in the country was to be transformed to a Sudanese one as opposed to a foreign one.<sup>xx</sup>

There was discrimination in employment in the pre-independence Sudanese public service that particularly affected Southern Sudanese. Of the 1 222 jobs which were to be Sudanised, of which 1 069 were held by Britons and 153 by Egyptians, only four were given to Southerners. This, more than anything else at the time, demonstrated to the Southerners that the Northerners were just new colonisers.<sup>xxi</sup> In the heat of the moment, though federalism continued to be their main demand, some of the more radical Southerners of the time began to call for the complete separation of the South from the North. Others called for a referendum under the auspices of the United Nations (UN) to determine the future of the South.<sup>xxii</sup>

It was against this backdrop of political disenchantment, and economic and social exclusions from the very state form that a revolt broke out in the Southern region of Torit on 18 August 1955, a year prior to the outbreak of all-out civil war in the southern part of Sudan.





The unwillingness of the northern politicians to grant this demand was among the root causes of the two rounds of civil war fought between successive northern elite dominated regimes in Khartoum, on the one hand, and Southern Sudanese rebel movements in the southern Sudan region, on the other.

The first round of the civil war that took place from 1955-1972 came to an end only when Jaafar Nimeiri, the then president of Sudan, signed the 1972 Addis Ababa Agreement which recognised the southern region as ‘a single self-governing region’.<sup>XXIII</sup> One of the causes of the first civil war in 1956 was the exclusion and marginalisation of the Southern Sudan region during the formation of the state and its subsequent economic, social, and political marginalisation during state- and nation-building in the post-colonial Sudanese state.<sup>XXIV</sup>

No sooner had independence of Sudan from Britain been declared, than the term federalism became a taboo, tantamount to subversion, in the political language of the Northern elite who, on the eve of independence, were assuring their Southern brothers that they sympathised with their cause.<sup>XXV</sup> In 1957, a parliamentary committee set up by the new Sudanese to look into the federal question rejected the idea on the ground that it was unsuitable for the Sudan. It then became apparent that the clause had been inserted as a political manoeuvre rather than as a genuine promise on the part of the North.<sup>XXVI</sup> For example, one of Northern opposition political leaders, Mohammed Ahmed Mahgoub, had this to say regarding the Southern Sudan case:

We canvassed all the parties to secure unanimity. We encountered some difficulty in convincing the Southerners so we inserted a special resolution to please them pledging that the constituent Assembly would give full consideration to the claims of Southern Members of Parliament for a federal Government for the three Southern provinces.<sup>XXVII</sup>

In November 1958, the Sudanese government was overthrown by a military coup led by General Ibrahim Abboud, and the new military regime set out to deal forcefully with dissent in the South.<sup>XXVIII</sup> It became official government policy that the South introduce Islam and Arabic throughout the country with all speed in order to unite the Southern people and Sudan in general, in the hope that this would discard calls for federalism. African traditional religions



practised mainly in the South were discouraged; in February 1962, all foreign Christian missionaries in the South were expelled.<sup>xxxix</sup> As unrest in the South mounted, Northern forces attacked Southern villages, with as many as half a million Southerners fleeing into exile. The government of Abboud declared a state of emergency and warned that any talk of federalism would be considered treason.<sup>xxx</sup>

As the war continued in the Southern Sudan region, General Abboud's military regime was overthrown through mass popular uprisings, and a civilian transitional government was formed in 1964. While the war was continuing in the Southern Sudan region, another military officer, Colonel Jaafer Mohamed Nimeiri, staged a coup and overthrew the civilian government in May 1969. In 1972 a peace agreement, known as the Addis Ababa Peace Agreement, was signed between the South Sudan Liberation Movement (SSLM) and the Nimeiri regime.

The Addis Ababa Peace Agreement gave Southern Sudan a regional autonomous government, referred to as local autonomy. For the first time, the South had its own Regional Assembly, High Executive Council (HEC), Regional Civil Service, Regional Development Corporation, and a regional principal language (English) in addition to the national official language (Arabic). The question of federalism was instead answered by providing local autonomy to Southern Sudan.<sup>xxxxi</sup> At the centre, the South was represented by Southern quotas in the government, national assembly and the army. The country's Second Vice-President was a Southerner and headed the HEC.<sup>xxxii</sup> Article 2 (a) of the Addis Ababa Peace Agreement stipulated that the Southern Provinces Regional Self-Government Act (SPRSA) could only be altered by a vote of three-quarters of the National Assembly and approval by a referendum in the South.<sup>xxxiii</sup>

Despite the fact there appeared to be legal safeguards for the regional autonomy that the South was granted, within the space of little more than a decade the agreement had collapsed and brought down with it the 'federal experiment' in Sudan.<sup>xxxiv</sup> In 1982, President Nimeiri divided Southern Sudan into three regions, and in 1983 he abrogated the Addis Ababa Peace Agreement, dissolved the regional government elected by the people of Southern Sudan, and then appointed a new one. This brought about an end to the Addis Ababa Peace agreement



and the beginning of another civil war in 1983, which ended in 2005 with another peace agreement.<sup>xxxv</sup>

The second round of the civil war, between the SPLA and the government of Sudan, began when the 1972 Agreement was reneged by Nimieri in 1983. It continued until the Comprehensive Peace Agreement (CPA) was signed in 2005. The CPA once again recognised the South Sudan region as a single political entity, with not only extensive autonomy but also the option to secede from Sudan.<sup>xxxvi</sup> A federal arrangement that provided a degree of autonomy to the southern region was thus a matter of peace or war before the country achieved independence. But what makes federalism a relevant political and constitutional issue in an independent South Sudan?

Upon independence in 2011, South Sudan adopted a transitional constitution which entrenched the ‘decentralised system’ that the country inherited from the Sudan.<sup>xxxvii</sup> Federalism thus seemed no longer relevant for the political agenda, even though the permanent constitution, which was supposed to be adopted in 2011, was to settle this issue once and for all. At the end of the Interim Period of the CPA, when South Sudan became an independent state, the new country was set to have constitutional change from a decentralised to a constitutional federal arrangement by writing a transitional constitution, or amending the Interim Constitution.<sup>xxxviii</sup>

There was no new transitional Constitution; instead a few amendments were made in the Interim Constitution by the SPLM governing party which claimed that amendment of the existing Interim Constitution was the only thing needed.<sup>xxxix</sup> Constitutional Review Commission members were appointed by the President. Almost all of them were cadres of the SPLM. There was no representation from other political parties, no representation from civil society organisations, and no other stakeholders. It was these cadres from the SPLM who amended the Interim Constitution.<sup>xl</sup> This happened against the backdrop of the presence of Article 1.4 of the Interim Constitution that recognises South Sudan as a multi-ethnic, multicultural, multi-lingual, multi-religious and multi-racial entity where diversities peacefully co-exist.



