Hanns Seidel Foundation

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Hanns Bühler/Susanne Luther/Volker L. Plän (eds.)

FEDERALISM – A SUCCESS STORY?

International Munich Federalism Days 2016

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Imprint

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PREFACE

||| Ursula Männle

In more and more countries with challenged statehood, federalism is being discussed as a model for reform. Under various preconditions, expectations are being addressed towards federalism worldwide.

The ability of federalism to integrate diverging interests, autonomy movements, and territorial conflicts peacefully is emphasized. It is, however, apparent, that peace and development with or by federalism are not guaranteed. For federalism reforms, a dialogue with the community is essential, which has to take place in the context of a democratic system and by mutual consent on its principles.

The concepts of federalism and decentralisation are thus facing support as well as various challenges and political circumstances are rather deteriorating than improving. How can federalism help satisfying critical voices? What requirements need to be fulfilled to overcome economic negligence (or its impression) and to prevent the extension of social rifts? Which role do security forces play to overcome conflicts that tear at a nation's unity?

These questions were discussed at the International Munich Federalism Days 2016, the sequel to the Wildbad Kreuth Federalism Days series. More than one hundred political and social scientists, politicians as well as activists from twenty-two countries discussed in the four day-conference, under which circumstances political reforms, aiming at establishment of federalized structures and mecha-

nisms can be successful. This book presents their findings of the discussions from eleven countries.

Despite its challenges, the concept of federalism itself is increasingly sought after by countries harbouring inherent geographical or ethnical tensions. The decentralisation of political power can help unifying interests and thus strengthening the country as a whole, making it easier for its citizens to identify themselves with it. The cases of the Philippines, Nepal or Myanmar are good examples. Here, federalism has been included in the political discourse. In some countries like Israel or Ukraine, federal models are discussed for pacification, but have yet to leave the stage of theory (See Oleh Berezyuk's article on current obstacles for decentralisation in Ukraine).

On the other hand, the cases of Yemen and Nepal show that the decentralised allocation of power or resources associated with federalism can also be the source of unrest instead of its remedy (see Hari Bansh Jha's article on the reasons of the failed implementation of Nepal's 2015 constitution). This further leads to the question which is also being discussed in the later part of this book: do certain economic preconditions have to be in place to ensure a stable federal state or is a decentralised structure necessary to ensure an economic and social balance? Even stable democracies such as Germany, have to re-evaluate their mechanisms as the case of fiscal equalisation between the Free State of Bavaria and other German states shows.

In order to maintain stability in a democracy, armed forces and police can play a significant role as well. Armed conflicts and military juntas – traditionally supporting centralised structures – have prevented the full implementation of decentralised structures as examples in this book show. On the other hand, a decentralised security force (police) with local accountability can increase effectiveness. However, a transition from a centralised to a decentralised security force is a tremendous act which can leave a power vacuum or incur substantial costs (this challenge is illustrated in Luis Cedeño's article on the case of Venezuela).

This book mirrors the manifold challenges democracies face with the practical implementation of decentralised structures. At the same time, it provides ideas and solutions from various perspectives. For this reason, I am confident that this book will be a significant contribution to the international exchange on the topics of federalism and decentralisation.

||| PROF. URSULA MÄNNLE
Chairwoman of Hanns Seidel Foundation since 2014.
She served as Bavarian Minister of State for
Federal Affairs and was a long-standing member of both the
German Federal Parliament as well as the
Parliament of the Free State of Bavaria.

CONTENTS

FEDERALISM AS A MODEL FOR SUCCESSFUL POLICY-MAKING AND AS A CHALLENGE TO GOVERNANCE

||| Roland Sturm

Federalism in the world comes in many shapes and institutional realities. This is due to the national circumstances federalism has to pay respect to. Still, it is not impossible to generalize, and to filter out the preconditions for a successful federal state. The most basic context is the one of democracy and federalism: Without democracy, there is no chance to develop the efficiency and participation potentials of federalism.[1] In an ideal world policy-making will follow the logic of federal power-sharing. The reality in federal states is often less straight-forward.[2]

Federalism is often seen as a challenge to traditional modes of governance and not as offering ways to improve governance. For example, the Westminster model of governance has to find ways to reconcile the thought of absolute parliamentary sovereignty with the popular sovereignty of the states / regions / provinces that make up the federation. Different strategies can be found here. In Canada, for example, the weakening of the role of the federal government in provincial affairs has reduced the fields of joint policy-making to an extent which makes it highly unlikely that the question arises, which of the principles of statecraft, the federal one or the sovereignty of Parliament in Ottawa shall prevail. In addition, with regard to policy-making, there exists no federal chamber to speak of, that would be able to and inclined to veto provincial politics. In India, we find the opposite extreme: A frequent involvement of the

federal government in states' affairs, especially via public administration, which is the backbone of policy implementation. In times of region-state conflicts, the federal government prevails to an extent which has led to the question whether India still is a federal state. The South African case is even more extreme. The leading political party ANC sees the federal organization of the state as an obstacle to governance. This obstacle should be overcome by the centralizing influence of party politics. The centralism of ANC party organization cannot be reconciled with federal diversity.

SUCCESSFUL POLICY-MAKING

The "secret" of successful policy-making in federalism is to make good use of diversity. Diversity is a complex issue. It helps to integrate centrifugal forces in societies, especially in ethnically divided ones. But the acceptance of diversity comes at a price. Governance gains in complexity, and it is necessary to deal with demands for different kinds of participation in policy-making. A balance has to be found between efficiency and voice. Policy experts tend to prefer problem-oriented solutions. In federal states, problem orientation has to take on board procedural orientations. It is not enough to come up with, for example, a better system of health care, when the introduction of such a system ignores regional demands and necessities. A recent example is the National Health Service in Britain, which federalized when the country began to accept a decentralization of its state organization. Now four health services – for England, Wales, Scotland and Northern Ireland – exist. The technical question whether a unitary health service would perhaps be more efficient is obsolete. Diversity is the precondition for the acceptance of the organization of the health service. Efficiency questions need to be answered in a framework which depends on the degree of diversity a society believes to be adequate.[3]

Organizational complexity in federalism is reflected in what was termed multi-level policy-making. What distinguishes federal from

unitary states is that these levels of policy-making are more than administrative units. They also guarantee political participation. Not the levels of governance matter as such, but the degree to which they give a voice to regional demands. This excludes top down decision-making processes. Federal states rely to a great extent on intergovernmental negotiations – be it in a formal setting, such as second chambers or meetings of federal and regional ministries, be it informally. The degree of transparency necessary in these negotiations depends on the acceptance of this mode of conflict resolution and the strength of traditions. "Older" federations, such as Switzerland, can live with an elite-driven negotiation style, whereas younger ones, such as Iraq, where trust is scarce, or federalizing countries, such as Myanmar, need permanent reassurance that compromises made with regard to policies do not discriminate against one or the other (ethnic) group. Policy-making in unstable federations or failing states, such as South Sudan, is seen as a zero-sum game. Compromise can be interpreted as weakness and the alternative of secession or civil war cannot be excluded.

