



South Sudanese Professionals in Diaspora

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Negotiating Peace through Federalism: A Proposal for Good Governance in Post-Conflict South Sudan

Let's put South Sudan first, before party politics, regionalism,
self interest, ideology and ethnicity so that we become
part of the solution rather than the problem

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July 30, 2014



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Disclaimer

The opinions expressed in this position paper are solely those of the authors and do not represent the opinions of any South Sudanese political party, ethnic group, state, pressure group, newspaper or media group. These opinions and views have been expressed in the genuine belief that it is healthy for citizens of a free nation to share ideas on pressing national issues. Secondly, these opinions have been issued in the spirit of enhancing and contributing to the on-going debate on good governance in South Sudan, for the benefit of all our citizens.

1 Acknowledgements

In writing this piece we have benefited from a number of people, who have asked for anonymity. We wish to respect their wishes. We thank them for the time and effort they have so willingly given us and in the search for peace in our country.


We also wish to add that, without the growing calls for federalism and the various opinion pieces issued on the subject, we would probably not have issued this position paper. We owe this paper to all those who have commented in public or shared their views with us in private, on this important subject.

We, therefore, issue this position paper in support of the call for a Federal System of Government (FSG) and proceed to present our reasons for doing so, accordingly.

2 Executive Summary

1. This is part of a series of dialogues we have initiated with the people of South Sudan, as non-partisan professionals, on pressing national issues, following the crisis of mid-December, 2013. We have, since then, issued three such position papers.¹
2. In this issue we focus on federalism, and suggest that it offers the best way of negotiating and navigating conflict in a pluralistic society like that of South

¹They include: “Unleashing the Potential for Good Governance in South Sudan, February 1, 2014; “The Interim Government Arrangement (Addendum One)”. February, 24th, 2014, : and “South Sudan Health Service”, May 2nd, 2014. (The health paper benefited a great deal from a special contribution by Victor Vuni Joseph, whom we wish to acknowledge, here as well).



Sudan, where ethnicity and regionalism can easily be politicised, leading to not just contradictory demands on the centre, but at times violence as events of December 15th, 2013 have painfully demonstrated.


3. We argue that the unfortunate events of December 15th, 2013, suggest that, as far as governance is concerned, it cannot and should not be business as usual in South Sudan. Serious soul searching and compromises have to be made by all, for the sake of the people of South Sudan.
4. Federalism should, we argue, not entail people returning to their respective states of birth or villages. It should be about devolving power, making government to be more accountable to the people in each state, introducing transparency into government accounting and involving local people in each state in decision making about how they wish their affairs to be managed.
5. The demand for federalism, we suggest, often triggered by real or perceived sense of injustice, can lead to the alienation of a group from the centre. The call for federalism cannot, as a result, just be wished away. It has to be confronted in a calm, civilised and accommodating manner worthy of a democratic nation.
6. The call for federalism, experience has shown, is often resisted by those who feel that any changes to the status quo would threaten their privileged positions.
7. Although federal forms of governments vary from country to country, they have underlying commonalities, and are adaptable to the needs of individual countries.
8. Federalism is a constitutional design issue. As such, the details of any federal system for the Republic of South Sudan should be worked out in the constitutional review and drafting processes and ultimately be put to a popular vote/referendum among the country's voting adults.

3 The aftermath of December 15th

The events of December 15th, which nearly brought the country to its knees, suggest that, not all is well with our country, the Republic of South Sudan (ROSS).

In addition, since 2005, South Sudan has been dogged by one rebellion after another. Attempts to resolve them have been patchy and unsatisfactory, leading to further rebellions.

Sooner or later when the guns are finally silenced, there must be some structural, organisational and personnel realignments. However, the discussions about future governance format cannot, and must not, wait until then.



We believe that it is, therefore, incumbent upon us all, as South Sudanese, to discuss the way forward, without fear, intimidation or favour, in an attempt to save the country from the current and similar catastrophe in the future.