The South Sudanese elite's failure to build strong and responsive state intuitions prior to and after independence, and its failure to prioritise nation-building, resulted in manipulation of ethnicity to achieve narrow interests, and endemic corruption, as well as its involvement in conflict.<sup>XLII</sup> The Transitional National Legislative Assembly was divided along ethnic and regional lines when the Transitional Constitution was passed. Members of Parliament from the majority Dinka ethnic community favoured the status quo and retained the decentralised unitary system. Equatorians, as a bloc majority of MPs from Nuer ethnic community, wanted federalism to be adopted as the system of government in South Sudan.

In the end, it was the President who came to Parliament and threatened that those MPs who did not want to pass the amended bill would be dismissed from parliament. A clause for federalism was not inserted in the draft of the amended transitional Constitution.<sup>XLIII</sup> The President threatened to dismiss members of parliament, and the Transitional National Legislative Assembly was forced to ratify the Transitional Constitution. This was the beginning of marked political differences between President Kiir, his Vice President Riek Machar, and their factions within the governing party. This later resulted in full-scale war in South Sudan.

Though the Transitional Constitution and its amendments were passed by the parliament as the President wanted, there are still a lot of challenges in the constitutional separation of power between arms of government and the rule of law associated with the implementation of some of the clauses in the text of the Constitution. For example, Article 3 (1–4) of the Transitional Constitution stipulates the supremacy of the Constitution and provides that the authority of the Government at all levels shall be derived from the Constitution.<sup>XLIII</sup> This clause, along with three other clauses in the Constitution which discuss decentralised systems of governance, has been violated several times by the executive. The Constitution has given the right to each level of government, like the state and local government, to elect their own representatives such as state governors and county commissioners.<sup>XLIV</sup> This has not been the case since the 2010 general elections in Sudan, when South Sudan separated and became independent from Sudan. Many elections have been held in South Sudan since 2010. It has been and is still the President of the Republic who appoints or relieves states governors and



counties commissioners from the offices they hold. The Transitional Constitution has been unconstitutionally amended several times to increase the powers of the President.<sup>XLV</sup>

According to Jok,<sup>XLVI</sup> the CPA was built on the premise of two viable states. Expectations for improvement in human security among all Sudanese people were high: state violence and all other types of violence inflicted on them would cease and good governance would become the order of the day – the so-called ‘peace dividend’, in other words. Instead, the CPA produced two countries that were so weighed down by violence that human security would not return in the absence of a massive national effort on both sides of the former conflict divide. The citizens of both countries, the Republic of Sudan and the Republic of South Sudan, wanted their governments to focus on security and stability.<sup>XLVII</sup>

However, federalism re-emerged as an important political topic less than three years after South Sudan became independent and while the country was still in the transitional period. This time around, the debate about federalism arose, not because of external factors, but because a power struggle that had arisen within the SPLM unearthed old inter-ethnic and intra-ethnic rivalries which had been eclipsed until then by the struggle for independence.

The political crisis of December 2013 that led to the post-independence civil war was not surprising, since this was not the first time that internal political rows had arisen among the politicians of South Sudan during peacetime. For instance, such rivalries and hostilities were among the reasons for the collapse of the regional autonomy of the Southern Sudan region which was put in place by the 1972 Addis Ababa Agreement. In fact, the undoing of the regional structure was demanded by the ethnic communities of the Equatoria province, who, having alleged the domination of the regional structure by the Dinka community, proposed that each of the three constituent units of the region be a region in its own right.<sup>XLVIII</sup> Nimieri used this inter-ethnic division as an excuse to abolish the regional structure and divide the region into its constituent units.

Historical rivalries in South Sudan are also not limited to those between different ethnic communities. Intra-ethnic or tribal rivalries and conflicts exist. The historical rivalry between the Dinka of Bahr el Ghazal (the birthplace of Kiir) and the Dinka of Greater Bor (the birthplace of John Garang) is a case in point. For instance, the political division and





confrontation of 2004 between John Garang and Kiir was predicated on the allegation that the Dinka of Bahr el Ghazal were ‘sidelined’ in the SPLM.<sup>XLIX</sup>

The inter-ethnic and inter-tribal rivalries and hostilities, which are again making federalism a pertinent political and constitutional subject in South Sudan, have deep historic roots. They were shaped, in part at least, by the political and economic agenda initially of the British colonial authorities and later the government of Sudan. The SPLM adopted them and sought to achieve those objectives.<sup>L</sup> It is particularly important to examine the drawing and redrawing of internal boundaries in South Sudan and how this was used as a mechanism to pursue specific political economic goals both before and after independence. Internal administrative boundaries within the former southern Sudan region were created and recreated first by colonial authorities with a view to managing inter-ethnic rivalries and conflicts and the attendant competition for resources. The colonial authorities in some cases placed different communities within a single provincial administration.

A case in point is the Upper Nile province, where the Nuer, Chollo, Anuak, Murle and Dinka people of Jonglei and northern Upper Nile were placed under a single provincial administration.<sup>LII</sup> In other cases, they placed different tribes of the same ethnic community in a single provincial administration, thereby creating congruence between ethnic boundaries and provincial boundaries. For instance, they placed the Dinka people of ‘the two Duks, Kongor and Bor’ under a single provincial administration. They also redrew provincial boundaries to incorporate the Nuer in Bahr el Ghazal into the Upper Nile and the Dinka in the Upper Nile province into Bahr el Ghazal.<sup>LIII</sup> Importantly, the colonial authorities attempted, albeit not always successfully, to create ethnically or tribally homogenous districts. In some cases, they even ‘forcefully relocated communities to new locations’ to maintain some level of homogeneity at the district level.<sup>LIIII</sup> The rationale was to create conditions favourable for colonial indirect rule through ethnic and tribal chiefs.

The government of Sudan also redrew provincial boundaries on the basis of colonial boundaries. The three provinces in the South Sudan region were abolished and the region was subdivided into ten states. Moreover, SPLM introduced changes to the internal boundaries of the South Sudan region in the areas that it brought under its control during the civil war with





the Sudan. It also introduced different tiers of administration, including ‘a three-level local government structure, which consists of counties, payams, and bomas’.<sup>LIV</sup> It is within that historical context that the establishment of a federal system in South Sudan is being debated and negotiated. This brings us back to the main question of the article: What are the federal options on the table?

