northern Sudan could reorganize - even without the South

INTERVIEW: DEPUTY GOVERNOR OF SOUTH KORDOFAN
Sudanese men ride their camels towards pyramids in the Meroe desert, north of Khartoum.
Sudanese President Omar al-Bashir (right) welcomes Salva Kiir, who heads Sudan’s former rebel Sudan People’s Liberation Movement, as Sudan’s First Vice President at a swearing-in ceremony in Khartoum on May 29, 2010.

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Sudan post-2011

Federal systems are likely in referendum aftermath.

Sudan, North and South: Kamal Hassan (left) from the ruling National Congress Party, and Luka Biong from the Sudan People’s Liberation Movement, sit side by side at a session of the African Union and the United Nations Sudan Consultative Forum in Khartoum in 2010.

BY SHAWN HOULIHAN

MORE THAN TWO DECADES OF civil war in Sudan ended on Jan. 9, 2005, with the signing of the Comprehensive Peace Agreement by Sudan’s two dominant political forces: the ruling National Congress Party and the Sudan People’s Liberation Movement (SPLM), which heads the government in Southern Sudan.

The Comprehensive Peace Agreement, known as the CPA, is an extensive, detailed, 241-page document. But it is fair to say that the centrepiece of the agreement is the promise of a referendum in which Southern Sudanese will decide in early 2011 whether to become fully independent or stay in a united Sudan. Residents of two border states, Southern Kordofan and Blue Nile, which are within the north but where many fought alongside the SPLM, will hold “Popular Consultations” to determine their status; and another border region, Abyei, will also stage a referendum on whether to join South Sudan.

Making unity attractive

The pre-referendum period from 2005 to 2010 was designed by the drafters of the agreement as a period in which all actors would work to “make unity attractive” – that is, to give one more chance to show that a united Sudan can work, especially for Southerners.

In addition to providing for a referendum for the South, the CPA is essentially a power- and wealth-sharing agreement. It created an asymmetrical federal structure for Sudan, with a highly autonomous Government of Southern Sudan governed mainly by the SPLM and a Government of National Unity in Khartoum with the two signing parties sharing control of the central government.

Whatever the result of the Southern referendum, it is likely that a form of federalism, or some elements of federalism, will be part of government in both the north and the south of Sudan in all scenarios that may emerge after 2011.

It is in this context that the Forum of Federations is publishing this special edition of Federations magazine. Our aim is not to advocate for federalism or a particular brand of federalism. It is to provide a neutral and authoritative contribution to the debate and to inform the public about federal ideas and the accompanying challenges in Sudan (and its component parts) under any of the

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that one order of government cannot usurp another’s powers, which differentiates it from decentralized unitary systems where powers can be given and taken away according to the central government’s wishes.

Comparative studies show that federal countries have found many creative and effective combinations of constitutional and institutional arrangements that fit different countries’ political, social and economic needs and even their historical circumstances. But federalism does not solve all problems. One eminent scholar, Professor Richard Simeon, refers to the “prerequisites” that are needed to make federalism work: democracy, constitutionalism and rule of law, trust and consensus, a common set of shared interests, respect for minorities, administrative capacities at all levels, fiscal resources at all levels and power sharing at the centre.

Residents of Blue Nile State gather in the city of Damazin. Blue Nile state is where the Roseires Dam, the main source of hydroelectric power in Sudan, has been built.

Not every prerequisite necessary
But given Prof. Simeon’s several prerequisites some may conclude that federalism is not within the reach of Sudan. The more optimistic view, however, is that these prerequisites do not need to be perfect at the outset, and usually take time to evolve; and it may even be that a federal political bargain will indeed provide the opportunity to reverse past cycles of conflict. Certainly this is the underlying rationale behind Sudan’s 2005 peace agreement.

It is this core contradiction – between the potential and central relevance of federalism for Sudan on the one hand and its apparent non-readiness to make it work on the other – that haunts Sudan and those who are working toward a durable peace for all Sudanese. This contradiction is also a reason many argue that Sudan (or any of its future configurations) should remain relatively centralized rather than being federal. This argument can be refuted in two parts. First, centralized governance has utterly failed over several decades and under various regimes in Sudan. Second, The more nuanced answer is that there is no contradiction between a federal system and strong central powers in certain key spheres of governance, or
be a silver bullet that cures its daunting shortcomings and deficits in capacity, governance and internal unity nor will it bring about the delivery of basic services so needed by the ordinary people.

Experiences of others useful
They also note other recent examples of federal experiments, and highlight the key positive role that neighbours and international partners can play, especially in providing security and economic incentives. Their article calls on Sudanese policy-makers to benefit from the useful lessons and warnings that other post-conflict federal experiences can provide.

Certainly the impact of the referendum will be felt far beyond the South. There will likely be a domino effect of unknown proportions in the Northern “peripheral” regions of the country, which also want a different, more genuinely federal-type relationship with the central government in Khartoum.

As Hafiz Mohammed and many other observers note, the Sudan problem is not just about the strife between north and south. It is a long-standing conflict between the centre and the periphery, in which all regions, most of them predominantly Muslim, feel alienated from and oppressed by the centre.

Hafiz Mohammed draws out the elusive challenge for Sudan since independence in 1956 – that is, why Sudan and its political elites have persistently failed to find a political arrangement that offers minimal stability to the people and a basis for them to experience inclusive nation building.

As a Northerner, Hafiz recognizes that Khartoum has failed to “make unity attractive” to the South, which was the core objective for the Comprehensive Peace Agreement. Generally, he notes, the promised democratic transformation has not taken place, as was witnessed in the conduct and results of the 2010 elections, which were roundly criticized and condemned.

Hafiz points to the Government of Southern Sudan for its failure to deliver and its serious limitations to govern itself. Most observers are aware of the risks of separation. It can perhaps be concluded that while independence will not solve the South’s problems of pervasive poverty, underdevelopment, poor governance, weak capacity and internal strife, neither has unity.

Hafiz also puts a sobering emphasis on the weaknesses of traditional Northern political parties, mainly the Umma and the Democratic Unionist Party (DUP), in delivering a durable solution to the Sudan problem in the first few decades of independence, when they were dominant in the country.

Whatever their record, these important political forces have become progressively weaker during the current regime of Omar Hassan al-Bashir, which came to power in a military coup in 1989 and has run the country since.

Strong and democratic alternatives have yet to emerge after all this time. This is the seminal fact of Sudan and goes far to explain why the 2005 peace agreement has failed to make unity attractive, why Southerners will likely vote to secede and why political forces in other peripheral regions of the North are nervous about the viability of genuine political negotiations in the foreseeable future.

South Kordofan concerned
This latter point is a major feature of the interview with Abdel Aziz, the deputy-governor of Southern Kordofan, of the Southern People’s Liberation Movement. He expresses strong concern that if Southern Sudan separates, his state will lose a political counterbalance that the SPLM has provided vis-à-vis the ruling National Congress Party (NCP) during the CPA period – a loss that will weaken the forces who want to hold the NCP more accountable for negotiating in good faith and delivering on promises, the most important of which is a functioning system of fiscal transfers to his state from Khartoum.

Abdel Aziz makes a case for stronger state powers than the CPA currently provides his state, many of which are commonly enjoyed in other federations, while highlighting the paradox of needing a viable partner to work with in order to make any improved system work. This was intended but has not been the case in the five years of the peace agreement. He concludes that if the Khartoum government is not willing to genuinely deliver real wealth and power sharing, the country will not hold together. Sobering words.

Several authors note that the peace agreement was flawed because although it was designed to be “comprehensive,” it did not include major legitimate opposition parties like the Umma and DUP. It also failed to address the grievances of other peripheral regions like Darfur.

Jalal Abdel-Latif of the United Nations Economic Commission for Africa, and co-author Seifulaziz Lamin Milas, who has worked with UN bodies throughout Africa, write about the failure of Sudan’s political forces to deliver a viable vision or consensus on how to deal with Sudan’s diversities.

They also observe that two other African federations, Ethiopia and Nigeria, have to varying degrees come to grips with the risks of identity-based politics and faith-based extremism, and have certainly succeeded more so than Sudan.

They suggest that at this point, the most pressing concern is that there be adequate preparation for the final stages of the Comprehensive Peace Agreement, which will soon expire. Thorny matters need to be addressed, they contend, among which are border demarcation, citizenship and preparation for the various referenda soon to be held, in order to ensure that the votes meet international
The article by the Forum’s Sudan Program Manager, Todd Dusenbery, reflects on his 16 months in Sudan. It deals with issues and options facing Southern Sudan after the 2011 referendum. His points are relevant whatever the referendum’s result. He notes that the five years of the peace agreement in Southern Sudan has implemented some basic federal, decentralized governance; but many basic features of a functioning political system, such as delivery of basic services to the people, are yet to materialize, or be up to expectations.

Where federalism offers solutions

He goes through a very useful list of classic federalism-related policy issues that Southern Sudanese should consider. His list includes clarifying and putting in place effective intergovernmental accountability and coordination of service delivery, fiscal arrangements, determining the number and criteria for constituting states, management of natural resources, cross-border matters, and clarifying the status of Juba, the capital of Southern Sudan, among others. In 2011, Southern Sudan will likely go from a federation within a federation (that is, within the rest of Sudan) to becoming some form of federal, or federal-like, country of its own.

The coming months will require Southern leaders to face and clarify some fundamental issues about the form of government for Southern Sudan that will deliver the goods to the people, and build a new national unity in a highly diverse and often divided society. After the referendum, the south might lose its main inspiration for unity, namely the common enemy in the North.

Deep-rooted conflicts like those of Sudan often entail a toxic mix of identity conflict with clashes over control of natural resources. This has certainly been the case in Sudan especially since oil was discovered in the late 1970s inside and around the border between North and South Sudan. The effective use of oil revenues has been a challenge in other oil-rich countries in Africa.

George Anderson, the president of the Forum, iterates many lessons and examples that Sudan can consider from other oil-rich federations.

Having vast oil reserves is often considered a blessing and a curse for developing nations. If the people of Southern Sudan vote to separate, their government will be the world’s most oil-dependent with 98 per cent of its revenues coming from oil. This dependence is unhealthy and one that Southern Sudan must handle carefully.

The Forum has produced a comprehensive study on the lessons learned by other federations in managing oil wealth that the Sudanese can draw upon to ensure that the legacy of this natural endowment will become a positive force for development and good governance, rather than run real risk that the opposite will happen, and it become a curse.

Our article by the South Africa-based expert, Jaap de Visser, on federalism and decentralization, presents some weighty lessons from other parts of Africa as well as insights into how to compare, weigh and interpret the applicability of different countries’ experiences to Sudan.

De Visser drives home lessons from what he calls the emerging “hub of innovation and experimentation with various homespun models of federalism and decentralization” in Africa. Clearly, dealing with diversity is crucial in Sudan as in most African countries, and he compares the very different models adopted by South Africa and Ethiopia in their respective political contexts.

Good relations needed

Whatever the basic political model, democratic federalism requires a respect for political pluralism, especially for the rights of other political parties to run different levels of government. De Visser also emphasizes the need for effective intergovernmental relations – a lesson well understood in Southern Sudan (even if the solutions remain to be decided), and the importance of addressing the need for massive administrative capacity building without which decentralized governance can only remain an empty promise.

Whatever the results of the referendum in Southern Sudan, the year 2011 promises to be critical for the 42 million people of Sudan, who in all corners of the country, yearn to finally experience peace, stability and development. Federal ideas and options could be critical and must be addressed – in all their potential and limitations – by the Sudanese peoples and by the international community.
Federalism – or closely related forms of decentralization – is perhaps the most widely recommended political form for the effective management and accommodation of conflict in deeply divided societies.

