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Democratic Federalism and Accommodating Diversity

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Accommodating diversity is a key issue of our times. It preoccupies policy makers the world over. Debates about ethnic, national, linguistic, religious, and economic diversity and its accommodation in viable and legitimate institutional structures has become a concern for established and emerging democracies alike. Diversities however, should not be considered a burden, but an asset that states can build upon. Indeed, one has to consider diversities as an opportunity for states that are enriched by different languages, cultures, religions and traditions.

Since its founding, the Forum of Federations has been increasingly drawn to work on the 'diversity question' in its partner countries – which include both developing as well as established democracies.

Whereas issues of cultural, racial, religious, and linguistic diversity are more pronounced in some countries than others, the issues of socioeconomic diversity (and indeed how they are bridged) concerns all federal or devolved systems.

The overlap between economic and social markers of diversity can complicate policy making and indeed polarize the politics of a country – the dispute in Iraq over the ownership of Kurdish oilfields, or exploitation of oil in the Niger delta by outsiders are well known examples, as indeed is the case of oil related conflict in Sudan. Over the last fifty years, many countries have come to craft institutional arrangements, albeit imperfect ones, for dealing with such issues. This has become necessary since these markers of identity can either not be changed, or can only be changed by violating fundamental human rights, such as religion or language. Moreover, unlike economic diversities that can be changed (in a positive fashion) via technical intervention, social aspects of diversity are often rooted in symbols and emotions, and can only be changed to the detriment of people.

It is fair to note that not all countries with social or economic diversity are necessarily set up as federal or devolved states. However, federal states often have the means for institutional accommodation which allows for the expression and recognition of social differences and provide mechanisms for bridging economic diversity. It is not surprising therefore that some of the most ethnically diverse countries in the world, such as Ethiopia, Nigeria, India, and Switzerland, are also federations.

My remarks this morning will focus on observations concerning the response of federal structures to challenges posed by diversity in a comparative context.

Those with roots in the region know very well that diversity - social, economic, ethnic and linguistic - is a reality of the countries in the region and also that these are traditional markers of identity along which groups have mobilized politically from time to time. Several federations like Belgium, Nigeria, Ethiopia, some de facto federations like Spain, and older

federations like Switzerland, for example, were constituted precisely to deal with issues of social and ethnic diversity. Indeed, the United States, Switzerland, Ethiopia and Nigeria, as they exist today, were specifically constituted to deal with the aftermath of a civil war. Even other apparently mono cultural federations such as Australia, Brazil and the United States have a substantial aboriginal population whose welfare has now been taken into account as the states embark on a path of creating a more equitable and just society.

It would be short-sighted to think of ethnic diversity as being static and territorially bounded. When we think of migration, we think of immigrants moving from the Global South to the Global North. What we often forget is that there are also South-South movements on a similar, if not larger, scale. Displaced Somalis living in Kenya, or indeed situations of internal economic migration have the potential to change the face of politics in host societies; hence, this is something we should probably keep in mind when we are thinking of how to deal with issues of diversity. A comprehensive discussion of all these issue, I suppose, is beyond the realm of my remarks this morning. I did however want to highlight the fact that in thinking of diversity it is important not to just think of primordial diversities, but also to think of new diversities and new challenges that emerge, because when we construct institutions for dealing with issues of diversity we need to think of constructing institutions that are adaptable, flexible and forward looking.

I think it is also important to acknowledge that there is no one perfect model for dealing with diversity. And countries that have succeeded in their search for reconciling unity and diversity have done so by experimenting with a wide range of devices available from what I would call a federal toolkit. Countries which have tried to deal with the challenge of unity through repression, exclusion, or forced assimilation have often experienced political instability and civil war.

As federal systems evolve, they face strains and tensions from various, but often interrelated, sources. These may include internal or international migration, as noted above, or broader demographic changes that may affect the balance of power among ethnic communities, the relationship between the state and such communities, or the obligations of membership in new supranational institutions; the discovery of natural resources in a region or state; meddling by external actors (including, so-called kin states that share an ethnic affinity with a community or minority in the federation) in state-ethnic and/or inter-ethnic relations; the mobilization of previously isolated or subdued tribal or indigenous communities; the domestic spillovers from major international economic or political currents and developments; the rise of extremist or militant (including irredentist or secessionist) ethnic movements; the development of significant disaffection in a federation in response to the perceived desecration or non-observance of the founding federal principles; and/or broad pressures from dissatisfied constituent units or communities for the adaptation or reformation of the federation, including fundamental or foundational constitutional reforms.

In the 1960's Nigeria dealt with separatism in Biafra in the east of the country, for many decades Canada had to deal with Quebec separatism. In Spain, Catalonia has had a sovereignist movement and Basque country has had a militarized separatist movement for decades. The United States, 140 years ago, fought a civil war to preserve the union and in India of course there have been constant insurgences on the periphery. And while it is true that in each case of militarized separatism, the state has used force to put these down, the continued unity of these countries and the viability of their democracy has resulted from the state's willingness to explore institutional mechanisms for accommodating divergent points of view rather than from ceaseless and continued coercion.