#### 4. The federal options in the 2015 and 2018 Peace Agreements

The establishment of a federal system has now been put forward by the opposition as a critical condition for the resolution of the conflicts, even if the conflicts are not directly linked to such demands. This is the reason that the establishment of a federal system was at the centre of the negotiations sponsored by IGAD. The negotiations led to the signing by Kiir and Machar of the Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS), in Addis Ababa, in August 2015. This Agreement, which was supposed to be incorporated into the 2011 Constitution of South Sudan, required as an interim measure the enhanced devolution of powers and resources to states and local government.<sup>LIV</sup> It also provided for the establishment of a Transitional National Government of Unity (TGNUG).<sup>LVI</sup> The TGNUG is tasked to ensure the adoption of a permanent constitution which would entrench a federal system.

The August 2015 Agreement did not, however, explicitly state what kind of a federal system was to be established in South Sudan. The different political groups had different understandings of what kind of federal system the Agreement envisaged. This led to several controversies with respect to the number of states the country was supposed to have and on what basis the boundaries of the states would be defined. Machar proposed the establishment of 22 states that were demarcated along the boundaries of the former colonial districts.<sup>LVII</sup> However, Kiir abolished ten states and created 28 states, later adding four more states, bringing the total number of states to 32.<sup>LVIII</sup> He did this claiming to be implementing the 2015 Agreement and setting the stage for the future federal system. This disagreement was key



amongst the factors that led to the breakdown in the implementation of the August 2015 Agreement, a mere year after it was signed, and to the continuation of the civil war.

When the two parties came face-to-face in Khartoum in June 2018 to negotiate a new ceasefire and peace agreement, the number and boundaries of the states of the future federal dispensation was thus on the agenda. The new agreement that the warring parties signed in September 2018, the R-ARCSS, covers several issues, ranging from the establishment of a 'Revitalised Government of National Unity' (R-TGoNU) to the adoption of a permanent constitution (section 1.2, R-ARCSS). It provides that the R-TGoNU should be established within eight months after the signing of the Agreement (section 1.1, R-ARCSS). The RTGoNU is tasked with taking measures towards creating national cohesion, including securing peace in the country, initiating and supporting a process of national reconciliation, and the like (section 1.2, R-ARCSS).

At the time of writing, the eight-month period for the establishment of the R-TGONU had lapsed. It was extended by six months, a period which is also about to expire. The formation of R-TGONU took nearly two years after the signing of the peace agreement in 2018. The formation of a national unity government was postponed twice for six months due to lack of political commitment from leaders.<sup>LIX</sup> Currently, the implementation of security arrangements that may lead to restructuring of the security organs, including the national armed forces, has begun, but the establishment of the unified forces of these security organs has not yet been realised by the parties. This would revitalise the government of national unity (R-ToGONU).

The Agreement also reiterates that the establishment of a federal system in South Sudan is still a popular demand. This demand has been confirmed by the three regional conferences conducted by the ongoing National Dialogue, which conducted its national conferences on 2 December 2019 in different states as this article was written.<sup>LX</sup> It seeks to resolve the controversy regarding the federal design, especially the issue of the number and boundaries of the states, in two alternative ways. The first, and what appears to be the preferred solution, is the establishment of two bodies by the IGAD that will help the parties resolve their differences on this specific issue. These are a Technical Boundary Committee (TBC) and an Independent Boundary Commission (IBC). According to the Agreement, the TBC would be



composed of members drawn from IGAD member states and the so-called Troika countries (Norway, the United Kingdom, and the US). The IBC would in turn be composed of 15 individuals, five of whom would be ‘nominated’ by the R-TGoNU and five by opposition parties. The rest would be nominated from and by member states of the AU High level Ad Hoc Committee on South Sudan, which is composed of South Africa, Nigeria, Rwanda, Chad, and Algeria. The IBC would be chaired by a non-South Sudanese.<sup>LXI</sup>

The TBC is charged with the responsibility of defining the country’s ‘tribal areas’ as they stood on 1 January 1956.<sup>LXII</sup> This Committee is also required to finalise its report within 60 days and submit its findings to the IBC. Based on the TBC’s findings regarding these ‘tribal areas’, the IBC would then make recommendations regarding the number and boundaries of the states,<sup>LXIII</sup> amongst other things. The IBC was expected to finalise its work and submit its final report to IGAD within 90 days and the Agreement did not permit an extension. The IBC has not thus far come up with its proposal, even though the 90 days’ deadline has lapsed.

The Agreement provides that, if the IBC fails to come up with recommendations,<sup>LXIV</sup> the second alternative kicks in. The government and opposition would come up with their own proposal on how the number and boundaries of the states should be defined.<sup>LXV</sup> The IBC would then automatically become a Referendum Commission on Number and Boundaries of States (RCNBS) and administer the referendum on the proposals of the parties to the agreement.<sup>LXVI</sup> The government’s proposal has thus far been the retention of the 32 states that Kiir created after the signing of the 2015 Agreement. The SPLM-IO, on the other hand, is pushing for the establishment of 22 states according to colonial districts, while some politicians from the three Equatoria provinces are in favour of ten states serving as the constituent units of the federal dispensation.<sup>LXVII</sup>

If the first option does not resolve the problem, the three proposals (or any new proposal in this regard) would thus be tabled in a popular referendum. In the course of the delay and failure of the parties to reach an amicable solution as to the number and boundaries of the states, the President came up with a presidential decree taking the country back to the ten states inherited before independence. Now South Sudan is being governed under the old ten



states. Nevertheless, there are still simmering disputes about the boundaries between the counties of the states, or between one state and another.

#### 4.1 Geographic or ethno-federal system?

At the time of writing, there was no concrete proposal on the design of a federal system for South Sudan. The debate about the shape and texture of the federal system that South Sudan is to adopt, especially the number of the subnational units and how they are to be structured, is far from settled. However, looking into the mechanisms that were put in place in the 2018 Agreements for defining the number and boundaries of the states and the proposals of the contending groups, leads inevitably to the conclusion that South Sudan is destined to enter into a federal arrangement that revolves around the territorial accommodation of ethnicity.