It is no surprise then that it has and is being increasingly used in such diverse locales as Bosnia and Herzegovina, Iraq, Ethiopia, South Africa, Nepal and the Sudan. Over the course of history, the record of federalism has been mixed in terms of its ability to stave off separatist tendencies; there are lessons to be learned for all Sudanese about the successes and failures of other federal experiments.

Federalism is central to the 2005 Comprehensive Peace Agreement (CPA) and to the Interim Constitution of Sudan that brought an end to decades of civil war, and which has maintained an uneasy peace since then.

The CPA sought to address the perception that the North had imposed its Arab and Muslim identity on the rest of the country, as well as the feeling that Sudan’s resources had not been used to benefit development in all of its regions, resulting in deep inequalities and a sense of marginalization. These centre-periphery grievances extend to all regions,

BY RICHARD SIMEON AND MARIE-JOËLLE ZAHAR

Abundant lessons for Sudan from abroad

The referendum must be ‘free, fair and peaceful’ to succeed.
the conflict-riven history of North-South that an overwhelming majority in the management of South Sudan, the indication is according to outside observers and possible referendum outcomes some of which are addressed in the CPA Protocols (Abyei, Southern Kordofan and Blue Nile), and some of which are not (such as Darfur and Eastern Sudan).

While the CPA has been much maligned, it certainly provided the South with a needed degree of autonomy and control over its own affairs while at the same time setting up power- and resource-sharing structures between North and South. This was set out in the twin structures of the Government of South Sudan (GoSS) and the Government of National Unity (GNU). It also provided for renewed relations between Khartoum and the Northern States.

The agreement called for new national elections in 2010 and, most critically, for a referendum in 2011 on the question of secession for Southern Sudan. The referendum is rapidly approaching, raising several important questions:

- What lessons can be learned from other federations regarding the critical issue of keeping a country united?
- How has the CPA fared in this respect so far?
- What lessons do other referendum processes hold for the 2011 referendum in South Sudan?
- If the South votes for independence, what are the possible relationships between a newly independent South and the rest of Sudan following a referendum?
- What role might federalism play in the new entities – in a reconstructed northern Sudan and an independent South?

This short article draws on comparative evidence from other post-conflict federations to address these questions.

Possible Referendum Outcomes

According to outside observers and some in the leadership of the government of South Sudan, the indication is that an overwhelming majority in the South is strongly in favour of independence. This seems to be deeply rooted in the conflict-riven history of North-South relations. It would not be the first time that federal arrangements have failed, in Africa or elsewhere.

Nevertheless, the outcome is not certain. The regime in Khartoum has attempted and still is attempting, to provide incentives, material and otherwise, for southern leaders to vote for continued unity of North and Southern Sudan.

Also weighing on the unity side of the ledger are considerations of capacity. Experience elsewhere has shown that the act of declaring independence does not solve all problems. Countries need human and material resources to run a new nation and meet the expectations of their citizens.

That lesson was learned the hard way in East Timor; it was also front and centre in debates about the independence of Kosovo. In the first case, capacity to deliver government services was lacking; in the second instance, Kosovo lacked a sufficiently strong economy to sustain the needs of a nascent state.

A flawed process

There are other factors to consider as well. Southern political forces are divided and some are concerned about the potential ambitions of the governing Sudan People’s Liberation Movement (SPLM) to dominate the political landscape, which are comparable to the regional tensions created by Kurdistan’s dreams of independence from Turkey.

In Africa, several neighbouring countries in a highly divided region might well object to an independent South.

In considering this regional dimension, the problems faced by Kosovo in its efforts to seek recognition of its independence highlight the importance of being recognized by other countries as an independent state to fully access the resources of the international system.

The international community has overwhelmingly accepted the South’s right to secede as stipulated in the CPA. Whatever Southerners decide, they will need to focus as much or more on the formidable new challenges they will face once they have independence, including the management of federal-decentralization within the South, as discussed below.

The impending referendum in South Sudan will be driven by how people ultimately assess the results of the 2005 Comprehensive Peace Agreement (CPA). This flawed process has all but failed in meeting its central goals: ushering in democratic transformation and making unity attractive to the South. Observers generally agreed that the federal elements in the CPA have not been effectively honoured.

Five years after the CPA was signed, critics point to discrepancies between the text of the Interim National Constitution and the laws in Sudan, to the flawed elections process of April 2010, and to actions such as the restriction of NGO activities, as proof of the lack of political will by the governing National Congress Party to make the CPA work. Critics also note the difficulties faced by the SPLM in governing the South and their impact in terms of mismanagement and corruption.

Implementation failures usually strengthen the case for separation. Serbia’s unwillingness to provide meaningful autonomy to Kosovo contributed to Kosovo’s decision to seek independence. Secession might be inevitable but the lesson from the CPA and those of similar processes worldwide highlight the importance of a free and fair process.

A free and fair process?

Like the flaws of other agreements before it, the CPA experience has failed to make unity desirable to many in South Sudan.

However, the comparative lessons of East Timor and Kosovo highlight the importance of avoiding flaws in the referendum process itself. Local and international reactions to the outcome may depend on it being free, fair and peaceful.

But equally important will be to have prior agreement about the rules that will govern the referendum. These are questions that Canadians had to confront during and after the 1995 Quebec referendum on sovereignty. How will the question be worded? How high is the bar – is 50 per cent plus one enough?

Should the majority of the population, which lives outside South Sudan, have any voice in the outcome? If so, how? How is the process to be managed in a way that both sides consider fair – a critical element in establishing the legitimacy of the result?

Other questions are of greater relevance to Sudan, such as where to draw the new borders? There is no consensus on this in the so-called “Three Protocol
areas” – South Kordofan, Blue Nile and Abyei. It is far better to agree on the borders before the referendum rather than to fight about them afterward.

Similarly with oil and gas, significant production potential is precisely in the contested areas. Oil produced in the South needs to be transported through the North to a distribution point on the Red Sea. Again, a peaceful referendum result will be much more likely if prior agreement is reached on this potentially contentious question. As the history of Ethiopian-Eritrean relations shows, failure to resolve these issues ahead of time will only feed tensions and increase the likelihood of interstate conflict.

Sudan is not alone in facing such crucial decisions. In Iraq, the fate of the Kirkuk governorate, one of the country’s richest oil-producing areas and a region disputed between Arabs and Kurds, is still undecided. Its resolution will weigh heavily in the success or failure of Iraq’s federal experiment.

In Bosnia, control over the district of Brcko was long contested between the Republika Srpska and the Bosno-Croat Federation. Its fate was ultimately decided by arbitration but many people on the Serb side see this decision as a violation of the Dayton Peace Agreement, which ended the Bosnian civil war in 1995.

Post-referendum relationships
What is to be avoided for Sudan is a contested referendum outcome combined with a long list of unresolved issues. That would be a recipe for renewed civil war.

Assume a massive victory for secession in the referendum. What happens the next day? Do two autonomous, independent entities spring into existence instantaneously? Of course not. A new set of issues arise.

The current government of Sudan is a power-sharing arrangement and Southerners play a major role in the national government. Do these power-sharing links instantly come to an end? What happens to the many from the South living and working in Khartoum today? What happens to Northerners living in the South?

More fundamentally, what rules will govern the nomadic groups of herders who have been accustomed to moving with their cattle across what will now become national borders? How will the two new countries join others in managing the water of the Nile basin?

The list of issues that will need to be
negotiated is long and complex. And these negotiations are likely to take place in an atmosphere of high tension. Therefore, there is all the more reason to solve as many of them as possible prior to the referendum vote.

And if these issues can be resolved, there will still be the question of building institutions that will manage the relationship into the future.

Some of the lessons of intergovernmental relations in functioning federations may be useful in managing relations between separate but interdependent countries. Here, the recent lessons of the Balkans may be useful.

Even after the dismemberment of the former Yugoslavia, following the international community intervention for conflict resolution and post-conflict reconstruction in Bosnia, Croatia and, later on, Serbia, regional links were inescapable.

Rebuilding of what are now inter-state links was facilitated in that case by the Stability Pact for South Eastern Europe. This pact joined the Balkan states and neighbouring countries with the United States and European Union member countries as supporting partners in 1999. This initiative was launched as a conflict prevention strategy aimed at stabilizing, bringing peace, stimulating economic recovery and strengthening democracy and improving human rights. The Pact provided a framework to stimulate regional co-operation and expedite integration into European and Euro-Atlantic structures.

While there are no immediate equivalents in Africa, the role of the African Union and the involvement of neighbouring states will undoubtedly contribute to shaping the post-seces- sion landscape. The Intergovernmental Authority on Development (IGAD) could also be considered as an important regional player in this respect. IGAD provides an already functioning forum for regional collaboration on common developmental objectives. It also recognizes the impact of insecurity and conflict on the ability of member states to reach their developmental goals and address humanitarian suffering in Eastern Africa.

**Federalism in a post-referendum Sudan**

If the federal option fails in keeping a country as deeply divided as Sudan intact, what are the possibilities for federal arrangements in the two separate countries?

Both are regionally and ethnically divided. In the North, considerable regional tensions persist. Many of the Northern regions chafe under rule from Khartoum and seek greater autonomy. Secession in the South will have confirmed their worst fears about federalism – that it fuels secessionist tendencies and can lead to a slippery slope of disintegration.

Will there be strong forces toward a centralist approach in the reconstituted North? Or will the political leaders in Khartoum learn a lesson that for federalism to serve in building unity requires a stronger commitment to political pluralism and power sharing than has been experienced during the CPA?

It could be a different story in the South. It too is deeply divided and, according to reports, was the site of mounting violence in 2009. There have already been three rebellions in Jonglei and Unity States by dissident members of the SPLM.

Since the 2005 peace agreement, the South has had considerable autonomy in the framework of the CPA and through the institutions of the Government of South Sudan. But the Southern regime faces serious human, material and financial capacity challenges. Its ability to function as an effective government is very much in question. It will require enormous international help to avoid becoming a failed state immediately following its establishment as a state.

Decentralization and federalization may prove a feasible solution for the South, but its design - acknowledging ethnic differences, almost unparalleled lack of government capacity to deliver services, the powerful role of traditional leaders and the presence of many nomadic groups - will require re-thinking many traditional ideas about the design of federal institutions. Unfortunately, in this regard, there is little if any guidance from other experiences.

South Africa provides one example, having recently established Houses of Traditional Leaders, giving them some voice in governance at the national and, especially, at local levels. It is however too early to tell whether this will suffice to reconcile formal and informal institutions of power. In Iraq, the role of tribes is increasingly acknowledged but there is no clear sense of whether and how to integrate them in formal structures of governance.

The core lesson to be learned is that federalism has worked in diverse and deeply divided societies throughout the world, but finding a distinctive design to match a country’s needs, and a genuine commitment to those unique power and wealth-sharing arrangements, is critical.

Less than one year remains before the referendum and what happens between now and then will critically affect the result. But comparative experiences offer useful lessons and warnings that Sudanese policy-makers on both sides of this issue ought to consider carefully.
Amid fears of secession, new visions of Sudan emerge

Disputes between centre and regions need fixing.

BY HAFIZ ISMAIL MOHAMED

The elusive challenge for Sudan since independence in 1956 has been to establish a nationwide political accommodation that is democratic and inclusive of its diversity, or its many diversities, whether they are religious, ethnic or geographic.

The months before January 2011 are crucial for the country and its people. If the voters of Southern Sudan choose independence in the upcoming referendum, and barring any major last-minute deals or severe outbreak of violence, Southern Sudan will secede.

As well, the 2005 Comprehensive Peace Agreement calls for a referendum in Abyei (on whether it is to be part of the South or North) and so-called Popular Consultations in the northern states of Southern Kordofan and Blue Nile, on whether to accept arrangements under the 2005 peace agreement or negotiate a different relationship with Khartoum.