In making these suggestions, we are aware that, no system of government could prevent the events of December 2013 from ever happening again. Nevertheless, we do think that there must be a system out there that can curb the excess of such tendencies and traits, should they try to raise their ugly heads again.

4 The Federalism debate

4.1 Two sides to the debate

The hottest debate in South Sudan today seems to be on whether, a Federal System of Governance (FSG), should or should not be adopted by the Republic of South Sudan (ROSS). As expected, there are two sides to this debate, which is a normal thing in any debate.

The proponents of federalism see it as a way of, not necessarily preventing, but mitigating future conflicts or the effects of conflicts similar to the 15th December 2013 crisis. The opponents, on the other hand, see it as a ploy of the armed opposition to divide, what they term as, the internal front.

However, the debate should not be about who is right or wrong. Nor should it be about who is good or who is evil. Neither should it be about who is for it or who is against it. It should be about the larger picture: what is best for the people of South Sudan.

4.2 A Polarised debate

The debate, unfortunately, has become polarised, with the armed opposition, the Sudan Peoples' Liberation Movement/Army in Opposition (SPLM/A IO), leading the call for federalism), while the central government, and some states have expressed various degrees of reservation, if not downright opposition to federalism.

A casual non scientific overview suggests that the three Equatoria states, through their governors, have come out openly in favour of federalism. Three other states: Unity, Upper Nile and Jonglei are largely contested grounds between the government and the SPLM/A IO to have a definitive view on the subject. That leaves four other states, whose



public stand on the issue of federalism is yet to be clearly established.

One of the effects of the polarisation is that the debate is fast becoming a distraction from the efforts of finding a solution to the current political and armed crises in South Sudan.

The polarisation and reports of alleged intimidations are likely to lead to an unhealthy situation which will drive the debate underground. This will be unfortunate because there are lots of unarticulated fears of both those opposed to and those in favour of federalism, which are crying out to be heard in the open.

Polarisation has, further, the effect of making each camp to entrench itself deeper instead of reaching out for a midway house.

4.3 Our position on the debate

Our view is that to emerge from this apparent impasse, there is need for a more sombre reassessment of the debate with input from all citizens, political parties, professionals, academics and civil society to inform the general public, so as to reach an informed decision, influenced less by diatribes and polemics. It is for this reason that we issue this position paper.

We also wish to ensure, among other things, that whatever system of governance, a post-conflict ROSS adopts is preferably supported by all or a significant majority of the citizens.

All views, we urge, need to be addressed in a calm, civil, informed and measured way and in the open without fear, harassment or intimidation.

5 Our Assumptions

In writing this position paper, we make the following assumptions:



5.1 The Status quo

1. All over the world, leaders of the central government and the people who identify closely with it usually resist any changes that they perceive to be a threat to their person or position, in preference to the status quo.

5.2 The current debate


1. The arguments on both sides of the federalism opinion divide have yet to be heard in the open and put to an audience of voters. Attempts to stifle the debate on federalism is not helpful as it only raises public suspicions that some vested interest groups are hiding or fearing something inherent in FSG. The proponents and opponents should be allowed to freely discuss the system, and the people to be the final arbiters.
2. The Comprehensive Peace Agreement (CPA) provides for and the Interim Constitution enshrines a three-tier system of government for South Sudan represented by the central, state and local governments. However, in spite of that seemingly federal structure, it falls far short of being a federal system of government as it does not encapsulate the fundamental tenets of a federal system as most people know it.

5.3 Federalism and stability

1. The most economically developed and politically relatively stable countries in the world are federal states. They include the USA, Canada, Germany, Switzerland, Australia, Austria, South Africa, Ethiopia, Nigeria (the most diverse and populous sub Saharan country in Africa which re-gained political stability after the Biafran war when it consolidated its federalism status). Their relative stability, we would like to suggest, has something to do with the way in which they have been able to allay, curb and address regional fears through federalism.