As indicated above, the IBC's recommendations are expected to be based on the report of the TBC and the latter is tasked with defining 'tribal areas'. This implies that ethnicity will be a key factor in demarcating the boundaries of the states. Moreover, the federal design is being negotiated with historical inter-ethnic rivalries in mind. These rivalries were in turn shaped by the drawing and redrawing of boundaries in the former Southern Sudan region. Thus, as Mahmood Mamdani (2018) puts it '[t]he new agreement is a sharing of the pie between the tribes of South Sudan: first the major tribes, Dinka and Nuer, and then the lesser ones ... Every inch of South Sudan has to be marked as part of one tribal homeland or another. Even areas with multi-ethnic populations must be defined as belonging to one particular tribe.'<sup>LXVIII</sup>

As mentioned above, if the IBC fails to come up with its own recommendations, the three proposals, i.e., the ten-states proposal, Kiir's 32-states proposal, and Machar's 21-states proposal, will be tabled for a referendum. It is often argued that the difference between the proposals relates to ethno-federalism vs geographic federalism. However, it is maintained here that none of the three proposals reflect a purely geographical federalism. All three proposals have the ethnic factor at heart, even though the political motives underpinning the proposals are different, even conflicting. This is not surprising since South Sudan's internal boundaries have been structured and restructured several times since colonial times. Almost always, the



structuring of internal boundaries has centred on the management of ethnic diversity, or the prevention of inter-ethnic conflicts.

Machar's 22-states proposal takes the colonial districts as the basis for demarcating the boundaries of the states. According to Justin and De Vries, the British colonial authorities divided the three provinces of the then southern Sudan region into 21 districts mainly along ethnic lines. In some cases, they 'forcefully relocated communities to new locations', among other actions, with the aim of creating ethnically homogenous districts in order to be able to exercise indirect rule through local chiefs.<sup>LXIX</sup> Machar is thus proposing that these ethnically organised districts should serve as states in the future federal dispensation. Kiir created the 32 states with the ethnic factor in mind. Not only are the states structured along ethnic lines, but the majority of the states are Dinka-dominated. This would supposedly enhance Kiir's or the Dinka's position, should the 32 states serve as the constituent units of the future federal dispensation. For instance, the Dinka community will be able to control the majority of the seats in the Council of States.<sup>LXX</sup>

Likewise, the ten states were also organised along ethnic lines:

In 1992 the Sudanese government replaced the eight provinces with 26 states—16 in the north and 10 in the south. In the parts of the country under its control, the Sudan People's Liberation Movement (SPLM) established a three-level local government structure, which consists of counties, payams, and bomas two years later. Importantly, both the government and the SPLM used the territorial divisions implemented by the colonial authorities, either by merging colonial districts to create states or by including chieftaincies in the local government structure in the SPLM's "liberated" areas. *Reflecting colonial practices, ethnicity became a prominent aspect of the restructuring of these units, at least in South Sudan.*<sup>LXXI</sup>

It is clear from the above that the territorial structure of South Sudan's federal system is likely to be impacted on by the ethnic factor in one way or the other. It is critical to note that the said Peace Agreement has also established a Ministry for Federal Affairs. The latter has indeed started to organise workshops, seminars, and meetings with a view to studying different federal options; however, the inclination appears to point to fiscal federalism or fiscal and





geographical federalism, bearing in mind, of course, the present fractured and disunited South Sudanese society.

The role of the international actors in the peace negotiations is also important. IGAD, the broker of the peace deal, did not promote any specific federal design for South Sudan. However, the members of this regional organisation, especially Kenya and Ethiopia, have sought to influence the federal design of South Sudan. As Wight<sup>LXXII</sup> observes, ‘Ethiopia, proud of its own federal system, favoured an ethnic model, while Kenya, Uganda, and Sudan were opposed to such an approach.’ It should be noted, though, that Kenya’s system of devolution to counties is also designed with a view to territorially managing the ethnic diversity of the Kenyans, and these counties, save Nairobi, have dominant ethnic communities.

Regardless of how the issues around the number and boundaries of the states are resolved, it seems that the federal model of South Sudan will be decidedly different from the Ethiopian ethnic federal model in one basic way. That is, it will avoid the logic of ‘one-state-one-ethnic community’ which underpins the Ethiopian federal system. The 1995 Constitution of Ethiopia creates nine states but contains a constitutional principle that allows each ethnic community to establish its own state. If the constitutional principle is to be taken to its logical conclusion, even an ethnic community with a population of a few thousand, settled in a territorial area as small as a district, can make a demand for its own state.

During the first two decades of its rule, the ruling party, the Ethiopian Peoples’ Revolutionary Democratic Front (EPRDF), managed to suppress the demands of small ethnic communities to establish unviable mini-states. However, this is changing rapidly. As the ruling party has become less cohesive, more and more ethnic communities have begun demanding their own states. For example, if these demands are granted, the Southern Nations, Nationality and Peoples’ Region (SNNPR), one of the nine states, will break up into tens of mini-states and disappear. Moreover, the civil war between the federal government and the Tigray region, which began in November 2020, is directly or indirectly linked to the design of the country’s federal system.<sup>LXXIII</sup>

Contrary to the Ethiopian model, none of the three proposals above will result in a single ethnic community being locked within a single state. This will make the South Sudan federal





system more like the Nigerian one, which divides every ethnic community into several states. This should help South Sudan avoid one of the major flaws – in the words of Yonatan Fessha,<sup>LXXIV</sup> ‘the original sin’ – in the design of the Ethiopian federal system.

#### **4.2 The prospect of ethno-federalism bringing peace in South Sudan**

As discussed earlier, well-designed ethno-federalism has great potential to resolve inter-ethnic conflicts and bring about sustainable peace. However, it also harbours a grave danger, especially if poorly designed and implemented, which may lead to the disintegration of a state. What makes the implementation of an ethno-federal system in South Sudan especially risky is that the country has had less than ten years of existence as a state and has yet to create a national identity. Before independence, the civil war encouraged the people of the region to transcend ethnic boundaries and cooperate towards a common cause. With the end of the civil war, that common cause has disappeared. An ethno-federal system is likely to make the creation of a national identity even more difficult.

The question, however, is whether South Sudan has any alternative but to factor the ethnic diversity of its people into its federal design. It does not seem feasible to design a federal system that deliberately ignores the ethnic factor. It is critical to put in place an institutional mechanism that might help manage the ethnic diversity of South Sudan. Moreover, the R-ARCSS (section 6.2) demands it. Thus, factoring ethnicity into the design of the federal system of South Sudan seems inescapable, despite the difficulties it may create. Lasting peace and stability in South Sudan may not be achieved without a system that recognises the diversity of its people. This does not mean, however, that the ethno-federal system would guarantee peace in the country. It simply means inter-ethnic conflicts are more likely to occur in the absence of a federal system that manages the ethnic diversity of the people than without it.