As the Southern referendum will be decisive for the future of Sudan, it therefore receives the most attention. But all these developments, the referendum in South Sudan, the referendum in Abyei and the popular consultations in Southern Kordofan and Blue Nile will have a profound effect on the future of Africa’s largest country.

To understand in what direction, or indeed directions, Sudan may go after 2011, it is necessary to understand how we got to where we are today politically.

As even casual observers know, Sudan and her myriad conflicts are extremely complex. The Sudan problem is best understood from four points of view:

- so-called North-South conflict;
- broader centre-periphery conflict;
- intra-South conflicts;
- recent experience of the 2005 Peace Agreement (as well as the Darfur and Eastern Sudan Peace Agreements).

These conflicts are interlinked, and, as federalism was introduced to the country’s interim constitution as a possible solution for Sudan, it is useful to consider the conflicts in terms of the strengths and limitations of federalism to remedy the root causes of these conflicts.

It should be recalled that the North and South were two separate entities under colonial rule. Even historically, the relationship between North and South was not a happy one. In the last years before independence in 1956, the North and South were governed quite separately under the Condominium Agreement by Egypt and Britain, respectively.

While the South became increasingly Christian, it remained extremely underdeveloped, while in the North the small, so-called Khartoum-based “Arab elite” dominated the state and thus controlled the resources in all regions of the country. The elites were influenced ideologically by Arab nationalism that had spread from Egypt and elsewhere.

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Forging a deal: Sudan President Omar Al-Bashir, right, shakes hands with Vice President Salva Kiir. The pair formed a government of national unity after the 2005 peace accord. The two were re-elected in April 2010. A referendum on independence in Southern Sudan scheduled for January 2011 could bring changes.

Before independence, South Sudanese leaders asked for and were promised a degree of self-rule, but the first government in power reneged, which inevitably triggered the first Southern rebellion that lasted from 1955, the eve of independence, until 1972.

Unfortunately, Khartoum dealt with the rebellion as a security issue and resorted to military means to suppress it rather than addressing the underlying political issues that fueled the revolt by the South Sudanese.

What followed in the next few decades was a series of what Southern political intellectuals refer to as “too many broken promises,” of which the current regime is only the latest version, until 1972.

Pan-Africanism and exploitation of the South’s natural resources, including its arable land, water and, of course, its oil.

Foremost among the Northern political parties are the Umma Party and the Democratic Unionist Party (DUP), each of which owed its popularity largely to their links with the two main Muslim sects of Sudan, the Ansar and the Khatimya.

Peace until oil was discovered

The one bright period for the South was during the time of the so-called Addis Ababa accord, in which Southern Sudan enjoyed considerable self-rule from 1972 to 1983. However, the main proponent of the agreement, General Ja’far Nimeiri, in the face of challenges to his power base in Khartoum, flouted the Addis Ababa Agreement and brought Sharia Law to the South.

This coincided with the 1978 discovery of oil in the region of the 1956 North-South borders. This discovery was central to the North-South conflict and still is today – and it will be key to achieving peace in the next months, whether or not the South votes for secession.

The breach of the Addis Ababa Accord led to the second Southern civil war, from 1983 to 2004, with the forming of the Sudan Peoples’ Liberation Movement & Army (SPLM/A), under the leadership of the late John Garang.

The SPLM adopted an all-Sudan vision, known as “New Sudan,” which explicitly recognized and pursued the secularization and democratization of the whole country, an approach which attracted significant political and military support outside of the South, especially in the border areas of the Nuba Mountains (Southern Kordofan) and Southern Blue Nile.

These latter states are located within the North, and their inhabitants are Muslims, but of non-Arab descent. During the second civil war, many people of the Nuba Mountains (Southern Kordofan) and Southern Blue Nile were strategic and loyal supporters of the SPLM/A program of a “New Sudan” and, being geographically on the front line themselves, were critical to the strength of the SPLM militarily.

Convincing vision lacking

Although there were prominent progressive political forces within the powerful Northern parties, sectarian, personal and ideological differences made them ineffective and vulnerable and in 1989, they were overthrown by the current regime of Omer Al Bashir.

Since independence, there has been a constant inability by Sudan’s other major political parties to settle on and deliver a viable political vision for Sudan. In particular there has been a failure to ensure the two requisites, separation of state and religion; and more reasonably balanced wealth- and power-sharing arrangements with all regions. This weakness cannot be underestimated in understanding why there are not more apparent options for democratic political solutions in Sudan.

After almost 20 years of fighting, and several attempts to restore peace, John Garang and the SPLM/A signed the 2005 Comprehensive Peace Agreement with the ruling National Congress Party that did not include the other major Northern (non-ruling) political parties, but did include special protocols for Southern Kordofan and Blue Nile, as well as Abyei which also sits on the border.

Critics of the 2005 peace agreement argue that it was not “comprehensive” at all because it did not include key legitimate actors such as other major opposition parties like Umma and DUP, which have enjoyed major support in all free elections in Sudan’s history. As well, critics note that the Peace Agreement did not deal sufficiently with the aspirations of other regions for better power- and
wealth-sharing relationships with the centre.

The “Sudan problem,” as it is often called, is typically referred to as a broader centre-periphery conflict, in which all the “peripheral” regions (including Darfur and Eastern Sudan) and not just the South have been long exploited and left underdeveloped by the small Arab elite that controls the centre of power in Khartoum. The people of the Northern “peripheral” regions, which are made up of virtually all Muslims. Khartoum. the people of the northern year interim period was to be used as a

Failed democratic transformation
The first objective remains unfulfilled as

Southern Secession
The second core objective of the 2005 agreement also looks likely to fail as unity is less attractive than at any other time in the history of Sudan. The majority of southern Sudanese are gearing up for secession, even though the government of South Sudan is facing many problems. Self-determination, specifically independence, has become first and foremost an emotional issue rather than one that has been thought through carefully.

For the rest of Sudan, the prospect of Southern separation could spell disaster. The North will lose some of the income it derives from oil revenues, which represents more than 65 per cent of the national government’s income, at a time when other economic activities have also deteriorated.

The separation of the South would most probably encourage other regions to demand greater self-determination, especially in South Kordofan, Blue Nile and Darfur which would add to the complexity of negotiations and instability in the whole country, depending on the negotiating behavior of the leaders.

Federal governance is an essential component of the Peace Agreement and the Interim Constitutions. Indeed, federalism as a core element of any long-term sustainable political solution is now widely accepted among the political elites in Sudan who are committed to democracy.

However, the experience of the last six years illustrates the limitations of well-designed agreements and constitutions in the absence of genuine commitment.

The lack of political will shown by the Government of National Unity to uphold the constitution and implement key elements of the peace agreement, elements that were essential for a transition to democracy, has led to frequent disagreement between the government’s two partners, the north’s National Congress Party and the south’s Sudan People’s Revolutionary Movement. This has been a dark cloud that has overshadowed the interim period.

This situation has created a political environment more conducive to deadlocks than democratic transformations. It is in this context – as well as the longer historical experience – that a Southern vote in favour of secession appears likely.

The international community overwhelmingly supports the South’s right to hold the referendum. If the regime, or elements of the regime, in Khartoum tries to put up obstacles that lead to disruption of the referendum, many expect large-scale instability will set in.

This scenario would also have an impact on the coming popular consultations in South Kordofan and Blue Nile, and the negotiations that are expected to follow. The consultations’ outcome is less certain than South Sudan’s likely vote for separation, but will be almost as critical. These states played key roles politically and militarily in support of the SPLM/A and the idea of a “New Sudan.” They will play a major role in testing the willingness of the Khartoum government to negotiate and deliver on their promises effectively and in good faith.

Federal governance is said to be a means through which the forces that make the Sudanese one nation can coexist with the forces that have the potential to pull them apart. The forces that differentiate us can be accommodated through various degrees of regional self-rule; while the forces that bring us together can be fostered by “shared rule” at the national centre. Sudan certainly has an abundance of both forces, although the former are threatening to tear the country apart because of the inadequate performance of its political leaders.

More than half a century of politics in independent Sudan has only managed to make unity increasingly less likely, and to fragment the society between and within regions. Whatever happens in the Southern referendum, Sudan will need to do better in its commitment to democratic federalism.

The country cannot withstand many more broken promises.
What Sudan might look like after 2011

Issues on the table are not just oil and land, but language, religion and culture.

SUDAN’S REFERENDUM IS scheduled for January 2011, and time is running out.

Many of the tasks required by the country’s 2005 Comprehensive Peace Agreement (CPA) have not been completed. These include crucial issues of governance including border demarcation and political rights that have not yet been resolved, and others that are certain to emerge with the rapidly approaching expiry of the peace agreement.

Sudan is facing major hurdles such as the inability to control its territory and manage its linguistic, cultural and religious diversity. Years of living with these problems seem to be eroding people’s sense of belonging to one nation in Sudan.

Sudan also faces urgent problems that need to be addressed quickly, whatever the outcome of the referendum, to ensure post-referendum peace and stability. Not acting quickly now could mean that opportunities for peaceful resolution of these problems could be lost.

Sudan, a large country, is one-quarter the size of the United States.

Historically, it was composed of tribal-based, loosely connected communities, accustomed to localized forms of government run by tribal sheikhs or village chiefs.

Its attempts at decentralization over the last 40 years have all fallen short of full-fledged federal mechanisms, particularly those that grant power and resource sharing.

The key actors in Sudan’s peace effort, both Sudanese and international, are increasingly focused on the approaching referendum and its aftermath.

The partners in the peace agreement,

BY JALAL ABDEL-LATIF AND SEIFULAZIZ LAMIN MILAS

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Seifulaziz Lamin Milas worked with the UN Environment Programme from 1980-89. After that he was with UNICEF/Operation Lifeline Sudan, UNICEF Somalia, and civil society organizations with a focus on post-conflict reconstruction and development in the Horn of Africa.
the National Congress Party and the Sudan People’s Liberation Movement/Army (SPLM), agreed in June to hold “negotiations on post-2011 referendum issues and arrangements” to be facilitated by a body of the Africa Union.

The talks are designed to address questions of citizenship, security, financial, economic and natural resources; international treaties and legal issues.

**Increased efforts**

As well, members of the international community have increased efforts to promote the timely holding of the referendum, which is considered essential to peace. One key consideration is that the peace agreement process extends for six months after the vote, providing for the necessary time to complete its implementation.

Many related concerns need to be sorted out. Border demarcation is the most obvious one, especially as many of the producing oil wells are in or near the border areas separating the North from the South. Any border area that has not been demarcated could encourage anyone dissatisfied to file legal claims, whether they are justified or not. This is where a super-power like China, a prime customer of Sudanese oil, might intervene by supporting the status quo, and protecting its economic interests.

Both sides are financially dependent on maintaining and increasing the flow of oil, the main source of income for both the Sudan Government and the Government of Southern Sudan. Most of the oil comes from the South, but it is sent by pipeline to the aply-named Port Sudan in Northern Sudan, from where it is shipped to foreign markets.

Whatever the people decide in the referendum, North and South Sudan will still have to live together and co-operate with each other. If they are not careful, they will have little choice except for renewed conflict leading to possible mutual ruin. They are better armed than before, however, and are probably capable of destroying the oil infrastructure upon which they both depend. In the event of a decision for separation, a peaceful divorce would be in the best interests of all concerned.

But what could Sudan do now to avoid a divorce of North and South?

One major step – perhaps not possible before the referendum – would be to break the hold of the traditional elites on Sudan’s central government.

Sudan’s institutional structure is seen by many, particularly those from outlying regions, as one in which disproportionate amounts of power and influence are held by northern elites.