Successful policy-making in federal states should use the advantage which the proverbial laboratory conditions of federalism provide. Policy innovation is not reduced to the single source of centralized reform. In federalism, numerous centers of policy innovation co-exist and compete. If federations do not give enough freedom to explore innovation in a decentralized manner, the resource of laboratory federalism will not enrich policy-making. So, in addition to respect for ethnic diversity, which is a constant source for the legitimation of policy-making, the respect for regional productive forces explains the need for diversity in policy-making.

Participation as an ingredient of successful policy-making in federations is often underestimated, and sometimes even seen as an unnecessary hurdle for decision-making. The latter view is based on a limited view of the policy process. In all stages of this process, namely agenda-setting, decision-making, implementation, evaluation and policy learning, participation in federal states improves policy

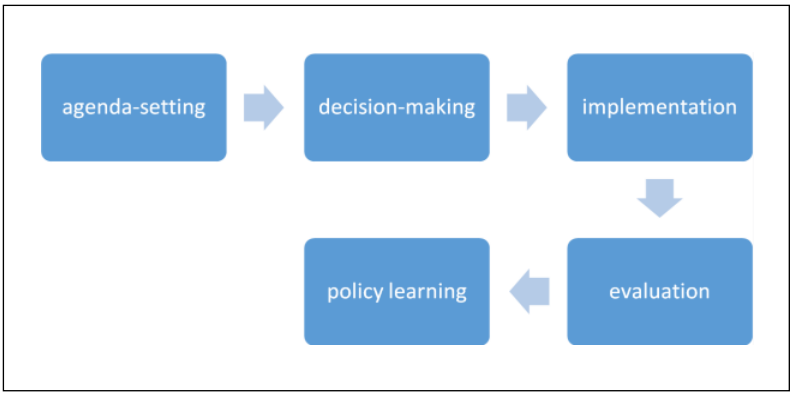
results. With regard to agenda-setting it is obvious that the more ideas contribute to the political agenda of political executives, the greater is the likelihood of convincing results. Early involvement of all levels of a federal state creates procedural legitimacy and shared responsibilities – also with regard to policy outcomes. If regional involvement includes co-decision-making the legitimacy of policy-making is further improved. Whatever central governments decide needs to be implemented. Here, of course, different models of implementation are possible. If the federal government, as in Canada or the US, implements federal laws, this may have the advantage that implementation does not vary by region and remains close to the original intent of a law. The lack of regional sensitivity of policy implementation can, however, also be a problem. It can be helpful not to parachute bureaucrats of the central governments in regions, especially if those regions fight for autonomy and self-determination. Instead, decentralized implementation may be an alternative. It is no problem to provide regional bureaucracies with the necessary know-how and financial means to make decentralized implementation possible, as the German example demonstrates. Implementation is not the end of the story of policy-making.

The evaluation of policies that has to follow is often neglected. It is, of course, important to know what works under which circumstances. In a federal state, circumstances differ by region and we must accept that a certain incentive for social change falls on fertile soil in one region of a country whereas it comes too early or too late in another. Diversity in federalism initiates a number of learning processes, which taken together provide preconditions for successful policy-making. It is important to note that policy learning in federal systems follows the logic of appropriateness. Appropriateness has in contrast to decision-making in unitary states two meanings. We are looking for solutions which are appropriate, because they solve policy problems (as in unitary states), but also for solutions, which find regional acceptance. In other words, the logic of rational choice will not by itself lead to successful policy-

making in federalism. Successful policy-making in federalism in addition always respects the elements of regional identities, traditions, or culture. Whereas policy-making in unitary states stresses efficiency and effectiveness, policy-making in federal states is embedded in the requirements of regional diversity. National policies in federal states are therefore compromises of regional world views and not only pragmatic solutions to policy problems. The simple decision to build a bridge from A to B, or to dig for oil for example, may from the point-of-view of central government yield many economic benefits, but seen from a regional perspective it may destroy the regional heritage.

In addition, there is the question of who controls the income generated by natural resources. In federalism, the distributional consequences of policy-decisions are always a topic. Arjan H. Schakel has formulated the following decentralization theorem: "This theorem states that the optimal degree of decentralization depends on the heterogeneity of preferences, on the one hand, and interjurisdictional spillovers (externalities) and economies of scale on the other."[4] This is an attempt to bring efficiency and participation together into one equation.

Graph 1: The policy process



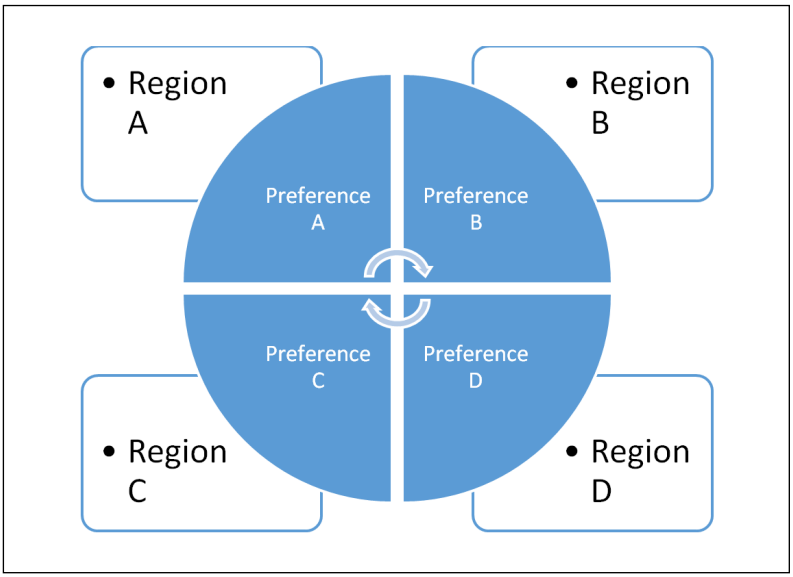
THE PARTY POLITICAL DIMENSION

In democracies, political parties have a decisive role in political decision-making. In federal states, this may either strengthen or weaken centralizing elements in policy-making. The decisive factors here are the policy preferences of the electorate. In federations, based on a political consensus of all regions, policy preferences tend to cluster in the middle ground, and there is a great amount of political flexibility when it comes to political compromises. Interconnected policy-making between the federal and the regional level is possible, even to the extent that federal states function in a way very similar to unitary states, as the examples of Austria and Germany illustrate. This is a general rule which has, however, some notable exceptions, especially when threats to the federal principle become political issues. Interconnected policy-making strengthens national party politics and allows political parties in election campaigns to address the nation as a whole, even disregarding regional interests. But even in the most centralized federations it should not be taken for granted that regional preferences always cluster in the middle ground. Federalism provides an opportunity structure for the politicization of the regional dimension[5] as conflicts in Germany over energy or refugee policies has shown.

When regional preferences cluster in the middle ground, policy-making decouples to some extent from regional identity politics. Though preferences A to D may show some kind of variation due to political processes in the regions, regional political parties will have no problem to do deals with other regional parties, and for state-wide political parties it is easy to accommodate regional preferences of their electorate. Consensus-based federalism may have ethno-regionalist parties. These parties have their priorities, however, in financial or participatory gains and not in politics of self-determination. If policy-making does not yield the expected results for regions, or if the center has lost regional political support because of repression, corruption, violence or other forms of maladministration the middle ground erodes. Consensus-based federalism loses its

coherence. Regional elites and regional parties may see an alternative in a weaker center and in a less co-operative federalism. The erosion of the center is the story of Belgian federalism. In Belgium the tensions between the Dutch speaking and the French speaking communities have resulted in a model of living apart together.