It is maintained here that three critical conditions must be fulfilled if a federal system is to bring about a sustainable peace in South Sudan. First, the federal system should be designed in such a way that it incorporates the views and carefully balances the interests of all contending groups in the country. The federal design should not be, or be perceived to be exclusively based on a single design proposal, lest it lose legitimacy and become a source of conflict. It



should avoid being seen as a design that protects and promotes the views and interests of any single group. The Ethiopian federal system provides a good lesson in this respect. It is perceived by many as an imposition by the EPRDF and the 1995 Constitution as simply the political programme of the TPLF.<sup>LXXV</sup> The federal system thus remains the principal source of political discord in the country.

Secondly, careful attention should be given to designing shared federal institutions in such a manner that they promote national cohesion. This is especially important given that South Sudan desperately needs to establish a national identity and that shared institutions are meant to serve such purposes. As is clear from the discussion above, the disputes, debates and negotiations so far are focused on the number and boundaries of the states and little attention has been given to the design of federal institutions. In the 2015 and 2018 agreements, references to the design of the national government are limited to the issue of how the different warring factions will be represented in the TGNU (R-TGNU). The constitutional principles in the two agreements which are meant to guide the drafting of the permanent constitution are silent on the need to design the federal system in a manner that helps build national cohesion while being explicit on respecting ‘ethnic and regional diversity and communal rights’.<sup>LXXVI</sup>

Thirdly, there should be strict adherence to constitutionalism. The second principle in the 2015 Agreement on the drafting of a permanent constitution puts federalism and constitutionalism in the same sentence.<sup>LXXVII</sup> Indeed, once a constitution is adopted that entrenches a federal system and has been designed by balancing various interests and concerns, it must be adhered to. Unfortunately, contending groups in South Sudan are notorious for not adhering to agreements they have entered into and the constitutional principles they have endorsed. One need only note the fact that they were unable to implement the ARCSS and that, at the time of writing, the R-ARCSS was about to collapse. As argued elsewhere, the lack of will to adhere to agreements and constitutional principles ‘[has been] the missing element in the federal and federal types of arrangements that were attempted in South Sudan but which failed to bring peace’.<sup>LXXVIII</sup>



## 5. The current status of South Sudan regarding federalisation

The Ministry of Federal Affairs (MOFDA) is one of the institutions created by the Revitalised Peace Agreement of 2018 and is tasked with leading the South Sudan quest for federalisation. It is also charged, along with other relevant institutions, with the responsibility for creating necessary participatory and inclusive platforms for the discussion of options to reinvigorate the constitutional functions, such that states and local governments can exercise their powers accountably and effectively. The accountability of public institutions to citizens at all levels of government is what has been the missing link in the Transitional Constitution 2011, as amended. For example, Article 35 (2) of the Transitional Constitution stipulates that national resources shall be used effectively, managed and efficiently utilised, focusing attention on the provision of gainful employment for the people, and improving their lives and livelihood, by building roads, schools, airports, community institutions and hospitals, and providing clean water, food security, electric power and telecommunication services to every part of the country.<sup>LXXIX</sup>

This is not the case on the ground in practical terms in terms of the implementation of the Constitution, and adherence to constitutionalism and the rule of law. Since 2005, from the Interim Period of the CPA until now, massive public resources, especially revenues from petroleum, oil and other mineral resources, have been embezzled and looted with impunity by a few elites.<sup>LXXX</sup> There are no roads, hospitals or schools which have been built, nor clean and potable water or public security provided to the people of South Sudan by the ruling SPLM party, despite the peace agreement. Despite endemic corruption, no individuals who have been holding or still hold public office have been prosecuted for corruption or other similar offences they may have committed. According to the Corruption Perception Index International Report of 2021, South Sudan is the most corrupt country in the world.<sup>LXXXI</sup> Lack of adherence to constitutionalism and rule of law, due to failed leadership from the top, are considered to be causes of the endemic corruption in the country.

Based on the mandate provided by the Peace Agreement,<sup>LXXXII</sup> MOFDA has been given the responsibility to develop a federal policy framework and blue-print documents that can



guide the move towards the federalisation process. The policy framework rationalises and contextualises some strategic issues and priorities that are inherent in establishing a form of federalism which is tailored to South Sudan.<sup>LXXXIII</sup> The draft policy highlights how constitutional powers, functions, and governing responsibilities can be guaranteed, with reference to three levels of government: national, state, and local government. It also considers the cooperative inter-governmental relations that the three levels might have with each other. It aims to clarify and to remove uncertainties regarding how South Sudanese citizens can interact with federal government institutions and with each other across the constituent states. The draft policy has been developed against the backdrop of shortcomings in the Transitional Constitution 2011 in political, administrative, and economic decentralisation, in which power and resources have become and still remain too centralised and too concentrated in the national government, in the hands of a few political elite.

A typical case is the centralisation of power by the President and national executives that emanates from the series of constitutional amendments which give unlimited power to the President. Examples are the dismissal of elected governors and the appointment of unelected ones to their positions, as well as the appointment of members of parliament at different levels of government, through presidential decree orders. This is contrary to provisions in the Transitional Constitution of 2011. For example, Article 36 of the Constitution states that all levels of government shall promote democratic principles and political pluralism, and shall be guided by the principles of decentralisation and devolution of power to the people through the appropriate levels of government where they can best manage and direct their affairs.<sup>LXXXIV</sup> This provision, although slightly ambiguous concerning the exact division of power between different levels of government, makes it clear that there is a division of power between levels of government and that each level of government has power of autonomous self-government, despite the absence of constitutional adherence to the rule of law.

The draft policy framework is based on rigorous analysis of the current Transitional Constitution 2011 as Amended. Based on the analysis, the teams found out that more accountable and effective engagement by states and local governments is urgently needed to relieve public pressure on the national government, which currently overloads itself with every



facet of the public life of citizens in all corners of the country. The national government instead needs to be empowered as an actor that safeguards constitutional democracy in a federated country.<sup>LXXXV</sup>

In addition to its focus and its specific references to constitutional options for workable form of federalism in the context of South Sudan, the policy framework seeks a wider impact measured by influencing political and public discourse on federalism more widely. For instance, once the federal Constitution is enacted, the policy framework will continue to serve as a guide for legislative enactments and reforms for its implementation, so as to develop state democratic and inclusive state institutions.