While a significant part of Sudan is made up of nomadic cultures, these elites are composed of largely non-nomadic communities from around the so-called ‘three towns’ of Khartoum, Omdurman and Khartoum North, and northward along the Nile, where inhabitants trace their descent from the early Arab migrations. They have been near the centre of power for most of Sudan’s post-independence history. This has often allowed them to promote interregional policies that expanded their support base through ethnic and regional agendas to their own advantage and to the detriment of local populations.

**Holding on to power**

The hold on power by these elites is linked to other major challenges and needs, which must be addressed to ensure a democratic transition and sustainable peace in Sudan. These challenges include the need for laws, policies and a coherent vision that addresses the issues of inclusion and management of diversity.

The 2005 peace agreement was meant to solve this by providing an Interim National Constitution, but it did so with limited success. The interim constitution was described in the local press as being more federal in form than in practice.

The CPA sought to address the challenges of diversity through the decentralization of powers. But the peace agreement was, above all, an agreement between the main belligerent parties. An inclusive agreement would have had more effect, enabling the participation of other major Sudanese political forces, such as nomadic communities in other parts of the country, thereby forming a genuinely federal structure with power and resource-sharing among the federal units (states) and the central government.

The management of diversity in Sudan remains a formidable political challenge to the building of a cohesive nation-state. The question of whether Sudan’s ethnic, religious, and cultural diversity can be reconciled to reflect a common public interest has long been debated by Sudanese political writers.

The debate continues, but with little consensus, and a tendency toward denial and lack of political will.

That could help explain the failure, since the signing of the CPA, to act on certain critical issues that need to be addressed before the referendum. These include demarcation of the border between North and South and necessary preparations for the referendum, as well as preparations for the referendum in the Abyei region, to be held at the same time. The Commission responsible for border demarcation has said that because of the rainy season, it will not be able to complete its work in time for the referendum. The SPLM’s response was that the referendums must be held on time, with or without border demarcation. The SPLM leadership has also stated that the popular consultations for the South Kordofan and Southern Blue Nile States are among the basic terms of the CPA and must be implemented.

As well, talks are continuing between the SPLM and Sudan’s ruling National Congress Party on the sharing of oil revenues and other key issues. Most of Sudan’s current oil production, the main source of state revenue for both North and South, comes from the border zones. Separation, without an agreed border between the resources belonging to the North and South, could bring a high risk of conflict and even the potential for another civil war - this time over oil.

**Working on border issues**

The committee discussing the border issue has referred it to the Presidency for settlement at the highest level. The Presidency includes President Omar Hassan al-Bashir, head of the NCP and First Vice-President Salva Kiir, who is also president of Southern Sudan and leader of its ruling SPLM.

There are also key issues of citizenship, such as who has the right to vote in the referendum, and also post-referendum issues of nationality that need to be addressed. There is the issue of southerners, Internally Displaced Persons (IDPs) and other people who live in the North, some of whom might want to stay. There are northerners, who live in the South and might want to remain. These are among the citizenship and right of residence issues that will arise if the referendum leads to secession.

Secessions also could lead to increased tensions over the Nile’s waters, with the South claiming its share, thereby
leaving less for the North. This is also a major issue for Egypt, which has often said it could not accept the separation of South Sudan. In the 1959 agreement between Egypt and Sudan on the Full Utilization of the Nile Waters, the two downstream countries claimed the full flow of the Nile River for themselves.

This amounts annually to 55.5 billion cubic metres (BCM) of Nile water for Egypt, 18.5 BCM for Sudan and 12 BCM lost to evaporation from storage behind Egypt’s Aswan High Dam. The seven upstream countries that were excluded from this agreement insist on their right to use the Nile waters. Separation and a share for the South could mean less water for the North.

Despite the lack of preparation, the CPA Partners in the Government of National Unity, the National Congress Party and the Sudan Peoples Liberation Movement (SPLM), continue voicing their commitment to the referendum and to holding it on time. Others are less certain and express their concern that delays might contribute to greater instability and potential conflict.

In Sudan, as elsewhere in Africa, there appears to be a resurgence of identity politics. Some groups in Sudan promote kinship identity as the basis for political divisions and loyalties. As a result, partisan activism and distorted public civic discourse are causing serious political repercussions.

Identity politics have frequently been at the centre of instability in Sudan. This form of politics is played out in the crisis areas of Sudan, mostly in the periphery, such as in Darfur, much of Southern Sudan, and in the Nuba Mountains and the Northeast.

Accommodating diversity

Various experiments in African countries such as Nigeria and Ethiopia have sought new ways to harness traditional kinship into a country’s politics in a balanced and positive way. These offer some profound insight into the workings of such forms of representation. The experiments provide examples of how such parties could coalesce through shared visions of nation-building and seek to accommodate diversity as a way of sustaining unity.

African governments have responded to diversity with policies and actions that have ranged all the way from repression to pluralistic policies such as granting autonomy to regions or adopting federal-type political arrangements.

Federalism can provide an effective structure for addressing diversity, when it is based on genuine sharing of power and resources, and co-operation. It goes further than simple decentralization and aims to ensure a voice at local and central levels, as well as taking into account shared values at the centre, which serve as the basis for national cohesion.

To establish effective federalism, a country must have the following:

- The will of political actors to give effective powers to subnational federal units by allowing each unit to determine its own destiny to a defined extent.
- The will to accept that subnational units have an effective voice in central decision-making so they can, to some degree, define the destiny of the whole nation-state.
- A commitment by political actors to support and give legitimacy to the entire country.
- The will to accept the rule of law, (as stated in the paper “Peace Mediation Essentials,” published by the Swiss Peace Foundation and the Center for Security Studies).

A federal system might provide an effective means of enabling Sudan’s diverse communities to live together, but would require considerable effort and attitudinal changes on all sides. But that would likely take time and time is running short.
Southern Kordofan State was the site of intense combat during the second Sudanese Civil War, fought between 1983–2005. It remained rife with tensions at the end of the conflict. It is endowed with oil, but awash with weapons and is in a region growing impatient for post-conflict reconstruction and economic development.

While most eyes are trained on Southern Sudan, and the delicate buildup to the 2011 referendum on whether it splits from the North, there are also the so-called three ‘transitional areas’ such as Southern Kordofan, which bear careful scrutiny because previous civil wars were fought in part in these areas and they risk being a battleground again if peace does not hold.

Abdel Aziz al-Hilu is the Deputy Governor of Southern Kordofan State, a state with a population of about 2.2 million, which is governed by special protocols to the 2005 Comprehensive Peace Agreement, the pact that ended the most recent 22-year civil war.

Mr. Aziz is also co-chairman of the technical committee that is facilitating planning and preparations for the state’s ‘popular consultations,’ which are to be held by June, 2011 to determine the political, economic, and social aspirations of the Southern Kordofan people as to how their state should function after the interim peace agreement comes to an end.

Mr. Aziz is a longtime member of the Sudan People’s Liberation Movement and was a senior commander of the Sudan People’s Liberation Army during the 1983-2005 Civil War. The deputy governor is part Nuba, one of the largest tribal groupings in the state, many of whom were loyal to and aligned with the Sudan People’s Liberation Army.

He and the current governor, Ahmed Harun, will be running against each other for the governor’s seat in the state’s mid-term by-elections.

While the state prepares for the popular consultations, there is uncertainty and apprehension over fears of renewed violence. This has heightened concerns that South Kordofan could be a flashpoint for broader conflicts as the interim period draws to a close.

In recognition of Southern Kordofan’s pivotal role in resolving the 22-year conflict, it and another ‘transitional’ area, Blue Nile State, were dealt with separately and granted a degree of autonomy in the 2005 Comprehensive Peace Agreement.

They were to be governed by a state executive, legislature, and judiciary. A State Land Commission was to work on settling land disputes. A census and elections were to be held within four years of the 2005 peace agreement.

However, there were profound disagreements over the census, which was postponed. Its completion is awaited in order for elections to be held in the state. Much of what was meant to happen since 2005 has not occurred, creating frustration and exasperation among the South Kordofan people who are still looking to realize dividends from the peace agreement that was struck almost six years ago.

It was against this backdrop that Abdel Aziz al-Hilu met with Todd Dusenbery of the Forum and gave the following interview, an exchange characterized by Mr. Aziz’s frank talk and his emphasis on how unity in diversity is the key to peace and stability for Sudan.

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**Interview: Deputy Governor Abdel Aziz**

Southern Kordofan’s Abdel Aziz al-Hilu answers Forum’s questions on federalism for the entire country.
Federations: Federal types of governance come in many institutional forms internationally to match the challenges and possibilities of different societies. But the main characteristic is that sub-national units (such as states, provinces, etc.) have some control over their own affairs in some areas—such as over primary education—but all regions are ruled by the central government on other matters—such as national defense. We call this balancing “shared rule” at the centre with the right degree of “self-rule” for regions. For you, what are the key areas where your state needs exclusive or significant autonomy, and why?

ABDEL AZIZ: There are several. First and foremost is in the area of wealth sharing. Devastation from the war (the 1983-2005 Sudan civil war) left us with a critical lack of basic services and severe reconstruction needs. The existing system of intergovernmental fiscal transfers from the National Revenue Fund in the centre is not effective or transparent and furthermore leaves us dependent on Khartoum for handouts. In turn, more state control of finances should be combined with systems for ensuring greater transparency and accountability to make sure the money is being spent wisely.

We need greater freedom to generate our own state revenues, but this is complicated by two factors. The first is collections of Zakat, which is a type of religious tax, and one of the Five Pillars of Islam. Under Sharia law, Zakat is mandatorily collected from the devout at mosques—and is pooled and equitably distributed to the poor for charitable needs. However, it is not clear where the money goes and we do not always see how it is meets the needs of the people. The other area is in the agro-business, where modern mechanized farming schemes generate tremendous economic activity. But like all northern states, we are not allowed to impose any duties on agricultural or animal-based revenues, which constrain public financing for important service delivery. Imposing other forms of state taxation also creates the complication of acting like double taxation for many, a problem which needs to be addressed.

Currently, as an oil-producing state, we receive a small share of the petroleum revenues generated in Southern Kordofan, in addition to the horizontal transfers that were negotiated as a part of the transfer formula. But this is not sufficient to make up for the extra financial and other burdens that petroleum production creates, such as damage done to the environment and public health problems. A greater share will need to be negotiated to meet the associated costs of research, cleanup, and medical care.

Management of diversity is equally important, especially given the cultural and religious mix in our state. There are over 92 tribes speaking up to 92 languages, several with distinct belief systems. Many are sub-clans of the greater Nuba ethnic grouping, and there are the Missiriya and Hawazma, and others who have migrated along the trade routes from West Africa, such as the Hausa-Fulani and Borneo tribes. Islam, Christianity, and several local religions are practiced, but currently only one system of religious law—Sharia—is imposed on everyone. This is not fair. All groups need binding constitutional safeguards and day-to-day assurances for cultural and religious freedom so they can live in peace.

More autonomy in decisions around land rights is also vital to managing peace and stability. This applies to both surface and sub-surface rights. There are fundamental problems related to land...
access and land use rights between the centre and state, and disputes over ownership and arbitrating claims. The introduction of large scale modern mechanized farming – sometimes managed by absentee landlords – and forced relocations (of farmers) off Southern Kordofan’s fertile land has created friction among the local, subsistence farmers who follow customary tenure and usage systems. We don’t have adequate institutions to adjudicate these matters, or sense where Khartoum’s jurisdiction ends and ours begins. Unquestionably land is another area where the state – and localities – need more say in management and rights.

Finally, Southern Kordofan should also have a stronger role in international relations, allowing us to better represent our cultural interests through diplomatic missions and other international forums, and to have a greater say around foreign investments and business practices, especially dealing with those involved in mineral extraction and agro-business, which have a tangible impact on our communities and affairs.