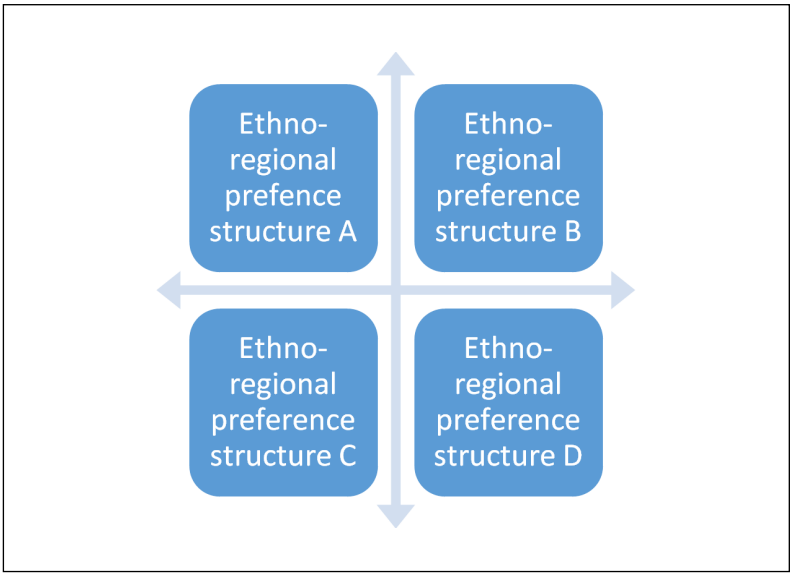
Graph 2: Regional Preferences Cluster in the Middle Ground



When federalism is the expression of different visions of statehood, the political cooperation in a disintegrating federalism proves to be difficult from the start. When secession is no solution, federalism provides an institutional framework which combines self-rule and shared rule. Both are important for policy-making and party political competition. Self-rule finds its expression in the way competences are guaranteed to the regions. The range of competences to be found on the regional level provides a fertile ground for regional party-political competition decoupled from national party-

political competition. State-wide parties may find it difficult to compete on an equal footing with regional parties.[6] The possible degree of shared rule when decentralizing federalism is difficult to predict.[7] As the Spanish case demonstrates, not even for the police force one model for the whole of Spain could be found.

Graph 3: Decentralizing federalism: Incompatible ethno-regional preference structures



In the case of diverging ethno-regional preference structures, two outcomes of policy-making in a federal context are possible. One is separate development. Policies are tailored only to the needs of one ethno-region. This does not need to destabilize a polity, if meaningful shared rule with regard to other policies, for example economic or foreign policies, is upheld. In Canada, for example, Québec's language policy of the 1980s was strongly opposed in Western Canada, but still the country could live with a policy field for which there

existed not even a minimal consensus. The more policies are tailored to regional needs, the more important regional parties become or, alternatively, the more important is the regionalization of state-wide parties.

Table 1: Policy-making in decentralizing and interlocking federalism

	Conflict	Party political strategy
Interlocking federalism	Lack of regional legitimacy	Strengthen national efficiency
Decentralizing federalism	Lack of regional similarity	Strengthen regional representation

A second possible outcome of diverging regional preference structures is institutional reform. Institutional reform removes the pressure on federal institutions to produce consensus where it is impossible. Institutional reform may take the form of a retreat of the central state (further decentralization), the privatization of policy fields or new constitutional safeguards for regional competences.

Decentralizing federalism is not per se less stable than interlocking federalism. Both forms of federalism have points of conflicts. What differs is the party political strategy to overcome political conflict.

FISCAL FEDERALISM

Fiscal decentralization is the decisive precondition for regional policy variation. If regional preferences differ, it is not enough when regions have the right to express their differences in regional legislation. As long as regions lack the financial power to put regional policy variation into practice, federalism allows only symbolic politics. A good example are educational policies which in most federations are controlled by the regions.[8] In Germany, for example, the

idea was to keep the federal government out of this policy field. Necessary standards were to be uphold by the voluntary cooperation of the *Länder*. The lack of *Länder* resources with regard to financing of universities, educational tests or the reform of primary education has brought the national government back in, not because there was any kind of substantial argument, but only because the *Länder* were not able to mobilize the necessary resources. The Swiss constitution in its article 61a seems to go further than the German constitution, because it recognizes a duty of cantons and the federal government to co-operate in order to secure internal mobility and a high quality of educational standards in Switzerland. But the important difference to the German case is that the constitutional need to cooperate is based on a separate set of competences, whereas in Germany cooperation finds its justification in political goals defined outside constitutional safeguards.

Most federal states are tempted to use their national control over resources as instrument to undermine autonomy in regional policy-making. Only in Canada and Switzerland does the center control less than 50 % of the national income. In Nigeria, Mexico or Malaysia, the central government controls about 90 % of financial resources, and only slightly less in Argentina, South Africa, Australia, Belgium and Brazil. Germany, Austria, Spain and India are in a middle group with control of between 60 and 65 % of resources.[9] It is not surprising that secessionism often has as its prime motive a greater regional control over the region's own resources, as for example in Catalonia, Scotland or Flanders. The question of control over resources is also a major obstacle to the introduction of federalism, as for example in Myanmar, where administrative decentralization is much easier to achieve than the sharing of natural resources.[10]

With regard to policy-making capacities, two alternative models of regional finance co-exist. One is the regional budget, which rarely exists in its purest form, namely with full sovereignty over taxes and expenditures and the right to borrow money from international capital markets. Where such a budget exists, it has to accept three

modes of outside control. The first is control by the voters. Voters see budgets as balance sheets of policy-making. At the polls, they have the opportunity to judge whether the regional government wisely spent regional resources.

A second mode of control is the scrutiny of the political opposition in the regional parliament via budget committees and the work of the general accounting office. And finally, there is the control by international financial markets and their ratings, which are crucial for interest rates, if a region needs to borrow money. The advantages of a regional budget seem to be obvious, because it guarantees transparency, control and responsiveness to regional policy preferences.

In most federations, all these advantages are given up with surprisingly little resistance. A second model of regional finance is frequently applied. This is the model based on the sharing of tax revenues between the center and the regions and on grants by the federal government to improve regional spending power. The consequence of this model is less transparency, because of the co-financing of important policies by the center. Loss of control is unavoidable. For example in Switzerland, where cantons take responsibility for their budgets, the markets rate regional budgets canton by canton differently, whereas in Germany – where the *Länder* and the federal government share resources – no such differentiation is necessary, because a *Land* with an unsustainable budget can rely on a bail-out. Parliamentary control and control by the voters suffer in a system of interconnected finance from a lack of transparency, too. Who is to blame for the misallocation of resources, if executives on all federal levels have been involved in policy-making?

Models of resource-sharing are often said to provide more stable regional finance and should help the poorest regions in a state. This should logically exclude extra payments by the center to the regions. The opposite is often the case. Grants are given by federal governments not only to regions with relatively autonomous budgets, as in the United States, Canada (and against the spirit of its constitution: Switzerland) but also to regions which are included in resource-

sharing models. Why is that? A plausible explanation seems to be that the center has difficulties to accept the financial autonomy of regions. It wants to control taxes and to a lesser degree expenditures, because it sees itself as being responsible for the international competitiveness of a federation as a whole. Less altruistic is the motive of control. Monetary support by the center can influence policy preferences and can be the precondition for policies to be implemented.