However, there are daunting challenges facing the MoFEDA in policy implementation and institutional leadership in the federalisation process. Among the many challenges is the lack of political will from the R-ToGNU to allocate resources, especially financial resources, to the ministry in order to implement the policy. This lack of political will is caused by lack of trust from the Dinka elite, who equate federalism with the *Kokora* of the 1970s, a policy that the Dinka ruling elite at the time considered as responsible for dividing South Sudanese along ethnic lines and paving the way for the Khartoum regime's divide-and-rule policy in Southern Sudan along regional and ethnic lines. Secondly, the Dinka elite have an unexpressed fear that, if South Sudan goes federal, this may mean loss of power and the loss of resources they have controlled on the pretext of being the majority ethnic community in the country.

Since 2019 to date, several thematic workshops and symposia organised by MoFEDA, with the support of its partners, have addressed aspects of the establishment of federalism in South Sudan.<sup>LXXXVI</sup> Some of these engagements, including those conducted under the aegis of an ad hoc working group on federalism, have altered the nature of informed debates on federalism in the country. Building on such dialogues, the Draft Policy Framework for the Federal Governance of South Sudan is timed to reflect that the country is progressing towards the crucial stage of inviting, analysing, and validating public and stakeholders' submissions for inclusion in a permanent federal constitution. The policy framework is intended to focus stakeholders' debates on well-informed, actionable constitutional proposals to be drafted in a consensus blueprint for a federal constitution. The blueprint is supposed to be sent for





consideration and elaboration by constitution-making organs after their establishment by R-TGoNU. It is intended to provide a focal point for subsequent public and stakeholders' debates.

Nevertheless, while MoFEDA is trying to carry out stakeholders' debates on federal options, the process has been frustrated by the political elite from the President Kiir SPLM's mainstream faction, a 'senior' partner in the Revitalised Government of National Unity (R-TGoNU). They claim that no resources, including funding, are available for conducting state debates on the federal options South Sudan should choose. Without exhausting the options of forms of federal arrangements, there is political contestation amongst the political elite. Some argue that South Sudan will resolve conflicts when it adopts a form of federalism that recognises and empowers diverse ethnic communities. On the other hand, there are those who believe that ethnic federalism may exacerbate conflict in the already fragile and conflict-prone South Sudanese state. As such, there is still no consensus amongst different political parties as to which form of federal system of governance South Sudan might choose and which federal country it should benchmark best practices from and share experiences with.

Regardless of which form of federalism South Sudan chooses, it is necessary to create state-inclusive institutions that can resolve and accommodate South Sudan's ethnic diversity. An inclusive state can be achieved equitably through constitutionally entrenched devolution of power and resources to subnational levels of government. This requires political commitment from the leaders. But the current political climate tells us that it is difficult to achieve the political will, because the most powerful elites from the Dinka ethnic community do not want to relinquish the power they hold. Despite the contestation, most of the parties' leaders seem to hint that South Sudan may choose geographical or territorial federalism. Their argument is that territorial or geographical federalism does not ethnicise political differences within a federation. By contrast, the leaders argue that federalism based on ethnic configuration exacerbates conflicts amongst constituent units. Among the federal states in Africa that South Sudan wants to take experience from are Kenya and Nigeria. From outside the African continent, its want to benchmark best practices from the US and Federal Republic of





Germany. The reason is that these countries have not considered ethnicity as the basis of their formation of federations.

Some political elites from the Dinka ethnic community assert that South Sudan wants a federal Constitution that does not consider ethnicity as a basis of institutional response for managing ethnic diversity and bringing lasting and sustainable peace in the country. The argument is that an ethno-federal arrangement as a basis of political identity may lead to the polarisation of ethnic differences in multi-ethnic South Sudan, rather than solidifying national unity. They also believe that adopting ethnic federalism or multinational federalism may negate the national government's vision of 'bringing development' that in fact they cannot deliver, and that ethnic affiliations may retard economic and political progress, which is completely missing.

## 6. Conclusions

There is no doubt that the complex conflicts in South Sudan are influenced by a multitude of factors. They relate to matters such as conflicts at different levels and concomitant insecurity and instability, ethnic/tribal diversity, economic difficulties, competition for resources and the history of political rivalry among different groups. It is a very young nation with virtually no experience as an independent country despite seceding from a country (the Sudan) that attained its independence from Britain in 1956. There is an immense expectation amongst the populace and the international community that a federal system or federal-type arrangement will bring a lasting solution to the myriad of problems the country is facing.

Federalism might be, and indeed has been, an appropriate institutional response to challenges emanating from ethnic/tribal diversity. On its own, however, it is not capable of being a credible response to these challenges. It must be complemented with democratic rule, constitutionalism, respect for human rights and the rule of law. This is all the more important given that South Sudan has a multi-ethnic, multicultural and multi-religious population and that the federal system is meant to manage such diversity. It is argued that no federal system is capable of doing so without respect and tolerance for political diversity, trust in democratic



outcomes, respect for constitutional rules and human rights, an independent judiciary and a general adherence to the law.

Expecting a federal design along tribal lines to sustain peace in South Sudan without its being complemented by those elements is naïve. It may even be irresponsible, in that the proposed tribal federalism may then aggravate tension rather than diffuse it. In addition to working out a credible federal design, whether infused by territorial accommodation of ethnic groups or not, South Sudan must put equal effort into becoming a democratic country based on democratic rule, respect for human rights, constitutionalism, and the rule of law.

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<sup>I</sup> John Mwangi Githigaro (2017) 'What went wrong in South Sudan in December 2013' *African Conflict & Peacebuilding Review* 112–122; Patrick Wight (2017) 'South Sudan and the four dimensions of power-sharing: Political, territorial, military, and economic' *African Conflict & Peacebuilding Review* 7(2) 1–35.

<sup>II</sup> Douglas H Johnson (2014) 'Federalism in the history of South Sudanese political thought' Rift Valley Institute, Research Paper 1.

<sup>III</sup> *Ibid.*

<sup>IV</sup> See Jumar Mabor Marial (2016) 'The Doctrine of Constitutionalism in the Republic of South Sudan can only be upheld and/or contravened by Lakes State Scenario' *South Sudan Nation* (23 February 2016); Lotje de Vries & Mareike Schomerus (2017) 'South Sudan's Civil War will not end with a peace deal' *Peace Review*, 333–340.

<sup>V</sup> See John Mwangi Githigaro (2017) 'What went wrong in South Sudan in December 2013' *African Conflict & Peacebuilding Review* 112–122. There are indeed other complex and fundamental causes to the conflict in South Sudan even if the December 2013 incidents triggered the violence. These include unconstitutional measures that Kiir took to consolidate political powers in his office and person, in effect undermining the decentralised system of the country. See Marial (2016).