**Federations:** Federalism or federal-type arrangements also entail regions having an influence on decision-making of the central government—in this case Khartoum. How do you see Khartoum working differently to ensure a balance between regional autonomy while needing to maintain a unified Sudan?

**Abdel Aziz:** While aspired to in the Comprehensive Peace Agreement, the Government of National Unity has not in practice led to the kind of true representation that is needed to instill confidence and trust in the system. In any future arrangement, we need to see an environment where multi-party democracy can operate and flourish, which will allow central institutions, such as the Council of States, and the National Assembly, to more accurately balance and represent the country’s diverse interests. We also need to see a more frequent rotation in the office of the presidency to give other regions an opportunity to lead at the centre. To promote a true sense of national unity and identity, the centre also needs to respect, tolerate, and protect the rights of all of Sudan’s religious and protect Sudan’s cultural diversity.

**Federations:** Although not detailed, the Comprehensive Peace Agreement’s 3-Areas Protocol calls for popular consultations in Southern Kordofan (as well as Blue Nile State). What needs to happen to ensure that the consultations are perceived as legitimate? What have been the main issues faced in designing the process? Do you have concerns that the process and its results will not be implemented effectively?

**Abdel Aziz:** In order for the popular consultations to work, the conduct of free and fair elections is first and foremost a prerequisite for legitimacy. Elections held in accordance with international standards will ensure that the many different interest groups are represented in the State Assembly, which has been given the authority in the Comprehensive Peace Agreement and Popular Consultation Law to set up the Popular Consultation Steering Committee.

The main challenges we have faced in designing the process have revolved around delays in conducting the state elections, whose tardiness has led to the postponement of the popular consultations. The elections were delayed because of disputes around the census results (which are expected to be announced soon). Some have accused Khartoum of using this as a stalling tactic to frustrate the process. Furthermore, there has not been enough civic education and sensitization around the popular consultations because many citizens are still confused and misinformed on basic facts about the process.

I am also concerned that when the Committee submits the outcome and recommendations from the popular consultations to Khartoum, there will be differences. According to the Popular Consultation Law, the State Council is supposed to settle disputes that emerge between the state and Khartoum, but I do not trust this body, and feel that international arbitration, through a body like the Intergovernmental Authority for Development (IGAD) or the African Union, will be required for a legitimate and binding resolution.

In the meantime, Governor Harun and I and have helped to prepare, by establishing the Popular Consultation Technical Committee, an ad hoc forum composed of key state leadership to carry out planning until the official committee is in place. We have also brought together a diverse group of more than 100 elders from a variety of backgrounds to bring in more people and help to generate increased consensus around the process.

But I still have deep concerns, particularly since many of the Comprehensive Peace Agreement (CPA) provisions were not implemented, which has reduced the level of trust of the people, heightened frustrations with the centre and contributed to increased insecurity. During the (five-year) interim period, we have not seen the Sudan Armed Forces in the area reduce their numbers to peacetime levels, as was set out in the CPA security arrangements. The Joint Integrated Units (JIU), which were supposed to be the basis of a new national army, formed by integrating Southern People’s Liberation Army and Sudan Armed Forces troops, has not been formed as planned. Disarmament and redeployment initiatives have not been effective, and there has been a disturbing spread of small arms throughout the region. Indeed, security is perhaps the biggest immediate challenge.

**Federations:** Capacity is a major constraint in all parts of Sudan. What vision do you have for building the capacity for better governance in your state and other parts of Sudan?

What has been the source of the success in the Southern Kordofan region during the war and Interim period?

**Abdel Aziz:** Overall, I think the CPA set up a strong framework for cooperation between the north and south. My relationship with Governor Harun has been productive and has helped us navigate some difficult terrain, especially since 2009. There has been less distrust between partners, more security and movement on key issues. But the seeds of conflict are still there, and fundamentally need to be addressed.

Most important is the development of sustainable democratic institutions, which are the foundations to peace and development. This includes a strengthened rule of law, strengthening legislative and local government
Southern Sudan faces challenges after referendum

Decisions needed on diversity, state boundaries and how to distribute oil wealth.

In South Sudan, young supporters cheer South Sudanese President Salva Kiir at a rally in Yirol, in Lakes State.

BY TODD DUSENBERY

After decades of civil war, the Comprehensive Peace Agreement was signed in 2005 by the government of Sudan and the Sudan People’s Liberation Movement/Army, enabling Southern Sudan to create its own semi-autonomous government and participate directly in managing affairs of the country at the national level.

But with the relative autonomy of the last five years has come an enormous task: to craft a new government virtually from scratch in an ethnically diverse, highly undeveloped, conflict-prone and geographically large region.

While much has been achieved in the first five years of the peace agreement, Sudan and Southern Sudan in particular are approaching a major crossroads with the referendum on Southern secession scheduled for January, 2011.

Preparations are underway for the post-referendum period. With support from the international community, the Government of Southern Sudan has established the Post-2011 Task Force, with a specific subcommittee focusing on what a form of government should look like post-2011.

While the government of Southern Sudan has publicly embraced the concept of decentralization, policy consensus and implementation have lagged in the interim period (from January 2005 until time of publication). There remains considerable debate and even confusion and fear over a common vision around federalism and decentralization and how to make it work in practice.

Whatever the outcome of the 2011 referendum, however, it is fair to say that federal institutions, ideas, and experiments will continue to play a vital role in the region’s political future – whether as a new nation or as a semi-autonomous region in Sudan.

Managing diversity is particularly relevant in Southern Sudan, which is composed of more than 200 ethnic...
groups, many with their own distinct languages and dialects. In similar situations, federal governance has been used as a tool for balancing and creating a sense of ‘unity within diversity,’ operating on a variety of levels to help accommodate specific needs, interests, and traditions of large and small, minority and majority ethnic groups.

**Self rule vs. shared rule**

The essential question for Southern Sudan, where power continues to be largely centralized, is: How much and in what areas should state and local communities be given freedom to manage or govern their own affairs (self rule), and how much control should remain in the hands of the central government (shared rule)?

A common error is for people to think of federalism (or federal-like decentralization) as a zero-sum game. People have the false impression that either we are one strongly united country or we are weak, balkanized or tribal.

But this need not be the case and is not how federalism has worked for centuries in countries like Switzerland and Canada, or more recently in post-colonial or post-conflict countries like India, Nigeria and Ethiopia. In these countries, diversity is empowered through a variety of means matching each society’s circumstances; indeed, diversity is mutually respected and embraced as part of the common national identity.

Many Sudanese and international observers believe that one of the main challenges for peace and governance in Southern Sudan as a whole is to manage relations among its many ethnic groups.

It is critical for Southern Sudan that disproportionate power not be, nor appear to be, in the hands of one ethnic group. Such situations, whatever their rationale, have often been the source of intractable conflict. This can be avoided by ensuring that powers and resources are assigned to states and local governments in such a manner that while some groups hold a majority, the rights of local minorities are also respected.

In addition, it is important that representation in the central government - in bodies such as the legislature, judiciary, police and security, and the civil service, reflect the national ethnic makeup to a reasonable degree.

In designing federations, a key issue to address is the physical geography of sub-national units, and related questions such as how many states ought to form the country, on what basis they should be constituted, where their borders should be drawn and what relative size each should have.

From international experience we see that once states are created it is very difficult to reduce their number. But 2011 may represent a unique moment for Southern Sudan to change the number and the basis for creation of states and local governments. There are no clean and purely neutral, scientific-like criteria, but there are criteria and processes that can enhance legitimacy for the basis used. South Africa went through such a process at the end of apartheid.

Another decision to be made concerns the status of Southern Sudan’s capital city. Will Juba continue to exist simply as another city within Central Equatoria state, or might it have a special administrative status such as that of Abuja, Nigeria; Addis Ababa, Ethiopia; or Washington D.C.?

**Using the oil windfall**

Southern Sudan currently has one of the lowest levels of development in the world. How can the government best put the windfall of oil revenues to work in making service delivery more responsive to people’s needs, as well to diversify the future economic and revenue base?

If South Sudan becomes independent it will become the world’s most oil-dependent economy and government, with oil revenue accounting for approximately 98 per cent of the Government of Southern Sudan’s revenue.

Wealth sharing is critical to ensuring balanced development and equitable service delivery, and to avoid inequalities and perceived injustices from becoming a source of tension and even violence. To date, states and local governments are almost totally dependent on financial transfers from Juba.

The allocation of revenue powers may need to be revisited, including those that should go to the local level of government. Any revenue-transfer system needs to take into account a wide range of factors that may change quite dramatically over time in new and fragile political entities like Southern Sudan, including among others:

- The share of total revenue that should be apportioned to each level of government to fulfill their respective functions (the total transfer from centre to state or local governments),
- The equitable share going to each of the states (or among all local governments) – the formula that may take into account their relative population size, level of underdevelopment, capacities, among other factors.
- The level of implementation capacity, including the capacity for proper public financial management,
- Creating proper incentives for states and local governments to generate their own revenues,
- The arrangements by which sector policies and programs are coordinated between levels of government,
- The arrangements by which inter-governmental allocations are decided and monitored. Under the peace Agreement there is a fiscal commission at the national level and one for Southern Sudan.

Intergovernmental relations are the informal and formal means by which governments manage the inevitable need for coordination of their work, as well as to prevent or mediate conflict among governments (within the same order or between orders). There are many different models or combinations of systems, institutions, laws and traditions that make up the unique intergovernmental relations system of each federation.

**Intergovernmental relations**

Key areas for design of systems of intergovernmental relations in Southern Sudan will be inter-state border issues, land management and coordination of sector policies and programs for basic services.

Two other essential elements of federal systems are to ensure that there is a designated supreme arbitrator of constitutional disputes between levels of government and that there is a second chamber in which the states play a role in the centre’s legislative functions.

The role of supreme arbitrator is usually played by the highest court of the land (Supreme Court) or even by a specially-designated constitutional court.

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Continued on page 32
Northern Sudan could reorganize - even without the South

Changes will be needed, no matter what the referendum’s outcome.

Tribespeople rally in Khartoum to support the Darfur peace negotiations in August 2010. After the referendum in Southern Sudan, Darfur will need a permanent peace.

By OMER AWADALLA ALI

IN JANUARY 2011, THE PEOPLE OF Southern Sudan are scheduled to vote in a referendum, either for a unified Sudan or to create their own nation-state.

This referendum, Sudan’s rendezvous with destiny, is spelled out in the Comprehensive Peace Agreement (CPA) of 2005 which, by the terms of the agreement, was meant to “make unity (of all Sudan) attractive” to Southerners during a six-year interim period that ends in 2011.

Dr. Omer Awadalla Ali is a senior civil servant in Sudan. He has served as a legal advisor in the Ministry of Justice. He obtained his PhD on Federalism from Switzerland’s University of Fribourg. He is working now as the director of the Federalism Research and Capacity-Building Centre in Khartoum.

A majority vote for secession by Southerners will raise many questions about the fate of the federal arrangements in force in the reconstituted northern Sudan.

Indeed, even a vote for unity by Southerners will still leave open important matters concerning how to devise federal arrangements in the country in a manner that best meets the legitimate aspirations of all regions to attain a degree of self-rule, while ensuring an effective and sufficient basis for national unity.

The future of federalism in the case of unity

If Southerners vote for unity, the current federal arrangements will continue, according to the 2005 peace agreement and the Interim National Constitution.

However, as has been well noted by all observers, the 2005 peace agreement and the interim constitution are the results of negotiations and peacemaking between the two warring parties, the National Congress Party and the Sudan Peoples’ Liberation Movement. But the two key documents, the peace agreement and the interim constitution, do not include all the major political actors or even all the major regions of Sudan.