The participatory nature of federalism is often challenged by top-down financial steering of the center. This is not only in contradiction with the principle of subsidiarity, it is also no recipe for successful policy-making, as empirical analyses have shown. A study by Sorens which compares 39 countries has shown that countries which opt for regional budgetary autonomy at least to some degree spend less and have a lower government spending ratio.[11] Gervasoni has shown that central government grants which do not correspond with the financial abilities of a region (in other words cannot be absorbed adequately) do not bring about economic development, but produce rent-seeking of the regional governments.[12]

THE GOVERNANCE CHALLENGE

Federalism increases the number of stakeholders in public policies. It also provides additional access for civil society organizations on the local and regional levels. Theories of governance have claimed that network governance has replaced hierarchical decision-making.[13] Federalism would – in this perspective – be another element of structural diversity. Regional governments, regional representatives of civil society, lobbyists and policy specific constellations of political power need to be added to the list of actors, which influence policy decisions and outcomes. What the governance literature exactly has to offer for the investigation of the dynamics of federalism is an open research question. What we can say is that in multiethnic federations policy-making is secondary to questions

of power-sharing and democracy. As long as a federation has not found a stable balance of regional and national interest representation embedded in a culture of federalism,[14] policy-making as such will not solve the constitutional problem. Good governance is dependent on a functioning federalism and not vice versa.

||| **PROF. DR. ROLAND STURM**
Professor for political science at
Friedrich-Alexander-Universität Erlangen-Nürnberg

NOTES

1 Cf. Sturm, Roland: Der deutsche Föderalismus. Grundlagen – Reformen – Perspektiven, Baden-Baden 2015.

2 Cf. Butenschen, Nils A. / Stiansen, Øyvind: Power-Sharing in Conflict-Ridden Societies. Challenges for Peace and Stability, Farnham 2015.

3 Cf. Fierlbeck, Katherine / Palley, Howard A. (Eds.): Comparative Health Care Federalism, Farnham 2015.

4 Schakel, Arjan H.: Explaining Regional and Local Government: An Empirical Test of the Decentralization Theorem, in: Governance 2/2010, p. 331-355, p. 331.

5 Cf. Lustick, Jan S. / Miodownik, Dan / Eidelson, Roy J.: Secessionism in Multicultural States: Does Sharing Power Prevent or Encourage It?, in: American Political Science Review 2/2004, p. 209-229.

6 Cf. Alonso, Sonia: Challenging the State: Devolution and the Battle for Partisan Credibility. A Comparison of Belgium, Italy, Spain and the United Kingdom, Oxford 2012.

7 Cf. Biela, Jan / Hennl, Annika: The distinct effects of federalism and decentralization on performance, in: New Directions in Federalism Studies, ed. by Jan Erk and Winfried Swenden, London / New York 2010, p. 157-171.

8 Cf. Hrbek, Rudolf / Große Hüttmann, Martin / Schmid, Josef (Eds.): Bildungspolitik in Föderalstaaten und der Europäischen Union: Does Federalism Matter?, Baden-Baden 2012.

9 Cf. Anderson, George / Scheller, Hendrik: Fiskalföderalismus. Eine international vergleichende Einführung, Opladen / Berlin / Toronto 2012, p. 43.

[10] Cf. Lynn, Thet Aung / Oye, Mari: Natural Resources and Subnational Governments in Myanmar: Key considerations for wealth sharing, Yangon 2014 (Paper IGC, MDRI, The Asia Foundation).

[11] Cf. Sorens, Jason: The Institutions of Federalism, in: Publius 2/2010, p. 207-231.

[12] Cf. Gervasoni, Carlos: A Rentier Theory of Subnational Regimes. Fiscal Federalism, Democracy, and Authoritarianism in the Argentine Provinces, in: World Politics 2/2010, p. 302-340.

[13] Cf. for example Rhodes, Rod A. W.: Understanding Governance. Policy Networks, Governance, Reflexivity and Accountability, Buckingham 1997.

[14] Cf. Kincaid, John / Cole, Richard L.: Citizen Attitudes Towards Issues of Federalism in Canada, Mexico, and the United States, in: Publius 1/2010, p. 53-75.

ON THE BORDERLINE OF WESTERN DEMOCRACY & EASTERN DESPOTISM

||| Oleh Berezyuk

INTRODUCTION

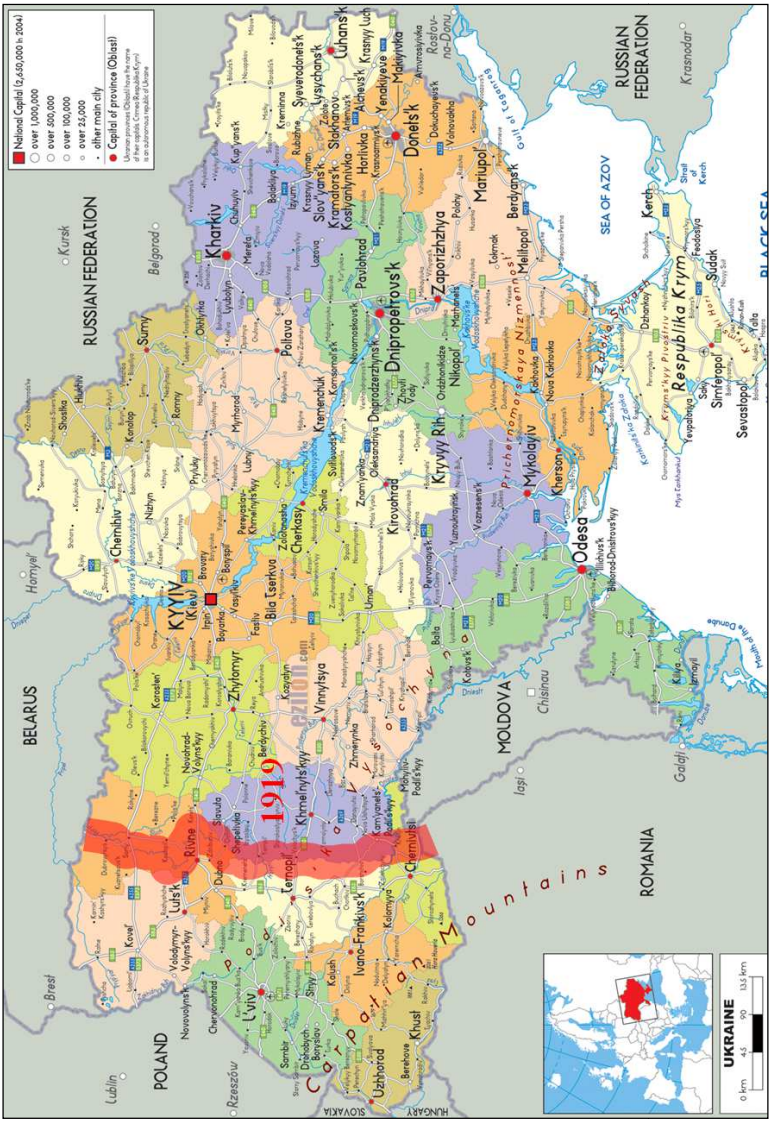
The political, social and economic situation in Ukraine is currently in the focus of the international community, while stability, peace and prosperity of the country, undoubtfully, pillars the stability of the whole Eastern European region. Decentralization, which presumes economic, political and administrative strength of the local communities, is viewed as a key necessity in the current turbulent situation. Local self-governance, which has deep roots in Ukraine, due to Magdeburg's Right applicable to more than 400 of its cities and towns in the XIV-XVII centuries, should become the cornerstone of the current renaissance of the country.