<sup>VI</sup> *Ibid.*

<sup>VII</sup> Agreement for the Resolution of the Conflict in the Republic of South Sudan (Addis Ababa, 2015). Revitalised Agreement for the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS, 2018).

<sup>VIII</sup> Diane Orentlicher (1998) 'Separation anxiety: International responses to ethno-separatist claims' 23 *Yale Journal of International Law*, 9; Töpperrwien N (2001) *Nation-state and normative diversity* Basel: Institute of Federalism Fribourg Switzerland, 67 & 195.

<sup>IX</sup> *ibid*; Fessha (2010) *Ethnic diversity and federalism: Constitution making in South Africa and Ethiopia* Farnham: Ashgate, 10–11; Denise G Réaume (1995) 'Justice between cultures: Autonomy and the protection of cultural affiliation' 29 *University of British Columbia Law Review*, 121.

<sup>X</sup> John McGarry Brendan O'Leary (1994) 'The political regulation of national and ethnic conflict' 47(1) *Parliamentary Affairs: A Journal of Comparative politics*, 103.



- <sup>XI</sup> Asnake Kefale (2012) *Federalism and ethnic conflict in Ethiopia: A comparative regional study* New York: Routledge.
- <sup>XII</sup> Henry E Hale (2004) 'Divided We Stand: Institutional sources of ethnofederal state survival and collapse' 56:165 *World Politics* 165-193.
- <sup>XIII</sup> Liam Anderson (2016) 'Ethnofederalism and the management of ethnic conflict: Assessing the alternatives' 46(1) *Publius: The Journal of Federalism* 1-24.
- <sup>XIV</sup> See Henry J Steiner (1991) 'Ideals and counter-ideals in the struggle over autonomy regimes for minorities' *Notre Dame Law Review* 66 1539-1560; Jan Erk & Lawrence Anderson (2010) 'The paradox of federalism: Does self-rule accommodate or exacerbate ethnic divisions?', in Erk & Anderson (eds) *The paradox of federalism: Does self-rule accommodate or exacerbate ethnic divisions?* London: Routledge 1-12.
- <sup>XV</sup> See Steve Odero Ouma (2005) 'Federalism as a peacemaking device in Sudan's Interim National Constitution'. LLM Thesis, Faculty of Law, Community Law Centre, University of the Western Cape, Cape Town, South Africa; Douglas H Johnson (2014) 'Federalism in the history of South Sudanese political thought' Rift Valley Institute, Research Paper 1.
- <sup>XVI</sup> Federalism became an important topic in the political discourse of the Southern Sudan region (the provinces in the region) especially when the British colonial authorities began exploring the possibility of merging the five northern and the three southern provinces into one political entity. It also became an issue in the early 1950s when various political parties in the northern region, the Umma Party in particular, pushed the agenda of Sudan's independence. There were two issues in this respect. The first issue was whether Sudan would remain part of Egypt or would be an independent state. This was an issue since certain political parties of the north, especially the National Union Party, were in favour of remaining with Egypt, even though the NUP changed its policy in this regard following the 1953 elections. The second issue was whether the then three southern provinces (Bahr el Ghazal, Equatoria and Upper Nile) would remain part of Sudan. Southern politicians were in general against the quest for Sudan's independence, the reason being that the southern provinces were not economically and politically ready to be part of an independent Sudan on equal footing with the northern provinces. It was at this stage that politicians from the southern provinces began demanding a federal arrangement as a condition if at all the southern provinces were to remain within an independent Sudan. Taha (2008).
- <sup>XVII</sup> Steve Odero Ouma (2005) 'Federalism as a peacemaking device in Sudan's Interim National Constitution'. LLM Thesis, Faculty of Law, Community Law Centre, University of the Western Cape, Cape Town, South Africa.
- <sup>XVIII</sup> *Ibid.* See also Douglas H Johnson (2014) 'Federalism in the history of South Sudanese political thought' Rift Valley Institute, Research Paper 1.
- <sup>XIX</sup> Steve Odero Ouma (2005) 'Federalism as a peacemaking device in Sudan's Interim National Constitution'. LLM Thesis, Faculty of Law, Community Law Centre, University of the Western Cape, Cape Town, South Africa.
- <sup>XX</sup> Angelo Lobale Lokoro Loiria (1969) *Political awakening in Southern Sudan 1946-1955: Decolonisation and the problem of national integration*. PhD Thesis, University of California, Los Angeles USA.
- <sup>XXI</sup> Steve Odero Ouma (2005) 'Federalism as a peacemaking device in Sudan's Interim National Constitution'. LLM Thesis, Faculty of Law, Community Law Centre, University of the Western Cape, Cape Town, South Africa.
- <sup>XXII</sup> *Ibid.*
- <sup>XXIII</sup> Art 8, The Addis Ababa Agreement on the Problem of South Sudan, 1972.
- <sup>XXIV</sup> Douglas H Johnson (2014) 'Federalism in the history of South Sudanese political thought' Rift Valley Institute, Research Paper 1; Douglas H Johnson (2003) *The Root Causes of Sudan's Civil Wars* (African Series. The International Institute for Africa Affairs: Indiana University Press).
- <sup>XXV</sup> Steve Odero Ouma (2005) 'Federalism as a peacemaking device in Sudan's Interim National Constitution'. LLM Thesis, Faculty of Law, Community Law Centre, University of the Western Cape, Cape Town, South Africa.
- <sup>XXVI</sup> *Ibid.*