Thus, a major challenge for making federal arrangements work more effectively post-2011 will be how to integrate the Darfur Peace Agreement (DPA) and the East Peace Agreement into a permanent National Constitution. The Darfur agreement was signed in 2006 by the Government of Sudan, the Sudan
Federations

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Liberation Movement/Army (SLM/A) and the Justice and Equity Movement.

It was hoped that the agreement would provide a lasting solution to the conflict in Darfur although major rebel groups refused to sign the pact.

However, the 2006 East Peace Agreement between the Sudanese government and the rebel Eastern Front has succeeded – unlike the Darfur agreement – in bringing peace and stability to the Eastern region.

Darfurians want to strengthen their region’s status and thus the parties to the Darfur peace agreement are seeking to amend the interim constitution to incorporate the Darfur peace agreement in it, and for good measure, to embed in it the aspirations of Darfurians.

**Darfur needs solution**

This evokes two possibilities. The first option would be to create an asymmetrical arrangement for Darfur similar to the arrangement set out for the South in both the 2005 peace agreement and the interim constitution.

As a result, the central government in Khartoum would deal with the peoples and state(s) in Darfur through a single government of Darfur, just as it now deals with the Government of South Sudan with regard to the interests of the southern states.

Under the Darfur peace agreement, an interim authority for the three states in Darfur has been established. But, unlike Southern Sudan, Darfur would have difficulty going about electing a president for all of its territory. This is due to a lack of coherence and unity among the military, tribal and social entities in Darfur, as well as a consequence of the considerable scars from the war on the region’s social fabric.

Another option is to reconsider the current division of the states in Darfur. The Darfur peace agreement calls for a special referendum in 2010 for the people of Darfur to decide whether they want to approve the current division of Darfur, which is currently composed of three states, or whether they want to collapse and integrate them into one region.

In the event of the latter ‘one-region’ option, the whole structure of the federal system in Sudan will need to be reconsidered – in particular, the critical issue of the basis on which states are constituted (namely the number of states and the criteria for their creation, with respect to borders and similar considerations).

**Northern states could be larger**

Obviously, these Northern states or regions would be bigger and possibly more powerful than the current 15 Northern states. However, every time constitutional framers design a new federal entity, they decide how to constitute the states that will form the new federation and they apportion the division of powers accordingly to meet the country’s particular needs.

Thus, there is nothing untoward or implied in the actual number of states or regions to suggest that the Khartoum government and central institutions would not be empowered to ensure unity, security and a healthy national economy for the whole country.

The notion of reconstituting the states or regions (as six states or regions in the North and one highly autonomous territory in the South) would present an opportunity to also reconsider the functions of the head of state as they would be set out in a permanent constitution. The holder of this office can play an important constitutional role in promoting national unity by recognizing, in meaningful ways, the nation’s diversity.

According to the 2005 peace agreement, the president of the republic is directly elected, while the powerful position of first vice-president automatically goes to the president of Southern Sudan. This arrangement is effective in recognizing and dealing with long-standing conflicts between the North and South, and the presidential system seems to be well adapted to handle the complexity of Sudanese society.

But this arrangement of the president of Sudan being from the North and the first vice-president from the South is not well viewed by other regions, such as the western and eastern parts of the country, which feel marginalized by such anomalies that make one of their own people ineligible to be head of state. There are other options.

Historically, Sudan was composed of nine regions until 1994, when it was split into 26 states (called wilaya), through the 10th Constitutional Decree. Then, in 2005, it was divided into 25 states under the Comprehensive Peace Agreement.

A common aim among political elites in the North is to restore the former nine-region configuration. Given that the South – under the unity scenario – would be considered one unit, and possibly Darfur as another unit, then in simple terms, considering the South and Darfur as two distinct regions, the central government might press to also amalgamate the other northern states into regions, as was the case before the adoption of federalism in 1991.

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was, in turn, composed of five members representing different regions. The office of president rotated yearly among them. A similar model could be put into place in the permanent constitution to be enacted after the 2011 referendum. This could provide all the regions with the comfort that they would share, significant power and prestige in the central government more equitably.

The overall Head of Government, such as a Prime Minister, would be directly elected from across all the country, while regional representatives of the rotating Presidency could be elected from among the respective regional caucuses in the national parliament.

In addition to this being a highly symbolic recognition of Sudan’s diversity, similar mixed Presidential-Parliamentary systems in other countries could be investigated to identify appropriate real powers for the rotating Presidency such as specific authority with regard to the interests of the states or regions. These powers would not interfere with the central government’s ability to set and implement policy.

In fact, this option would be relevant for the rest of Sudan even if the South votes to secede.

Another challenging governance issue that will have to be dealt with in the permanent constitution, if South Sudan votes in 2011 to remain part of Sudan, is how to deal with the intergovernmental relations dimension of the country.

Under the 2005 peace agreement and interim constitution, the federal government in Khartoum can only deal with the people of Southern Sudan by going through the Government of Southern Sudan in Juba. It is very uncertain whether this unusual arrangement has worked thus far, or can work in the future to foster nationwide unity and cohesion.

In 2011, the parties should consider an alternative model of intergovernmental relations between the Khartoum government and the South as well as the other regions. Such an alternative would recognize the special autonomous status of the Southern region while fostering a sense that the southern states are part of a wider system of national government.

This could be done by various means such as holding meetings annually or more frequently of all the governors, as well as special meetings of governors or other government office-holders in the border states. These gatherings would help attain, between the states and the centre, a state of balance between autonomy and national unity – which is the very essence of all federal systems.

The future of federalism in the case of secession

Some political elites in Sudan and many international actors view Sudan in terms of it being composed of two distinct entities - the North and the South. However, this view obscures the essential fact that efforts to secure a sustainable peace in Sudan need to take the interests of the entire country into account, especially with regard to the power-sharing and wealth-sharing relationships among all the country’s regions and its centre.

Nevertheless, the reality created by the 2005 peace agreement is that Southerners will have the right to vote for or against secession in a vote now scheduled for January 2011.

If Southerners choose secession, the burning question to be answered would be whether the remaining northern part of the dismembered nation would maintain the current federal structure or opt to become a unitary country.

Constitutionally, the states and local governments gained significant autonomy under the current federal arrangement, set out in the 2005 interim constitution. For that reason alone, it would be difficult for the federal order of government to retreat and implement a unitary form of government that has, after all, failed since independence.

The federal system has effectively enabled protagonists to settle not only the historical conflict in the southern part of Sudan, but also qualifies as the obvious response to regional strife involving other Sudanese entities such as Darfur to the west, and Beja to the east, as well as the Southern Blue Nile and Nuba Mountains, among others.

Federalism has become increasingly understood by Sudanese political actors as a means to cope with social, cultural and ethnic pluralism in a very comprehensive manner. That is, it is a form of governance that can contain different regional, ethnic and cultural groups as one national entity, but one that should not be seen as providing advantages to the particular interests of minorities, ethnic groups or regions – as that approach could fracture the country.

Northern Sudan’s large geographic expanse, its multiple levels of diversity - religious, ethnic, linguistic and historical - suggest very strongly, if not inescapably, that it would be best governed as a federal nation.

Another key issue in the case of secession is the situation with the two states of Southern Kordofan and Blue Nile for which the 2005 peace agreement sets out different procedures for determining the nature of their political relationship with the rest of Sudan.

Although these two states lie in the northern part of the country, according to the defined border of 1956, many of the inhabitants living in the two states have long sympathized with the southern cause and fought together with the Sudan People’s Liberation Army/Movement to achieve their demands, which ranged from regional autonomy to self-determination.

This is why the 2005 peace agreement’s special protocols apply to the two states, where the people have to carry out a process of “popular consultation.”

The term “popular consultation,” which is clearly defined by the law, is a process meant to determine the will of the people of these two states:
- on whether the 2005 peace agreement satisfies their political aspirations.
- with regard to the weaknesses in the constitutional, political, and administrative arrangements of the 2005 peace agreement.

Once the shortcomings have been identified, a process of negotiation is to be established between the states and Khartoum.

Autonomy possible for two states

Another question that needs answering (with or without Southern secession) is whether these two states will seek a greater degree of autonomy in their dealings with Khartoum, and if so, how would such asymmetrical arrangements affect the legitimate aspirations of other states or regions?

Similarly, how would any such redistribution of power affect the legitimate needs of the central government and central institutions to forge national unity in the newly reconstituted Sudan? Clearly, federalism, with its attendant strengths and weaknesses, should be an important factor to be weighed by all Sudanese as they prepare for the many and varied scenarios the country will face in 2011.
Sharing the wealth: oil for Sudan’s development

Learning hard lessons from other federations

BY GEORGE ANDERSON

The Comprehensive Peace agreement of 2005 marked a bold experiment to develop a federal structure for a post-conflict Sudan. In 2011, this experiment will be tested when the people of Southern Sudan vote on whether to become a separate country. The issue of oil was at the centre of the 2005 agreement and it will remain central to the politics of Sudan, North and South, whatever the outcome of the referendum.

It is estimated that oil accounts for about 95 per cent of Sudan’s export earnings and 60 per cent of its governmental revenues. It accounts for 98 per cent of the revenue of the Government of Southern Sudan. This makes Sudan, and particularly Southern Sudan, one of the most oil-dependent countries in the world.

Managing oil can present tremendous economic and political challenges in any circumstance, and doing so within a federal structure can be even more demanding. But countries are not difficult to govern because they are federal; rather, they are federal because they are difficult to govern. In fact, federal structures are meant to help a country find a balance between national and regional interests that makes governance easier.

About 40 per cent of the world’s people live in some 25 federal systems and 14 of these (including Iraq and Sudan) have major petroleum resources. Federal countries account for about half of the world’s oil and gas production. So while managing petroleum in federal systems presents special challenges, it is a well-travelled road.

The Forum of Federations has been leading a major comparative study of how Argentina, Australia, Brazil, Canada,
India, Malaysia, Mexico, Nigeria, Pakistan, Russia, the United States and Venezuela deal with petroleum issues within their federations. While all these countries are federal, they differ enormously in their level of development, in how centralized they are, in the state of their democracy, and in the nature of their political institutions.

We have found that a key factor influencing how oil and gas is dealt with in these federations is the extent of their dependence on petroleum. In some of these countries, oil dominates exports and government revenues and, as a consequence, national politics.

Sudan is clearly in this category, along with Nigeria, Venezuela and Iraq; Mexico and Russia are close. In other countries, such as the United States and Canada, there may be very large petroleum resources, but they exist within large, rich and diversified economies and so are not usually very important in national politics. In those federations which are highly dependent on petroleum, the management of the petroleum industry and petroleum revenues tends to become very centralized, even if, as in Russia, it was once decentralized.

Sudan and Iraq are exceptions in this regard. In Iraq, the three provinces of Kurdistan effectively manage oil and gas in their territory, while Baghdad manages them for the rest of the country. In Sudan, there are special power-sharing and revenue-sharing arrangements for petroleum between the North and South. In both of these post-conflict federations, the current arrangements are contested and could change dramatically.

Ownership: an emotional issue

Every federation must determine how it will allocate the ownership, management and revenue of petroleum resources. “Ownership” is perhaps the most emotionally-charged aspect of this in that it is highly symbolic, but the paradox is that “ownership” often seems not to matter hugely in how petroleum is actually managed or revenues are shared. In federations such as India and Malaysia, ownership is with the states, but the federal government controls the industry and gets the lion’s share of revenues.

In Brazil, the federal government owns the resource, but most of the revenues go to the states. So the negotiators of the CPA were wise to put ownership aside and to focus instead on the more concrete, and shareable, issues of management and revenues. This approach could continue to be followed after the referendum, whatever the outcome, though in the event of secession, the Northern and Southern governments might seek to have ownership assigned constitutionally to the central government.