5.4 Federalism for conflict resolution

1. Most nationalities of the world today find themselves in territories characterised by plurality of nationalities and cultures, which when politicised, can give rise to contradictory claims on the centre. One of the tested tools used increasingly



by nations such as Ethiopia and Canada to neutralise and confront demands for autonomy from such culturally plural groups is federalism.

2. The cost of repressing regional, cultural or religious groups' demands for autonomy from the centre is far greater and more catastrophic than accommodating such demands.
3. Federalism dilutes many of the perceived threats to the existence of a group or perceived constraints to their developmental aspirations. By conceding to their demands, we wish to suggest, such groups are made to embrace, accept and increase their sense of loyalty to the center. In a nutshell, it is a win - win situation.
4. In the creation of federalism, multiplicity of institutions, often in competition with and independent of each other, we concede, are created. These institutions, we would like to suggest, quickly learn to use the national frameworks so created, for effective negotiation and resolution of disagreements, which in turn should act to strengthen rather than weaken national integration.

6 The current political arrangement

6.1 A Federal System by a different name

The current political arrangements in South Sudan divide power between the central government headed by the president based in Juba and the ten states, headed by governors. Within these States there are a number of counties headed by commissioners. The system provides devolution of powers to the states and counties, presumably for effective governance.

While the present system has semblances to a federal system, there are fundamental differences between the two. Firstly, the states are not given sufficient and clearly defined powers and guarantees enshrined in the constitution to run their affairs without interference from the center. Secondly, a clearly and legally delineated system to interface the relationship between the state and the center, and demarcate the boundaries between the powers of the center and the state has to be enshrined in the constitution. These have to include the interface between corresponding state and federal institutions, resource allocations, etc.

The current system is heavily compromised and constrained by lack of resources to fund community projects, schools, healthcare, feeder roads, agriculture, animal resources and fisheries. This has driven rural folks to the city in search of employment, thus abandoning the rich natural resources unexploited in the countryside.



The above contrasts sharply with Ethiopia's federal system where 60-70% of the federal revenue is, we understand, allocated to and reaches the *Woreda*, the local government.

The current model of decentralised government in Juba is widely believed to be ineffective, non transparent, too powerful and unaccountable, even to parliament. This is not good for those in government as their support base in the states will gradually ebb away through loss of confidence.

It is only three years since independence and it can be argued that the ROSS is still developing various processes of governance and systems. Any such a discussion must not exclude any options or models of government. Similarly, the practical steps for implementing the preferred options must be discussed or published.

For the central government to reclaim its constituency in the rural areas, we suggest, it has to re-discover the empowerment of the rural communities by vesting some powers in them through more devolution of powers to the state and local governments and assemblies to be matched with appropriate funding.

6.2 Confronting rather than evading our fears

The fears of the opponents must be addressed rather than swept under the carpet. So must any fears of the proponents.

Many in the federal opponents camp fear being herded into states which ultimately become under resourced political ghettos. They also fear exclusion from areas of the South Sudan perceived to be "better developed" in terms of infrastructure, schools, health facilities and connections with the outside world.

The developments in some of these so called developed areas, we would like to believe, have been initiated by the local people and not funded by the central government.

Some of these states, unfortunately, are in perpetual inter-clan conflicts which threaten to suck children into them, curtailing their chances of good formal education. The solution to these ills and conflicts has to be local, and this can only be better and effectively delivered by a responsive state authority, empowered by the constitution in a federal system.

Pictures beamed from the conflict areas between December 2013 and now show destroyed or previously non-existent infrastructure, absence of schools, poor hospitals, poor roads and dilapidated buildings. These areas require huge efforts in their re-construction and development, and a large injection of funding to bring them to a reasonable standard.



The present system of governance, which largely benefits a few elite, cannot be relied upon to achieve these. There has to be devolved power to enable decisions to be taken locally on the ground.

6.3 Expunging the ghost of *Kokora*

The memories of *kokora*, a political pressure group slogan in the mid 1980s, has left a lot of bitterness within some quarters of South Sudanese. The proponents saw it as a way to decentralise power, while the opponents saw it as an attempt to divide the people of South Sudan.