This paper presents the historical context of the current political system of Ukraine, argues the form and the means of decentralization applicable in the Ukrainian context, as well as presents a view on the current constitutional process in the country.

HISTORICAL CONTEXT OF THE CURRENT POLITICAL SYSTEM OF UKRAINE

Contemporary Ukraine as a sovereign independent state has undergone a long and bloody way of transformations and development. Its current political system is not only the result of the centuries-long strive of the Ukrainian people, but also the complex geopolitical confrontation of eastern and western powers and ideologies.

Graph 1: The borderline of western democracy in 1919, public domain, details by author



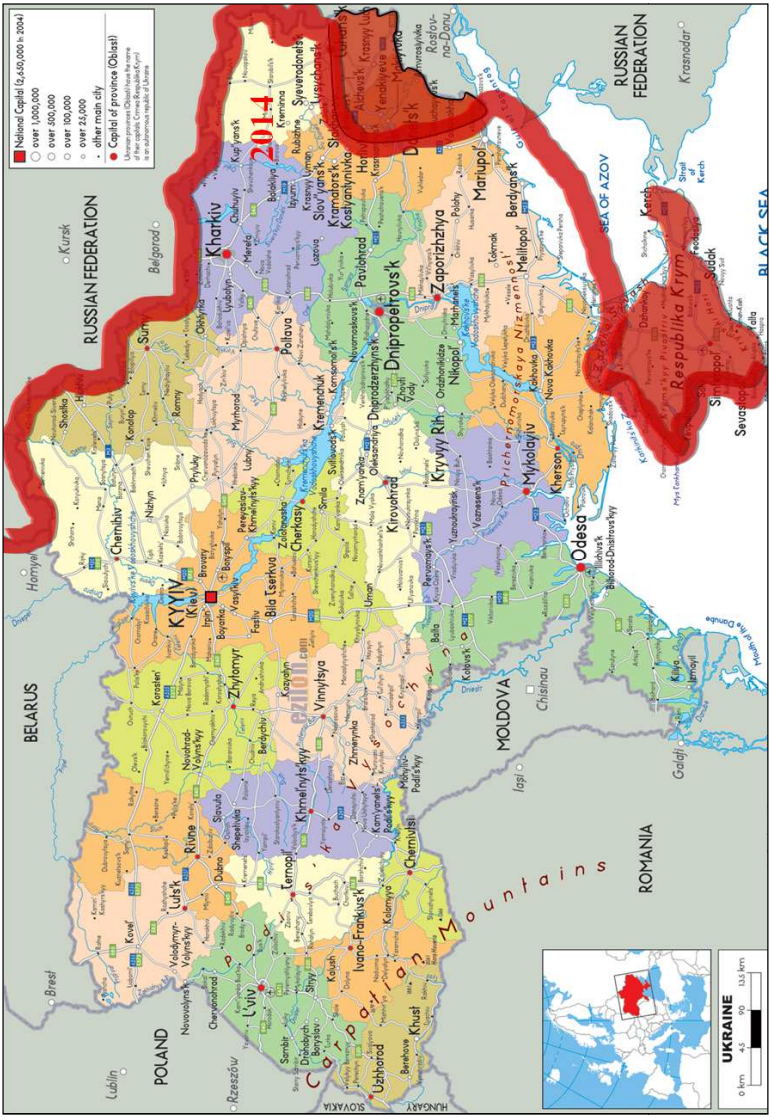
The first chance for reestablishment of modern Ukraine on its ethnical territories appeared with the fall of Russian and Austro-Hungarian Empires after World War I when Ukrainian People's Republic and Western Ukrainian People's Republic had arisen. By the Unification Act of 1919 these republics were united in the common state, which, contrary to strict jurisdiction of local authorities to central executive bodies, were common for political systems of Russian Empire, from the very beginning proclaimed the principles of decentralization and stood for the democratic development of the country.

As a country which was among the main victims of the World War I and seeking for international recognition as an a newly arisen state, unified Ukrainian People's Republic sent its common delegation to the Paris Peace Conference in 1919, which was about to raise the Ukrainian question on the international level. However, due to increasing threat of the Bolshevik Russia and deep concern about Ukrainian-Polish war, the Ukrainian delegation was not allowed officially to Paris Peace Conference, which actually meant the legalization of the split of Ukrainian territory between several countries. The border between the two parts of the Ukrainian territory can be considered as a margin of the geopolitical division between East and West.

Due to a paradox situation, the territory of Ukraine was finally formally considered as a unity on international level in the Molotov-Ribbentrop Pact in 1939 at the threshold of the World War II. The non-aggression act between Nazi-Germany and the Soviet Union, containing a secret protocol defining the "spheres of interest" of both totalitarian states, defined that after the annexation of Poland by Germany, its eastern parts, inhabited by ethnical Ukrainians, should become a part of the Ukrainian Soviet Socialistic Republic.

However, the outcome of World War II and the fall of Nazi regime in Germany in 1945 resulted in much further intervention of soviet ideology and political power into Eastern and Northern Europe and the beginning of the so called Cold War. The Berlin Wall, build in 1961, was the final symbolic clash between the two

Graph 2: The borderline of western democracy and eastern despotism in 2016, public domain, details by author



worlds, putting not only Ukraine, but also other European countries like Lithuania, Latvia, Estonia, Belarus, Poland, Czechoslovakia, Hungary, and Bulgaria on socialistic rails.

The fall of the Berlin Wall and the crash of the Soviet Union in 1991 pushed this line back to the boarders of Ukraine, initially defined by the Molotov-Ribbentrop Act. The European integration of Poland and the Baltic States changed the geopolitical mapping of Europe, bringing democratic values further to the east. Although internationally recognized as a sovereign independent state, Ukraine has remained unofficially the "sphere of interest" of the Russian Federation, the successor of the Soviet Union.

The Ukrainian Orange Revolution of 2004 and the Revolution of Dignity of 2013-2014 have showed the protest of Ukrainian people against eastern despotism and defined the pro-European democratic choice of Ukraine.

The Current situation in Donbas, the annexation of Crimea and the continuing war with the Russian Federation is the logical and predictable continuation of the promotion of European values and democratic principles to the east. The borderline which was located at the River Zbruch in 1919 as a result of difficult century long transformational processes, advanced hundreds of kilometers to the east to the frontline of the current Ukrainian-Russian war. It is obvious, that without the western European influence this progress would not be possible.

Taking into consideration all mentioned above, there cannot be any doubt that the solution for solving the difficult socio-political situation in Donbas is not in the military or diplomatic sphere, but in further promotion of democratic values and European social standards to the east.