The key management powers over petroleum relate to the issuance of exploration and production licences and the specification of terms, including such matters as the possible role of international oil companies and the local employment or industrial benefits that an oil company may provide. These powers can be exercised by a government department, a professional agency or a state oil company, but in any case, the major policy framework will be estab-
Established by legislation and ministers.

The joint management arrangements agreed to in the CPA were designed largely to suit the governments of Sudan and Southern Sudan, rather than the 25 states of the federation. The producing states do have a limited right to participate in the National Petroleum Commission when their interests are involved, and they can object to contracts, subject to arbitration or an override by the Commission. Also, both federal constitutions establish land commissions which are meant to involve all levels of government and could deal with some petroleum-related land issues.

While a number of federations have highly centralized petroleum management, it is clear that in some cases this has been a source of major political tension within the country and resentment towards the industry in producing areas. Petroleum exploration and development can be done in ways that protect the local environment and provide local benefits, but too often some companies adopt very low standards, especially in poor, developing countries.

Local people are on the front-line in these matters and they can have a very different view from central governments, which may be heavily focused on revenue generation, even at the cost of environmental damage. The experience in the Niger delta of Nigeria is an example of how things can go wrong when local people are disempowered. Providing a local voice in and benefits from petroleum management can be fundamental to creating a positive context for the industry’s development and political harmony.

When the CPA was negotiated, most states in the new federal Sudan had little happening on the ground. Even today, there are huge challenges in building capacity at the state level to make the states reasonably effective politically and administratively. However, a key issue for Sudan, North and South, after the referendum will be the role of the states in whatever new arrangements emerge.

While the discovery of major oil resources in a country is usually celebrated, the experience can soon turn sour. Many oil-rich developing countries have had poor economic growth and poisoned politics because of oil. Classic problems include overvalued and volatile exchange rates (undermining the non-petroleum sectors of the economy), poor investments and use of oil wealth (including providing consumers with fuels and petroleum products at heavily subsidized prices), stop-go spending by governments (whose expenditures track oil prices), and corruption (because the profits of oil production can be so high and elites grab a big share). There are cures for all of these ills, but they require clear policy frameworks and political commitment.

Revenue sharing: a key issue
Given the centrality of oil revenues for governments in Sudan, a key question is clearly the sharing and management of these revenues. The CPA’s sharing formula between the North and South will certainly be reviewed after the referendum, whatever the outcome. It is likely the revenue-raising powers of states will continue to be insignificant for most of them, given the nature of their economies, so they will depend overwhelmingly on transfers from the central governments. Attention should be paid to the adequacy, equity and macro-economic principles of new revenue-sharing arrangements with the states.

Adequacy means giving the states a fair share of resources because they will be responsible for key aspects of education, health and infrastructure which are fundamental to the country’s future.

Equity means treating all states fairly: this is always a challenge in federations because there are so many ways to justify a claim. Thus, in Southern Sudan, the general transfer is currently shared equally amongst all states, regardless of their population; while this may reflect in part the problem of poor census data, it is clearly not optimal.

In addition, the oil-producing states have two per cent of production reserved for them, so that in Southern Sudan the most advantaged producing states receive total revenues per capita which are substantially higher than those in the least advantaged non-producing states. While it is important to give local populations in producing areas some special benefits from the industry, finding the right balance is always a challenge. Developing the capacity of the Fiscal and Financial Monitoring Commissions could be one way to advance this.

Good macro-economic practice in oil-rich countries should aim to stabilize spending over time despite the potentially huge swings in oil prices. This means smoothing arrangements for revenue transfers to the states, as well as for spending at the centre.

Too often in oil-rich federations, transfers to the states do not take this into account. Expenditure smoothing is probably more important than revenue saving in a country such as Sudan, where the needs for investment in development are so great. However, the challenge is to make good investments in infrastructure, governance systems and education which truly provide a return for future generations.

Good revenue and expenditure management depend fundamentally on transparency and accountability in government and this has often been a major failing in developing countries. Some federations, such as Brazil, have developed tough fiscal responsibility laws that require transparency and responsibility at both levels of government. South Africa has written the basic rules on governmental financial reporting and procurement right into its constitution. There is also the very promising Extractive Industries Transparency Initiative, which has been joined by several African countries, including Nigeria, the Democratic Republic of Congo, Gabon, Ghana, Guinea and Liberia. This focuses on transparency in the resource sector with accountability right down to the community level.

Accommodating the referendum
After two terrible civil wars, Sudan established peace between North and South. The agreement was partly motivated by the mutual interest in providing a climate in which the country’s petroleum resources could be developed and there has been real progress in that regard since 2005. The country still faces great challenges in terms of North-South, but also within the North and the South. After the referendum, whatever its result, there will be a major review of arrangements. The country’s petroleum resources will be at the centre of this, and the examples of other oil-rich federations provide lessons – both good and bad – that can help Sudan manage the risks and realize the opportunities.
Lessons learned from Africa

In Africa, only Ethiopia has tried ethnic-based federalism.

Supporters of the ruling Ethiopian People’s Revolutionary Democratic Front chant their support after a speech by Prime Minister Meles Zenawi.

BY JAAP DE VISSE

FIFTY YEARS AGO, WHEN AFRICAN leaders first confronted the challenges of running their newly independent countries, they faced another problem: how to deal with ethnic diversity.

But the leaders were either unaware of, or generally turned a blind eye to, this problem because forging national unity was really their most pressing task to effectively govern the states they inherited from the retreating colonial powers.

Since then, a half-century of centralization of power in African countries has generally not delivered political stability, let alone basic services to most of their citizens.

In recent years, in countries as diverse as Ethiopia, Nigeria, Rwanda, Sudan and the Democratic Republic of the Congo, ethnic groups have demanded political accommodation or a state of their own from their central governments.

To handle these internal conflicts - and to solve other governance problems - some nation states in Africa created subnational units, such as states or provinces, by granting subnational autonomy to ethnic agglomerations in some form of federalism or other decentralized model.

In the case of Ethiopia for example, its federal constitution was primarily designed to accommodate that country’s ethnic diversity. The Ethiopian federation divided itself along ethnic lines, even naming its subnational units, called regional states, after the main ethnic groups. This policy resulted in names such as Tigray, Somali, Oromia and Amhara for the regional states.

Ethnic accommodation

Similarly, during negotiations in the 1990s for a democratic South Africa, both conservative Afrikaners and Zulu nationalists pressed for a federal structure. While South Africa’s 1996 Constitution does not focus on ethnic accommodation, its quasi-federal arrangement made important concessions toward this goal. This was also the semi-federal constitution of the Democratic Republic of the Congo.

A key lesson from African experience has been that when a country readily acknowledges its ethnic diversity, through federalism or similar arrangements, this generally leads to a decrease in tensions among ethnic groups. But this also depends on the specific nature of the federal design and the ability of that design to respond to the ethnic-related needs of the society in question.

Diagnosing every political conflict within each society is important, and is something that leaders of several countries have failed to do correctly. The crucial question is “To what degree do ethnic politics pervade the politics of the country?” The likelihood of ethnic differences deteriorating into outright political divisions depends on the historical and political circumstances of each different society.

Two African countries in which this diagnosis took place were South Africa and Ethiopia. For post-apartheid South

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Africa, it was widely predicted that differences among the country’s 11 linguistic groups would lead to strife. In fact, political friction along ethnic lines has not turned out to be a major issue.

There is a direct link between institutional design and political behaviour. Comparative evidence suggests that the institutional structure of a country, such as its territorial design, goes a long way in shaping the regional, ethnic, religious or linguistic identities that form a basis for political mobilization. Ethiopia responded to its multi-ethnic challenge by recognizing its ethnic groups and responding to their claims. By doing so, it elevated ethnic identity to a primary basis for political mobilization.

Of the 81 parties currently registered with Ethiopia’s National Electoral Board, 73 are ethnic-based parties that have their strongholds in the different regions of the country. Although it may be tempting to dismiss the proliferation of ethnic-based parties as the work of the ruling party, there is enough evidence to show that the opposition is also fragmented along ethnic lines.

**Accommodating minorities**
Whatever its success in Ethiopia – which is still a young federation – the Ethiopian model is not necessarily essential for other countries to follow. A serious risk is that making ethnicity the main factor for the organization of a nation-state can cause the triggering of an automatic ‘ethnic solution’ reflex for all issues when one is not needed. South Africa has accommodated ethnic diversity without making ethnicity the basis for the organization of the country, thus avoiding conditions that make ethnicity a rallying point of political disagreement and fragmentation.

Federalism has contributed significantly to broadening the political participation of minorities. Notwithstanding the conflicting claims about ‘true representation’ and the dominance of a single party, the federal system in Ethiopia has turned ‘obscured districts’ into important units of government with significant local empowerment. In contrast to the selective co-optation of individual ethnic groups by the previous regimes, the federal government has become more diversified than ever in terms of ethnic composition and most subnational administrations are staffed with locals.

Similarly, the provinces in South Africa have provided regional elites with the means for political participation and representation in the leadership structure. In both cases, the self-management of communities is further strengthened by policies that allow the use of regional languages. The same is true in Nigeria.

**Allowing secession**
However, although it has proved effective for Ethiopia to have designed its federal structure along ethnic lines, this does raise the highly contentious issue of whether a federal constitution should include the right to secede. Many other countries forbid secession of a subnational unit. Ethiopia’s constitution is the first one on the continent that explicitly recognizes a general right to secession.

Sudan’s constitution provides for the right to secession for Southern Sudan through a referendum in 2011. Canada’s Supreme Court held that the province of Quebec could pursue secession through negotiations if a clear majority of the province’s voters, voting on a clear question, chose to secede.

Certainly, enshrining in a constitution the right of a constituent unit to secede is fraught with pitfalls. But there may not be much choice if instability, or even civil war, is to be avoided. In Ethiopia, the political forces at play during the transition to the current structure of federalism might help to avoid large scale ethnic conflicts but the practical impossibility of creating an ethnically pure subnational unit brings a new tension: one between the majority and the minorities at the level of the constituent unit. The new subnational units almost always have their own minorities as well (such as anglophones in French-speaking Quebec or Amharas in Oromia).

To succeed in managing ethnic diversity, a federal arrangement must accommodate those who do not belong to the newly empowered regional majority. The challenge lies in recognizing that the constituent units share the same problem of accommodating ethnic diversities that the central government is experiencing, which calls for inclusive politics, respect for national citizenship
and full rights, regardless of minority status, within a geographic area.

The process is crucial in ensuring that the institutional arrangement that a country chooses mirrors its political realities, and is therefore acceptable to the major contenders for power. Although in Ethiopia the blame for the failure of an all-inclusive process falls on the opposition as much as on the ruling party, the reality is that the militarily victorious ethnic-based liberation movements, by and large, translated their political program into constitutional mandates.

Fifteen years into its federal system and 19 years after the end of the civil war, Ethiopia must find a way to focus on building the forces of unity and common identity among Ethiopians, which in federal terms is just as important as giving expression, power and resources to the individual groups. This, in fact, is what distinguishes the Ethiopian system from the South African institutional response, which is the outcome of a more open, negotiated compromise that did not take place in the context of prolonged civil war.

The challenge of pluralist politics
Pluralist politics do not come naturally and must be learned. Decentralization provides a good school for such learning and opens opportunities for empowerment of marginalized groups. For example, South Africa's representative structures at all three levels boast an impressive record of gender representation. Forty per cent of all local councillors are female. The jury is still out, however, as to whether this has translated into increased access to services for rural women.

In new democracies, the unhappy prospect that only one party, or power-sharing coalition, can be the winner of elections and the rest will be losers, can be offset by providing space at the decentralized level for different parties or coalitions to govern.