This bitterness, unfortunately, still persists and has become the lens through which any attempts to reform governance in South Sudan, including demands for federalism, is viewed.

There is an undercurrent of suspicion, we believe, which sees federalism as *kokora* being smuggled in by the back door. We strongly believe that, for all what it is worth, *Kokora* is history, it cannot and should not be revived under any circumstances.

Kokora, a Bari word meaning, “to share out” or “to divide amongst a people”, has been initiated by a number of Equatorian political activists who felt that they were being excluded from key decision making positions in the then regional government of Southern Sudan.

It is equally true to say that there were some Equatorians who were vehemently opposed to *kokora*. Similarly, it was endorsed, accepted and championed by South Sudanese from outside Equatoria too, with the same vehemence that it was resisted with. Therefore, to maintain and continue to associate *kokora* with Equatoria only is to be disingenuous, we believe.

6.4 Why Federalism is not *kokora*

Federalism is different from *kokora*. The call for federalism, it has been argued, has its roots as far back as 1947, when the people of Southern Sudan then put forward a demand for a federal status between South and North Sudan. This call was repeated in 1955 by members of parliament from Southern Sudan. In both occasions they were denied, and the rest is history.



The call for federalism today is being considered as an alternative governance modality for an independent country, where there are already ten states in existence. We believe that, the fear expressed about *kokora* as aimed at dividing the people of South Sudan, is therefore weakened, especially when there are already ten states that are embraced and clutched firmly to by both the opponents and proponents of federalism.

The call for federalism is today coming from a variety of sources: political parties, academics, civil society organizations, the youth and the ordinary citizen.

The status quo is already proving to be unmanageable for both the rulers and the ruled. South Sudan cannot be in a state of perpetual strife or war. We believe that all options of possible models of governance must be on the table for discussion. For those opposed to federalism an articulation of their points in favour of an alternative system is eagerly awaited and encouraged.

7 The definition and basics of federalism

7.1 Defining federalism


We wish to opt for a simple, non-academic, definition of federalism. For us, it is a system of governance that creates a division of governing power and authority between the national (federal) governments and regional (state) governments.

There are, we admit, different types of federalism in practice. South Sudan, has to find a version that best suits its own complexity. Furthermore, federalism is not a static but rather a dynamic entity that is continuously evolving. Whatever system we choose today, would be different, come tomorrow.

The American form, for example, has evolved over the years and still continues to evolve from “dual federalism”, where the functions of the federal and state governments remained largely separate, to; “co-operative federalism”, characterised by, as the name suggests, co-operation across the two levels of government, to; “regulated federalism”, characterised by federal intervention in state functions with the threat of withholding grants for specific purpose, for non-compliance, to; the current “New federalism”, characterised by the return of more administrative powers to the states.

7.2 The basic elements of federalism

The basic elements of federalism according to K.C Wheare (1962), a leading expert, are:

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1. The presence of at least two levels of governments characterised by constitutional division of powers with each level independent of the other.
 2. The existence of a certain degree of financial independence at each level of government, which allows them to carry out their constitutional mandates without depending or appealing to the other for all their financial needs.
 3. The creation of a Supreme Court of an independent judiciary, whose task it is to oversee, arbitrate and resolve any conflicts between the centre and the states.

What appears to be certain from the above is that there is no minimum level of ‘development’ needed for devolution of power or federalism to take place. It is also clear that the specific details of any federal system are worked out during the process of constitutional design.

7.3 The criterion for federalism

The call for federalism is often triggered by some real or perceived sense of injustice resulting in alienation from the center by regional, language, ethnic or religious groups. Where people do not feel alienated from the centre, the call for federalism is rare, if not unheard of.

The concession to the demands for federalism, may be a painful and uncomfortable experience, especially for those at the helm of power in the center. And yet, the sense of alienation so expressed cannot just be simply wished away. It has to be confronted in a civil manner, for the sake of the peaceful and continued existence of the nation, especially for those who see their power and privileged positions threatened by it. Forceful repression is more costly than concession.