Although not all federations were originally designed to empower ethnic or linguistic minorities, nor are all diverse countries federations, federal types of arrangements seem to be the preferred means to reconcile respect for diversity with a common purpose of unity. This is possible because federal states have the means for institutional accommodation. Many federal countries owe their stability to the fact that they have been flexible and have often taken a middle ground in balancing unity and diversity. In Canada, Spain and India diverse groups can consider certain provinces or autonomous communities as their home land, and at the same time, all groups have significant representations in the key institutions of the state.

Institutional arrangements for dealing with diversity vary depending on the type and configuration of diversity. Countries like Nigeria, Switzerland, India and Spain, to name a few, tend to have linguistic groups that are territorially concentrated just like in Pakistan. Often, the solution to that is to create territorial homelands for linguistic groups. In other countries, like Brazil and the United States, the identified minority groups are dispersed across the country, and there the state often resorts to affirmative action policies in order to accommodate diversities. Typically however, most federal states have identities and diversities which are territorially concentrated on the one hand but may also be dispersed or cross cutting across various groups.

Many federations face especially difficult problems with accommodating various forms of minorities and disadvantaged groups. These may include not only the traditional national (but locally dominant) minorities, but also territorially dispersed minorities, minorities within minorities (so-called double minorities), historically ignored minorities, unofficial minorities (for example, religious minorities in linguistically based federations), and socio-economically disadvantaged groups, such as pastoralists and women. What mechanisms exist for addressing the concerns of such groups? This question has become especially germane as relative demographic growth, the global human rights movement and democratic revolutions have not only made minorities more assertive or resolute than in the past, but have also rendered unviable previous mechanisms for containing ethnic minority situations, such as assimilation or coerced integration, hegemonic repression or domination, ethnic cleansing, expulsions, or genocide.

A classic federation with constitutionally empowered and entrenched constituent jurisdictions is especially judicious for the accommodation of locally concentrated ethnic minorities. Like decentralization and special autonomy arrangements in otherwise unitary states, fully-fledged federations have the potential advantage of elevating national minorities into self-governing majorities at the sub-national level. Within the framework of territorial autonomy afforded by such sub-national jurisdictions, minority communities can exercise a broad range of political powers, including the authority to accord an official status to their own languages and to establish and control their own educational institutions.

However, where ethnic communities are territorially interspersed or dispersed, rather than geographically concentrated, or where the communities are too fragmented or small to be viable constituent units, more creative solutions may have to be crafted to alleviate ethnic minority concerns. To be sure, the establishment of ethnically mixed institutions, rather than promoting inter-ethnic bargaining at local level, could subsequently provide an experimental basis for inter-segmental compromise and stabilization at national level. However, especially where disparities in the size of communities create legitimate but seemingly intractable ethnic minority concerns, innovative arrangements will need to be established to assuage the consequences of such complicated ethnic demographics and guarantee inter-community peace.

Corporate autonomy or non-territorial federalism arrangements have been used to accommodate geographically dispersed or isolated minority communities in places as diverse as Belgium, Canada, the Netherlands and Israel. These arrangements extend public support and privileges on a personal or non-territorial basis to members of a community, especially in the domains of education, language and healthcare. Marginal minority communities, as well as ethnically mixed or disputed areas, can also be accommodated or managed through special territories that are more or less directly controlled by the federal government (or any other relatively neutral or common authority) such as the union territories in India, the three indigenous territories of Canada, or the Brcko District in Bosnia Herzegovina.

While the traditional literature on federalism is binary in its approach, complex situations such as those noted above give rise to the need for multi-level federalism. In this sense, the importance of local government cannot be overstated. Local governments not only bring government close to the people, but also provide mechanisms to deal with complex, minority situations. This is done through the establishment of institutions of local power sharing that guarantee representation to minority communities in regional executives and parliamentary decision-making bodies at sub-national level. Such local power-sharing structures have been instituted in the Brussels Capital Region of Belgium, in Brcko District, Kurdistan, South Sudan, and Northern Ireland, among other ethnic flashpoints. A related mechanism is one that gives federal constitutional recognition to local authorities within constituent units, thereby guaranteeing some opportunity for local self-rule beneath the level of a federation's primary constituent states and regions. Such aspiration to protect and empower vulnerable communities in sub-national jurisdictions has been a more or less explicit goal of local governance institutional design in countries like Ethiopia, India and Nigeria. In India, local government institutions have also provided a vehicle for the empowerment of women, through the reservation of a third of all elected positions for women.

When minority nationalities in countries that have lived through conflict propose a federal structure as a political solution, members of the majority sometimes suggest that federalism would merely pave the way to splitting up the country. The actual experience of federalism proves that fear to be unfounded. The federal solution does not so much encourage the secessionist impulse; it contains it. To put it in the starkest terms – a system of constitutional rules and democratic practices allows those who seek to advocate secession to do it in a peaceful, non-violent fashion, rather than resorting to armed resistance. The experience of federal countries to date – especially those that have a strong tradition of democracy – is that, despite referenda and other forms of secessionist public advocacy, secession has not occurred. Democratic federalism has proven resilient and flexible enough to deal with the challenge of secession.