- xxvii Mohammed Ahmed Mahgoub (1974) *Democracy on trial: Reflections on Arab and African politics* (London: Andre Deutsch).
- xxviii Steve Odero Ouma (2005) 'Federalism as a peacemaking device in Sudan's Interim National Constitution'. LLM Thesis, Faculty of Law, Community Law Centre, University of the Western Cape, Cape Town, South Africa.
- xxix *Ibid.*
- xxx *Ibid.*
- xxxi Addis Ababa Peace Agreement, Art 1 (a – c), 1972; DK Mathews (2016) *Liberation for South Sudan: An account of a participant* (Nairobi: African Books Shop).
- xxxii Steve Odero Ouma (2005) 'Federalism as a peacemaking device in Sudan's Interim National Constitution'. LLM Thesis, Faculty of Law, Community Law Centre, University of the Western Cape, Cape Town, South Africa.
- xxxiii *Ibid.*
- xxxiv *Ibid.*
- xxxv DK Mathews (2016) *Liberation for South Sudan: An account of a participant* (Nairobi: African Books Shop).
- xxxvi CPA, 2005, Art 1.3.
- xxxvii TCSS, 2011, Art 1.5.
- xxxviii Isaiah Abraham (2011) 'Opponents of South Sudan draft constitution must give us a break' Sudan Tribune (19 May 2011) < <https://sudantribune.com/article38544/>> accessed on 17 June 2022.
- xxxix *Ibid.*
- xl Jok Madut Jok (2021) 'Lessons in Failure: Peacebuilding in South Sudan/Sudan', in McNamee, T & Muyangwa, M (eds) *The State of Peacebuilding in Africa: Lessons learned for policymakers and practitioners*. Palgrave McMillian, Springer International 363–377.
- xli Moro, in Bach et al. (2022).
- xlii Abraham (2011).
- xliiii TCSS, 2011, Art 3.
- xliiv CSS, Art 162 and Art 165.
- xlv Moro, in Bach et al (2022).
- xlvi Jok Madut Jok (2021) 'Lessons in Failure: Peacebuilding in South Sudan/Sudan', in McNamee, T & Muyangwa, M (eds) *The State of Peacebuilding in Africa: Lessons learned for policymakers and practitioners*. Palgrave McMillian, Springer International 363–377.
- xlvii *Ibid.*
- xlviii This proposal is locally referred to as *kokora*, a Bari word which means 'division', 'to divide'. Rens Willems and David Deng (2015) *The Legacy of Kokora in South Sudan: Intersections of truth, justice and reconciliation in South Sudan* (Briefing paper) < [https://www.kpsrl.org/sites/default/files/publications/files/801\\_the\\_legacy\\_of\\_kokora\\_in\\_south\\_sudan\\_briefing\\_paper.pdf](https://www.kpsrl.org/sites/default/files/publications/files/801_the_legacy_of_kokora_in_south_sudan_briefing_paper.pdf)> accessed on 17 June 2022.
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- li Mareike Schomerus & Lovise Aalen (eds) *Considering the state perspectives on South Sudan's subdivision and federalism debate* (London: Overseas Development Institute, 2016).
- lii *Ibid.*
- liii Justin and De Vries (2019).
- liv *Ibid.*



LV Chapter II, Art 6(2)(4).

LVI Chapter 6, Art 1(2).

LVII Stimson Centre, 'The 28 States System in South Sudan', Briefing Note, 9 August 2016. [https://www.stimson.org/sites/default/files/file-attachments/Stimson\\_StatesBriefingNote\\_9Aug16.pdf](https://www.stimson.org/sites/default/files/file-attachments/Stimson_StatesBriefingNote_9Aug16.pdf).

LVIII *Ibid.*

LIX Revitalised Joint Monetary Commission, 2020 Report.

LX Recommendations of the Regional Conferences, 2019.

LXI Section 1.15, R-ARCSS.

LXII Section 1.15.18, R-ARCSS.

LXIII *Ibid.*

LXIV Section 1.15.12, R-ARCSS.

LXV Section 1.15.16.

LXVI Section 1.15.14.

LXVII Patrick Wight (2017) 'South Sudan and the four dimensions of power-sharing: Political, territorial, military, and economic' *African Conflict & Peacebuilding Review* 7(2) 1–35.

LXVIII Mamdani (2018).

LXIX Lotje de Vries & Peter Hakim Justin (2015) 'A failure of governance: Understanding South Sudan's conflict dynamics beyond the political and humanitarian crisis' (Cape Town: Southern African Liaison Office (SALO)).

LXX *Ibid.*

LXXI *Ibid.*, 35.

LXXII Patrick Wight (2017) 'South Sudan and the four dimensions of power-sharing: Political, territorial, military, and economic' *African Conflict & Peacebuilding Review* 7(2) 22.

LXXIII Soon after the 2015 elections, a division emerged within the EPRDF, an association of four ethnic-based regional parties of which the TPLF was the most dominant group. The immediate cause of the division is linked to the heavy-handedness of the federal government armed forces, which were supposedly dominated by the TPLF, in the manner in which they responded to the anti-regime public protests that took place in the Oromia and Amhara regions between 2015 and 2018. The intra-party division became a cause for a change in the party leadership, which in turn led to the rise to power of Abiy Ahmed, the current prime minister. The prime minister took various measures to consolidate power in his own hand, including fundamentally restructuring the party. As a result, the TPLF lost its influence in the party and the federal government. Leaders of the TPLF left the federal government and camped in Mekelle, the capital of Tigray, and began acting as an opposition political force. The political altercation between the two parties worsened after the federal government and the Tigray regional government declared mutual non-recognition after the federal government postponed the sixth general election and extended its term beyond its electoral term, while the Tigray region organised a regional election, since each deemed the action of the other unconstitutional. The political dispute finally turned into a military confrontation. The war, which has caused massive humanitarian disasters, is still ongoing despite the intermittent truces declared by either or both of the two warring parties.

LXXIV Yonatan Fessha (2017) 'The original sin of Ethiopian federalism' *Ethnopolitics: Special Issue: The Ethnopolitics of Ethnofederalism in Ethiopia* 16(3) 232–245.

LXXV GT Hessebon (2013) 'The precarious future of the Ethiopian constitution' *Journal of African Law* 215–233.

LXXVI Section 6.2 R-ARCSS.

LXXVII Chapter VI, section 1.2, ARCSS 2015.

LXXVIII Zemelak Ayele (2019) 'Constitutionalism: The missing element in South Sudan's elusive quest for peace through federalism?', in Charles M Fombad & Nico Steytler (eds) *Decentralisation and Constitutionalism in Africa* (Oxford: Oxford University Press).





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LXXXIX Transitional Constitution (2011).

LXXX Jok Madut Jok (2021) 'Lessons in Failure: Peacebuilding in South Sudan/Sudan', in T McNamee & M Muyangwa (eds) *The State of Peacebuilding in Africa: Lessons learned for policymakers and practitioners* (Palgrave MacMillan, Springer International) 363–377.

LXXXI Corruption Perception Index (2021)

LXXXII R–ARCSS (2018).

LXXXIII This excerpt is taken from an analysis of a policy draft document entitled, 'Federal Governance in South Sudan: A Policy Framework Draft Document' (2021), drafted and developed by the Ministry of Federal Affairs (MoFEDA), Juba, South Sudan. The policy draft serves as a guide to developing a blueprint for federal constitution-making and the building of inclusive federal and state institutions.

LXXXIV Art 36 1 TCSS (2011).

LXXXV Policy Draft Document, 2021.

LXXXVI Policy Draft Document, 2021.