We, outline three grounds on which the call for federalism, be acceded to:

1. There should be a certain degree of sense of alienation from the center or disillusionment with the centre, for a variety of reasons, expressed by a sizeable proportion of the population.
2. The sense of alienation and demands may be expressed through protests, speeches, mass mobilization, letters, and in extreme cases through violence.
3. The central government can concede to such demands either by reaching a consensus with all the key stakeholders or by organising a plebiscite to determine the extent of the demand, and respond accordingly.



8 Power distribution in a Federal System

We would like to briefly propose the following formula for sharing power between the federal and the state levels:

8.1 Power distribution and citizenship in a federal system

The federal government be responsible for the following:

1. Defence; foreign affairs; internal and external security; the judiciary; economic planning
2. Civil aviation authority; South Sudan central bank
3. Secondary and tertiary hospitals; higher education and scientific research; postal service and telecommunications; public service
4. Petroleum and mining; power generation.
5. Mega interstate programs such as dams, river transport; trunk roads (connecting towns and states).
6. Customs, immigration and passport authorities.

8.2 The powers of state governments

The States be responsible for the following:

1. Primary healthcare; primary and secondary schools(development and running of these institutions); feeder roads; water and sewage disposal.
2. Agriculture; animal husbandry; fisheries; poultry farming and commercial fish farming
3. Magistrates courts; local policing (deemed to be more harmonious if the local police officers hail from the neighbourhood); land reform and land allocation; overseeing and evaluating the work of Non-Governmental Organisations in the area.
4. Local tax collection (a proportion of collected taxes belong to the states and an agreed percentage remitted to central Government); forging business links with prospective investors (from within and without the nation) to develop local resources, create employment opportunities and stem the tide of rural-to-urban migration.



8.3 The Rights of citizenship

The rights of the citizen, has to be stressed, because the opponents of federalism fear restriction of movement, while the proponents of federalism believe the system will be a check on the rampant land grabbing.

1. Any citizen may live in any state in ROSS as long as they subject themselves to the rules in place in that state, as they would elsewhere. The Interim Constitution provides for any citizen of South Sudan to move freely and live in any part of the country. The status of federalism should not alter these rights to movement and settlement.
2. Property (houses, businesses etc) should be protected by law wherever any citizen chooses to live.
3. Citizens from outside specific states may be elected into local councils by the local people if they elect to live into those states and raise their families there.
4. The above rights, however, should not translate into citizens from one state forcing the inhabitants of any community in another state off their land, renaming the area and setting up a parallel administrative or judiciary entity there.


9 Our Proposals

9.1 Freedom of speech

1. There must be room for free, open and frank discussion on the merits and setbacks of federalism to educate the general populace, who would then be able to make informed choices. Intimidations, harassment and attempts at silencing people with different views from the established one, should have no place in a democracy worthy of its name.
2. It is only through the process of earnest and open dialogue, free from intimidation, that the people of South Sudan will understand and appreciate the advantages and disadvantages of federalism in general and for South Sudan, in particular.

9.2 Restructuring the present states and counties

1. The devolution of more power and increased financial allocation to the states, must be an on-going process, with or without federalism. The current ten states, must



in return, be made to work more effectively under whatever new arrangements the country may enter into.

2. We would, ideally, prefer three federal states to the present ten states, mainly for reasons of cost. However, current sensitivities may dictate that such arrangements be allowed to evolve over time.
3. We do not advocate the creation of more states beyond the current ten so as not to undermine resource allocation and reduce South Sudan into unmanageable administrative units. However, if we must expand in the name of equity, then only two more states need to be created: one in Upper Nile and another one in Equatoria, as Bahr el Gazhal already has three.
4. We call for an overhaul of the counties, and if necessary, falling back on to the councils of the yesteryears, pending a proper review of the current counties. The current counties are too many, unrepresentative, unequally curved and doled out and have become – probably more than anything else – one of the major sources of conflict at the local level, with its unclear boundaries.