The Ukrainian-Russian war united the people of Ukraine in their perception of the Ukrainian state and strengthened their national identity. Only the economic and social success of the country can reunite the Ukrainian territorial integrity and give victory to the western democracy in the region.

It is nowadays obvious that, although Donbas and Crimea are inseparable parts of the unitary Ukraine and should always be considered a part of Ukrainian territory, and taking into consideration the complexity of Minsk processes, Ukraine is not able to take full control of the temporary occupied territories and the work of public authorities there. The policy of Ukrainian state should, therefore, consist in temporary political, economical and military isolation of the temporary occupied territories for the sake of strengthening economic and political stability of the country. At the same time the Ukrainian population that remains at temporary occupied territories should receive consistent and continuing humanitarian aid from the Ukrainian government.

Economic and political stability of the country can be achieved only through building strong public management institutions, fighting against corruption, improving citizens' quality of life and bringing European social standards. All this is inseparable from building strong local communities, which is achievable through decentralization reform.

CURRENT STATE OF LOCAL SELF-GOVERNANCE IN UKRAINE

The Revolution of Dignity accelerated the total reload of power in the country, which resulted in early presidential and parliamenttary elections in 2014. The majority of the new convocation of the Verkhovna Rada of Ukraine declared decentralization as a key priority of state development for the next years, which was documented in the Coalition Agreement.

In two years a number of very important steps were taken in reforming local self-governance, which built the ground for the independence, prosperity and political strength of the local communities, which are marked by the number of important laws passed, including State Law "On voluntary amalgamation of local communities", "On cooperation of local communities", amendments to budget and tax codes, laws on increasing competence of local self-government in the sphere of public services, etc.

The major hindrance on the way to stable development of local communities has for many years been their fragmentation. In 2013 there were almost 30 thousand administrative territorial units in Ukraine, including more than 29 thousand rural localities, administered by over 12 thousand local governments. Over 50 % of localities had less than one thousand inhabitants, which made them highly depressive and subsidized.[1] The majority of resources were used for maintenance of administrative staff.

The Law "On voluntary amalgamation of local communities" is the first step for solving this complex problem by means of amalgamation, introduction ubiquity of local governments and transition to new mechanisms for intergovernmental budgetary relations.

According to data of National Council on Reforms[2] from 1.1.2016, almost 800 villages, towns and cities have already amalgamated, creating 159 united communities. According to the resolution of the Central Election Commission, these communities elected local authorities (deputies, mayors and heads) at the local elections in Ukraine in October 2015. Despite considerable progress in this sphere it remains an urgent matter to motivate local communities to further amalgamation and overcoming social resistance, associated with lack of information and natural opposition to change.

The amendments to budget and taxation codes, adopted by the Parliament of Ukraine in 2014, are the real mechanisms for motivating the amalgamation of communities. It consists in change towards direct relations between local and state budgets for amalgamated communities. The amendments also include increasing the number of local taxes, by taking over 100 % transfer fee for administrative services, 100 % of the state fee, 10 % corporate income tax, 80 % of environmental tax instead of 35 %, introduction of excise tax on retail realization of excisable goods (beer, alcoholic beverages, tobacco, petroleum products, etc.) at a rate of 5 % of the cost of goods sold, collection of property tax from commercial (non-residential) property and tax on cars with large engine capacity.

All these reforms contribute to building economic and political stability of the country in the nearest future, creating new social relations in the society, enhancing the efficiency and capacities of local governments.

THE CONTEXT OF CURRENT CONSTITUTIONAL PROCESS IN UKRAINE

It is obvious, that decentralization as a new mode of political and social organization of power in the country requires the introduction of numerous amendments to the Constitution. At the same time the conditions and manner in which these amendments are currently introduced in Ukraine raise great concerns and threats to the democracy in Ukraine.

The Constitution which in a democratic state is the treaty concluded not by the politicians but by the people of the country, defines the basis of social relations in the society, acceptable by the majority of its population. Since any amendment to the Constitution will have an enormous effect on every single citizen of the country, this process requires broad and open consultation with the society. The introduction of amendments to the Constitution of Ukraine in a secretive and non-transparent manner, excluding citizens from general discussion of the process, evokes great concerns about the validity of such a process.

Sociological surveys, conducted by International Republican Institute[3] in Ukraine, clearly show that only 6 % of the population are aware of the content of the amendments introduced by the President of Ukraine, 65 % find their awareness of the constitutional process very low or low and almost 1/5 of the people have not heard about the amendments to the constitution. The survey also revealed that only 12 % of the citizens believe the amendments to the Constitution will change the situation for better, contrary to 15 % who believe they will change the situation for worse. At the same time the majority believes that the introduced amendments

will not result in any changes. This shows the low involvement of the population in the process, which, therefore, can be viewed as not democratic.

There also exist deep concerns about the legal procedure of introduction of the amendments. According to the Coalition Agreement, signed by five parties of the coalition, the draft of the amendments to the Constitution was to be developed by the temporary special commission, established by the Parliament. But although the members of the commission were about to introduce their proposals, the first draft of the amendments on decentralization was developed without including these proposals, and exclusively by the secretariat of the commission, which was not authorized to do so. As a result, the amendments summated by the Head of the Verkhovna Rada of Ukraine to the Venice Commission included substantial divergences from the original amendments, devised by the temporary commission.

Afterwards, the text of the amendments was changed four more times, so that in the end the variant introduced by the President did not even include the proposals of the parliamentary factions of the coalition. The voting for the amendments also included great procedural violations. In particular, the draft law was not properly discussed as required by the Rules of the Procedure. Moreover, the Member of Parliament (MP) who was appointed to the position in the executive body, voted for the amendments. According to Article 81 Paragraph 5 of the Constitution of Ukraine the powers of the Members of Parliament of Ukraine are terminated if circumstances which lead to violation of the requirements of the incompatibility of the deputy mandate with other activities are not resolved within 20 days from the date of their appearance. Such circumstances are defined in Article 3 of the Law of Ukraine "About status of the People's Deputy of Ukraine",[4] which states that any Member of Parliament has no right to be the member of the Cabinet of Ministers or the head of the central executive body. While the voting took place later than 20 days from the appointment, the law was abused.

Currently, Ukraine is in state of undeclared war with the Russian Federation. The Constitution of Ukraine (Article 157) prohibits the changes of the Constitution in the state of war, while in these conditions the state cannot guarantee the insurance of human rights on the occupied territories and is vulnerable. The facts of Russian aggression are recognized on both national and international levels. Moreover, in view of the articles of Minsk Agreement, the aggression of the neighboring country can be regarded as a direct attempt to impose certain amendments to the Constitution of Ukraine which are of benefit for this country.

Taking into account all said above, it is obvious that the constitutional process in Ukraine can scarcely be called democratic and transparent, which undermines its enormous influence on the society.

THE CURRENT AMENDMENTS VS POSITION OF "SAMOPOMICH" UNION

The amendments to the Constitution define the new balance of powers between the executive branch of Government and local governance, as well as the roles and powers of President, Cabinet of Ministers and Parliament with regard to local governance.

The amendments offered by the President and adopted in the first reading by the Verkhovna Rada of Ukraine introduce the position of executive branch Prefect, who according to Article 118 is appointed and dismissed by the President on the recommendation of the Cabinet of Ministers.