Once political space is shared, the realities of governing will force different orders of government to co-operate across jurisdictional and party lines. This gives real meaning to multi-party democracy. But experience across Africa has shown how difficult it is to make pluralist politics work. A clear example is the tensions that exist between big cities and their central governments in some African countries, on a continent where strong ruling parties or movements at the central level are common.

It has been a bitter pill to swallow for some ruling parties in Africa to win an election but lose a major city to an urban-based opposition movement. Countries across Africa have dealt with this differently. For example, one of South Africa's nine provinces and the City of Cape Town are governed by the Democratic Alliance, which is in opposition to the ruling African National Congress.

Opposition parties win big-city elections
While intergovernmental relations between the central government and a major city can be acrimonious at times, such tension is generally resolved through an agreed discourse of cooperative governance.

In some other countries, that discourse between the central government and its capital city has not been fruitful. This has occurred in instances when the opposition party paradoxically won the majority of votes in the nation's capital. In several countries this decade – including Ethiopia, Zimbabwe, Uganda and Kenya – strong opposition parties first emerged in the capital or larger cities and won elections in those settings, but were prevented from taking power or otherwise thwarted by the respective ruling parties of the central government. The latter were unwilling to share power with another party running one or more governments at the subnational level. Such decentralized sharing of power is at the heart of successful implementation of federal or decentralized systems that seek to accommodate diversity of identities as well as of other political persuasions.

Therefore, while decentralization offers great potential for democratization in Africa, intergovernmental institutions and processes must be sufficiently credible and equipped to absorb inevitable tensions between the different orders of government.

As well, political leadership at all levels must have the resolve to funnel intergovernmental disagreement through agreed intergovernmental institutions and processes, rather than resorting to extraordinary measures, as has unfortunately been the more common experience in Africa.

Federal and decentralized arrangements involve a complex set of government structures, procedures and processes. Powers must be divided, and governance procedures must be designed in the case of shared competences. Institutions of self-rule, especially at the subnational level, must be staffed with skilled administrators and steered by wise politicians. These arrangements take years to mature and require a highly skilled corps of politicians and officials to make them work effectively.

The older federations found in highly developed countries often provide the federal model for export. However, the recent interest in the federal solution often arises from undeveloped and underdeveloped countries, ridden by conflict, where human and physical resources are at a premium.

This paradox – the countries most in need of a federal solution are least equipped to rapidly deploy it – raises the following question: how can the institutional design of new federal systems accommodate skills and resource scarcity?

A hub of experimentation
A complex system requires skilled politicians and administrators. Capacity needs to be built at all levels, by people at each particular level, and this poses a tremendous challenge. For example, South African provinces are required to build capacity in local governments, while they themselves face serious capacity constraints.

In addition, the quasi-federal constitution has introduced a very complex national institution, the National Council of Provinces, which places the system under strain while it continues to explore its role in the intergovernmental arena. In Ethiopia, top-level political will and commitment at the centre helped drive an early, massive and coordinated effort of public sector capacity building in the regions. Other countries would do well to learn from this highly successful mobilization of capacity, without which such complex and often lengthy transitions cannot even get off the ground.

The African continent is fast becoming a hub of innovation and experimentation where various homespun models of federalism and decentralization are being implemented. Resource constraints, conflict and political ambivalence put countries that are exploring these issues at a disadvantage. However, the need to look beyond the agenda of centralization has never been greater.

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**FEDERATIONS: What is the role of the Local Government Board in developing federalism in Southern Sudan?**

**SORO:** The mandate of the Local Government Board – which was established by the 2005 Interim Constitution of Southern Sudan – is first and foremost to advise the president on the organization and development of local governments in 10 states as a basis for improving intergovernmental relations and decentralization. Given the existing administrative and logistical capacity constraints, our work is currently conducted in close co-ordination with states (in some cases, states are our de facto interlocutors). Our mission is also to serve as a technical resource for the newly-created local government councils.

**FEDERATIONS: What are the most critical challenges facing the Local Government Board (LGB)?**

**SORO:** Despite the successful passage of the Local Government Act in 2009, which established a legal framework for the functioning of, and powers related to, local government councils, there has been a slow recognition of LGB’s mandate, which has constrained our ability to implement the Act. This has come about as a result of slow recognition by both federal and local levels.

In the localities, communities have not entirely welcomed the imposition of new local government councils (despite the fact that local government structures and functions have been in place for a long time – dating back to the colonial period and beyond, especially if one takes the tribal administrative system into account). But over time and because of the long war and human displacement, these structures have become increasingly marginalized.

Many regard the new councils as ‘foreign,’ or externally imposed bodies by the central government. What is needed are more civic awareness programs and capacity building projects, as well as ways to integrate elements of the traditional tribal authorities.

On the level of the Government of South Sudan, challenges have largely stemmed from a lack of political will, and concern that the local government councils do not have the capacity to handle an influx of resources and responsibilities. This is compounded by the fact that the Government of South Sudan is facing several, indeed multiple priorities, especially with respect to negotiations with the National Congress Party (NCP) concerning Comprehensive Peace Agreement (CPA) matters.

To date, the Local Government Board has been working with several international development organizations, notably the United Nations Development Programme (UNDP) through its Local Government Recovery Program, and the German-based GTZ, on a comprehensive program of administrative capacity building for state and local administrators.

**FEDERATIONS: What is the future of the Local Government Board?**

**SORO:** Looking to the future, the LGB will certainly continue to play an important role. There is little doubt that when – and if – North-South issues are ‘resolved’ through the 2011 referendum process, we should expect more internally-focused pressure in Southern Sudan. Hence, it is critical for the Local Government Board to prepare the stage for the future, to reinforce local capacity to provide essential services to their citizens, and to set national standards for developing localities, to serve as a clearinghouse of information recommending reforms and innovations.
FEDERATIONS: *Five years after the establishment of the commission, to what extent has it achieved its objectives?*

ABBAKER: Fortunately, most of the commission staff has had previous experience in practical implementation of fiscal federalism, having originally worked for the States Support National Fund, which was a mechanism for implementing fiscal federalism.

It was 2005-07, the very important period, when the proposal of allocation criteria was made, and the technical work, principles and administrative issues were established. The more recent second stage has concentrated on setting principles and criteria to achieve more equity in allocation between the states and transparent distribution of shares between the centre and states.

Also, we established mechanisms to publicize information about support for all orders of government, which we did by holding regular meetings attended by finance ministers from northern and southern states, representatives of the Government of National Unity and of the Government of Southern Sudan, and leaders of the reconstruction funds.

A highlight of this has been frequent interaction between international NGOs (like the Forum of Federations) and the federal government in conducting capacity building programs. Training courses have been held in the implementation of fiscal federalism and related fields.

FEDERATIONS: *What is the main challenges facing the fiscal commission?*

ABBAKER: The main challenges are: 1) a lack of comprehensive, suitable and accurate databases to reflect current, up-to-date statistics on the states, which hinders an equitable distribution of resources. 2) The lack of a fully effective and efficient system for monitoring and evaluation, which is needed to facilitate the follow-up of revenues deposited in the national returns fund; and to track the transfer of shares to the three orders of governance.

FEDERATIONS: *What is the future of the Financial monitoring commission?*

ABBAKER: There is no formal date for the completion of the commission’s work. This commission is unique in that it is the only institution focusing on coordinating the implementation of fiscal federalism between the three levels of government and their related organs. The work of the commission will continue to be relevant as long as Sudan is implementing fiscal federalism. The 2011 referendum results will not change the tasks and jurisdictions related to federalism, it might only change the title of the institutions.

However, I don’t think the Commission needs more power as such. What is needed is capacity development, political will and strengthening of coordination between relevant federal ministries and the states.
institutions, as well as building more robust systems for public administration and financial management through perhaps the formation of a civil service college.

Remarkably, during the war and in the absence of any government, the Sudan People’s Liberation Army liberated areas and were actually more functional and effective at delivering services to the people than is now the case. Despite the lack of resources, we set up advisory councils and other bodies that were more transparent, more accountable, and better managed than what is currently in place.

**Federations**: If Southern Sudan votes to secede in the next year, how do you think this will affect the balance of power and governance in the rest of Sudan, in particular with regard to the marginalized areas like Darfur, Southern Kordofan and others?

**Abdel Aziz**: If the south secedes, the country will lose a critical check and political counter balance, which will have a big impact on border states and other regions in the north. This will turn attention inward, as marginalized groups in the east, west and north will be more vocal in demanding autonomy and similar concessions. This is especially the case in Southern Kordofan, where I fear that the National Congress Party would only intensify efforts to entrench its power and its control more deeply, and this would cause the people to resist.

In order to mitigate these dangers, the problems have to be addressed at the source. There needs to be greater fiscal and political decentralization, comprehensive constitutional reforms to guarantee these rights, and a genuine commitment to implementation of agreements and to democratic governance. If not properly managed in a comprehensive way, I am afraid it could intensify the Darfur war, and eventually lead to the breakup of the north.

**Federations**: What is your prediction for Sudan’s political future over the next five years?

**Abdel Aziz**: This depends on the outcome of the 2011 referendum. In the case of secession, which I believe will happen, there will be – as I have stated – considerable intense pressure on the centre to address similar demands of marginalized peoples in the north, such as Darfur, the East, and the people of the Nuba Mountains. Unless there are fundamental constitutional reforms to wealth- and power-sharing, I do not foresee how the north could hold together.

In the case of a vote for unity, the only hope for peace and stability, again, is to have a new constitution and new federal-type arrangements that work to better accommodate the cultural, religious and ethnic diversity of the country. This would require a radical break from the status quo and from the old policies of divide-and-rule and of pitting one group against another to create instability and create distractions from the real problems.

For Southern Kordofan and the majority Nuba people, we most importantly want to avoid being a pawn in a bigger strategic game of tug-of-war between the north and south, and naturally hope that the political leadership in the state can overcome narrow party allegiances and unite around our common interests of promoting peace and development for the people of Southern Kordofan.

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**Southern Sudan**

The principal role of such courts is to be the final arbitrator and thereby ensure the presence of a mechanism that is fundamental to federalism, and which distinguishes it from decentralized unitary systems – namely, the presence and participation of an institution that prevents one level of government from arbitrarily usurping the constitutional power of another.

Another almost universal component of all federal systems is the presence of a second legislative body such as a senate. These chambers can moderate the potentially heavy-handed use of central government powers that go against the interests or preferences of the states, or a majority of states. Especially if South Sudan becomes independent, such a body may be a useful addition to the package of instruments for managing the balance that need be struck between shared rule and self rule. Similarly, Southern Sudanese may want to look at special mechanisms for specific functions that can be played by the traditional authorities from different parts of Southern Sudan.

**Finding the best model**

This article touches on some of the key areas of federal-decentralized governance that Southern Sudan will need to deal with in order to successfully handle the transitions that are coming in one form or another in 2011. The good news is that there is a plethora of options to learn and borrow from as Southern Sudanese find the model that works best for their vision and circumstances.

It can be argued that much of what drives cohesion and a sense of shared identity in Southern Sudan has been the perceived common enemy to the north. Whether this is true or not, it is clear that tension among the Southern states is likely to continue, putting demands on Juba to enact wealth and power sharing legislation.

But the Southern leaders fundamentally continue to disagree about a common vision or consensus about how to design a federally decentralized system that matches the needs of the people. There are some leaders who question, justifiably, whether this is the right time to devolve power from the central government, considering the real priorities of maintaining security and stability, not to mention the considerable resources that are required to run a federal system.

While it may be premature to predict the outcome to the referendum and the resulting political realignments, it is certain that the next chapter of South Sudan’s future will be defined by the negotiations, debates, and discussions concerning options and alternatives for wealth and power sharing.