9.3 Human resources

1. Professionals such as doctors, veterinary doctors, pharmacists, nurses & midwives, engineers, architects, lawyers, judges, academics, teachers, etc, are a national asset to be deployed in various states according to need.
2. States which have common borders or common development targets may forge mutual links to form educational, economic and social links to maximise the use of their resources and accelerate development.
3. The employment of the right people is crucial for the planning, execution and implementation of any project. The sense of entitlement currently being enjoyed has to give way to ability and capability. The scrutiny of qualifications, job descriptions and contracts of officials appointed to the civil service, has to be undertaken, to ensure the right people are appointed to the right posts.
4. States which are professionally under resourced should be allocated a percentage of their annual capital investment from the federal government to recruit the necessary professionals, even if it means engaging the services of expatriates, if no such skills can be found locally in the country, to run services.
5. However, where expatriates have been hired, each expatriate should be required to train two people prior to the conclusion of their contracts in exchange for a gratuity. This is to ensure that under resourced states are brought up to an acceptable level of staffing.



9.4 The Diaspora as a national asset


1. Concerted effort must be exerted to engage with and to attract the Diaspora to come and work in South Sudan. This must be treated as part of a national emergency.
2. In order to curb human and capital flight and to build local capacity, every effort must be made to ensure that jobs are advertised widely, including to the embassies, so that the Diaspora can apply. No expatriate should be hired, unless there are no South Sudanese at home or abroad with the necessary skills to fill such a post.

9.5 Petroleum and other revenue collection and allocations

1. As long as petroleum remains our main and only key source of revenue – a situation that must be overhauled urgently – there has to be established a competent, transparent and efficient body run by experts to oversee revenue collection and disbursement from this and related resources. The minutes, decisions and operational modalities of the commission have to be published quarterly in a government gazette, for reasons of accountability, transparency and openness.
2. An equitable, fair and robust formula acceptable to all stakeholders must be devised on how the revenue from petroleum and other sources will have to be shared between the federal, state and local governments.
3. Any state from which any form of resource is being extracted should be given a percentage of the revenue from such resource, on an agreed formula.

9.6 Federalism is not the panacea for all our ills!

1. We are aware that no system of governance can totally prevent the type of events witnessed on December 15th, 2013, not to mention rampant corruption, nepotism, tribalism, unaccountability, incompetence, impunity, etc. However, as the status quo is not an option, we need to look for a system that can curb or minimise the types of excess we have witnessed since 2005.
2. There are various forms of federalism. We need to find a system that best fits our own system. Studies of the experiences of Ethiopia, Canada, Australia, Switzerland, Germany, etc may be a good starting place.
3. We are aware of the fear that federalism might exacerbate rather than curb feelings of regionalism within the country. These fears are not new and are not unique to South Sudan. All the countries we can think of – Ethiopia, Canada, USA, etc – have embraced federalism to allay such regional fears and to curb them. We have not been able to find something unique to South Sudan, apart from “we are a new



nation” narrative, that the implementation of federalism, may exacerbate rather than curb regionalism.

10 Conclusion

The main aim of federalism, as we advocate for South Sudan here, is aimed at spurring grassroot Socio-economic development for all citizens of the country through fair allocation of resources. The devolution of powers to the states or whatever administrative units are agreed on to constitute the federal units, in our view, should be to enable the local people to take important decisions at the local level.

Federalism should not entail people returning to their respective state of birth or village. It should be about overhauling the present system to make government more accountable to the people in each state, introduce transparency into government accounting and involve people in each state in decision making about how they wish their state developed.

The current system of government, where a disproportionately large amount of resources is spent at the centre, is too centralised to benefit the grassroots in a visible manner. In fact, it is likely to breed resentment from the periphery.

We believe that federalism nurtures unity in diversity, where local languages, local cultures will thrive and not be lost, to enrich our national heritage.

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