According to Article 119, the functions of the Prefect are the supervision of compliance with the laws and the Constitution by the local self government authorities, co-ordination and supervision over local bodies of central executive authorities and administrative functions (enforcement of state programs). These functions do not broaden the responsibilities of local self-governance, as declared by the decentralization reform.

Moreover, according to the current draft law, the Prefect is granted with the power to suspend decisions of self-government authorities for the reasons of their inconsistency with the Constitution or laws of Ukraine (Article 144). On a similar note, if the head of hromada, hromada council, rayon or oblast council adopts an act inconsistent with the Constitution of Ukraine, which poses a threat to the sovereignty of the state, territorial integrity or threat to the national security, the President of Ukraine obtains the power to suspend the powers of elected bodies and to appoint a temporary State Governor. While the law does not include the mechanisms of protection for local governance and does not define the terms in which the President can execute his power, this can pose a direct threat to independence of local self-governance.

Moreover, the draft amendments suggest excluding from the Constitution of Ukraine the provision according to which the rights of local self-government are protected in court, which contradicts Article 11 of the European Charter of Local Self-Government which states that "local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation".[5] In most of developed democracies, the acts of local self-government can be suspended only by the court.

The amendments under consideration put the extensive amount of power to the President which is not applicable in a parliamentary-presidential form of government.

With regard to this, the position of "Samopomich" Union faction and the deputy speaker of the Parliament of Ukraine, Ms. Oksana Syroyid, is to split the power provided by the draft law to the President between the President and the Cabinet of Ministers and to define the exact terms for all procedural aspects. As a result, the suggested balance of powers can be formulated as follows:

- The President of Ukraine shall suspend the respective act and simultaneously bring the matter before the Constitutional Court

of Ukraine and temporarily terminate powers of the head of hromada, as well as the composition of hromada council, rayon and oblast councils respectively.

- The Prime Minister of Ukraine shall appoint a temporary state official within ten days from the moment of temporary termination of powers of the head of hromada, and the composition of hromada, rayon and oblast councils.
- The Constitutional Court of Ukraine shall consider this request of the President of Ukraine without delay and shall deliver its decision on compliance of normative act of the head of hromada, hromada councils, rayon and oblast councils with the Constitution of Ukraine no later than thirty days from the day of such a request. According to Article 59 of the Law of Ukraine "On local governance in Ukraine", the local councils issue normative acts in the form of decrees.

POSITION ON THE SPECIAL ORDER OF LOCAL SELF-GOVERNMENT IN CERTAIN DISTRICTS OF DONETSK AND LUHANSK REGIONS

The transitional provisions of the current amendments, adopted in the first reading by the Verkhovna Rada of Ukraine define in section XV, clause 18 that: "Special features of exercise of local self-government in certain districts of Donetsk and Luhansk oblasts shall be set forth by specific law."[6]

There is no legal basis for providing special order to Donetsk and Luhansk oblast. The only reason for introducing this article into the Constitution is the adherence to Minsk Agreement. At the same time the Constitution cannot be adjusted to the current war conditions, while this is a social agreement which is to be constructed for the time of peace. Introducing special order of local self-government in certain districts of Donetsk and Luhansk regions in the "text" of the Constitution will give such provisions direct effect and provide that special order of local self-government will be effective in certain districts of Donetsk and Luhansk regions prior to their liberation by Ukrainian government which is unacceptable.

The position of "Samopomich" Union is that this provision should be excluded from the text of the Constitution. The temporary occupied territories of Luhansk and Donetsk after their liberation should be provided with the general powers, accredited to all local communities of Ukraine by the reform of decentralization, which will provide their economic and political stability in the time of peace.

CONCLUSIONS

Decentralization is the key priority for the social, economic and political stability of Ukraine. The unitary Ukrainian state should be strengthened by broad and overwhelming decentralization, providing equal opportunities for social growth of local communities.

||| **OLEH BEREZYUK**
MP of Ukraine, head of Samopomich Union faction
in the Verkhovna Rada of Ukraine,
member of the committee of state building and
local self-governance

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RESOLUTION OF ARMED AND ETHNIC CONFLICTS IN D.R. CONGO IN THE FRAMEWORK OF THE CONSTITUTION

||| Kalulu M. Taba

INTRODUCTION

The Democratic Republic of Congo (DRC)[1] is the largest state in Black Africa in terms of its land mass (2,335,000 square kilometers) and has a population estimated at about 72 millions. It is a giant state in Central Africa surrounded by nine neighboring states. In spite of its abundant natural resources and agricultural potential, it's among the poorest countries in Africa and the world. Since independence in June 30th 1960, the history of the country is full of tragedies and lost opportunities. It has gone through three different republics, each characterized by a constitution. The current constitution of the country is not federal but a decentralized united state. This paper highlights for each republic the political environment at the time of writing the constitution and the major armed and ethnic conflicts that prevailed.

THE FIRST REPUBLIC, FROM 1960 TO 1965

Constitution

The Fundamental Law (constitution at independence) of Mai 19th 1960 provides in article 7 that the DRC comprises six provinces, each having a separate civil personality. The law recognized the existence of central, provincial and local institutions which were autonomous and had different duties and responsibilities. The provincial power

made of the provincial government and its provincial assembly could legislate on a large number of different matters to those of the Central government. The constitution was a compromise between those who favored a federal state and those who believed in a strong centralized state. It was also agreed that the Fundamental Law, written under colonial rule, was temporary and one of the missions of the first government was to write a definitive constitution for the country.[2]

In spite of troubles, misfortunes, conflicts, government instability and the risk of balkanization, the first Republic was able to write and adopt a new constitution which defined state structure and maintained a large degree of autonomy of provinces and other decentralized territorial entities on August 1st 1964 (Luluabourg Constitution). The spirit and many points in this constitution were similar to the Fundamental Law. The autonomy of the provinces related mainly to administration, political issues and the management of certain internal matters. The country was divided into 21 provinces plus Kinshasa, the capital. Elections under the new constitution were organized in 1965. Provincial governors were elected by provincial deputies as stated by the constitution and members of the two legislative chambers of the central government (senators and deputies) were also elected. However, the process of presidential election which should have taken place at the second degree by the members of the two chambers of Parliament was not completed because Mobutu staged a coup d'état.

Contrary to federal States such as the USA and Germany, the 1964 Constitution did not provide provinces with any judiciary power which was concentrated in the hands of the central government.

The constitution was also a compromise between those who wanted a federal state (Kasavubu and Tshombe) and those who favored a centralized state (Lumumbistes). The result was a unitary state strongly decentralized. The constitution was written at a time when some parts of the country were still under rebel's rule and the

trauma of the two secessions in Katanga and South Kasai was in everybody's mind. It was then unlikely that a complete federal constitution could be accepted by the majority of the population.

It would be hazardous to pass a judgment on the success of the Luluabourg Constitution because the implementation process was stopped by a coup d'état.

Major crises and armed conflicts

The first major crisis erupted in Congo just five days after independence on July 5th 1960, when national army soldiers mutinied for a pay rise against the white officers. The revolt which started in Kongo Central (Mbanza Ngungu) spread all over the country in a few days and resulted in the massive departure of Europeans from the country and led to a serious crisis.[3]

The soldier's mutiny was resolved when Congolese officers were appointed and salaries were increased. But the political consequence was dramatic, Lumumba, the elected prime minister with a large majority in the two chambers, was removed from power and killed soon after in Katanga.

At almost the same time as the army mutiny, two rich mining provinces, Katanga under leadership of Moise Tshombe and Sud Kasai under Albert Kalondji, declared secession from the rest of the country. These secessions were mainly instigated and back by foreign powers, notably Belgium, and mining companies.

The Sud Kasai secession was rapidly ended by the national army whereas it took several international and national rounds of negotiations and finally the soldiers from the United Nations Mission to Congo to regain Katanga. It is worth mentioning here that the secession of Katanga was not totally backed internally by all the population of the province. In fact, in North Katanga, the majority Luba ethnic group resisted and rebelled against the power of Tshombe, the leader of the secession, and a southern Katangase. Tshombe went to exile in Spain whereas most of his soldiers found refuse in Angola.

Two years after the end of the secession, Tshombe was nominated Prime Minister by President Joseph Kasavubu. The main mission of his government was to fight the last remaining pockets of rebels and to organized elections under the new constitution. He relied mostly on his soldiers ("ex gendarme katangais") and white mercenaries to pursue the fight against rebels. He organized elections in 1965 in the parts of the country under central government control. His party, CONACO ("Convention Nationale Congolaise"), won a large number of elected seats in both houses of the National Parliament and in many provincial assemblies. The November 1965 coup d'état stopped his ambition to become president.

The third major crisis resulted in the revocation of Patrice Lumumba as prime minister in September 1960. His close associates moved then to Stanleyville (Kisangani) and proclaimed the Free Republic of Congo on December 13th. They were supposed to represent legality and were backed up by many communist and non-aligned countries. The Free Republic of Congo lasted until January 1962 when, following negotiations and international pressure, its main leaders accepted political posts in the central government in Kinshasa.

However, some members of the government of the Free Republic of Congo refused to join the government in Kinshasa and started a rebellion in 1963. In the West of the country rebellion was led by Pierre Mulele, former Minister of Education and Fine Arts in Lumumba's government and in the East by Christophe Gbenye, Soumialot and Laurent Kabila. The Eastern front was very successful and in short time arrived to control more than a quarter of the country with Kisangani again the capital of now the Peoples Republic of Congo, proclaimed on August 5th 1964. The rebellion in the West was contained by the national army but in the East the central government had to call on Belgian and Americans soldiers in order to retake Kisangani on November 24th 1964. The rebels then split into several factions in the East of the country and continued fighting in small groups until in 1966 when they were totally defeated.

Major crises in DR Congo during this period (1960 to 1965) were to a large extent inspired and backed by foreign powers. The two secessions and the removal of Lumumba and his assassination are well known to have been organized and implemented by Belgian and American secret agents.[4] Many communist and non-aligned countries at the time were backing Lumumba and his followers. The lesson of that tragic period is that Congolese politicians were not aware, in the middle of the Cold War, of the consequences of their acts and naively believed in international justice which is dominated by selfish national interests. Lumumba naïve trust in international justice led to his death and the tragedy that followed has, to some extent, implications for the current situation in the country.[5]

THE SECOND REPUBLIC, FROM 1965 TO 1997

Constitution

When he seized power on November 24th 1965, Mobutu told people that he assumed the function of the President but all the democratic institutions provided in the 1964 Constitution were to remain in place. The two chambers of Parliament were to remain active and the provincial governments could continue their activities. A year later, in a series of law he enacted, he took control of executive, legislative and military powers.[6] The two chambers merely rubber-stamped his decisions, the provincial governors ordinary simple civil servants, and the number of province was reduced to nine. In 1967, he wrote a constitution which gave him more power and removed the autonomy of provinces as stated in the Fundamental Law and recognized in the 1964 Constitution. All matters related to the decentralization in the 1964 Constitution were removed and replaced by a very centralized state under Mobutu's control.

In 1967, he created his own party, "Mouvement Poupulaire de la Revolution" (MPR), which became a year later the only party in the country under one man, Mobutu. In the due process of acquiring

power, he changed the country name to Zaire and those of several towns in 1970. Opposition to his regime was not tolerated as each Zairian was supposed to belong to the party and could not disagree with the Chief.[7]

However in 1977 and 1978 the southern Province of Katanga (Shaba) was invaded by a political-military party, "Front de Liberation du Congo" (FLNC), led by Nathaniel Mbumba. These wars and internal pressure forced Mobutu to initiate a process of decentralization under a single party, the MPR. Laws governing the process of decentralization were adopted by the central committee of the ruling party, but were not implemented and remained simple intention. The last step in his will to decentralize the country was the division in 1988 of the Province of Kivu in three parts: North Kivu, South Kivu and Maniema. The number of provinces was thus increased to eleven.[8]

Major crises and armed conflicts

Mobutu was able to control the country and to stop any dissenting voice against his regime through his very infamous and brutal secret service and the army. Major crises during the first 25 years rule were the two invasions by FLNC rebels in 1977 and 1978. The rebels, formers Katanga's military, came from Angola and occupied several towns in the South of Katanga. Foreign soldiers (French, Moroccans and Belgian) and national army intervened rapidly and brought the situation under control and saved the regime.[9]

In spite of his autocratic power, Mobutu in the first 25 years of his rule, was able to preserve the unity of the country and to create a somehow a Congolese national identity which to some extent prevailed over other identities. This is his major contribution which most Congolese still remembered. The strong sentiment of being Congolese has helped a lot so far to keep the country united to present day in spite of external wish to balkanize the country.[10]

Nevertheless, it is well known that while he lectured against tribalism, Mobutu favored people from his own Equateur province

for key political and administrative posts. This choice of rulers and managers based not on efficiency and qualifications could explain the bad governance all along his regime.

THE TRANSITION FROM 1990 TO 2006

The long period of transition to the Third Republic took place under three presidents, Mobutu (1990 to 1997), Laurent Kabila (from 1997 to 2001) and Joseph Kabila (2001 to 2006).

Following internal and international pressure and the collapse of the Berlin wall, Mobutu announced on April 24th 1990 the end of one party state which implied also the need for a new constitution. A national sovereign conference was convened in 1991 with a mandate to look at all questions of national interest, to determine all the fundamental options of political organization of the Third Republic including a new constitution. The conference proposed a constitution similar to the one of 1964. This time the term federal was written clearly at the beginning: "The Federal Republic of Congo is a sovereign, united, democratic, social, and secular state." At the time, political environment in the country was favorable for a federal state after 25 years of dictatorship and people were ready to try a new state organization. The conference elected a transition government under the most virulent opponent to Mobutu, Etienne Tshisekedi and drafted a constitution for the transition period. The conference resolutions did not please Mobutu who then used all tactics and methods to recover partially his power while prolonging the transition initially set for two years.[11]

In the midst of confusion and disorder at that time, Laurent-Désiré Kabila led a rebellion backed by neighboring countries, Rwanda, Burundi, Uganda and Angola, and took power in Kinshasa on May 17th 1997. He assumed the function of the President of the transition and suspended the constitution of transition and all the institutions of that time. Later on he set up a transition parliament with a main mission to write the constitution of the Third Republic.

Laurent-Désiré Kabila ruled in such a confusion and incoherence which made it hard to know the direction he was going. The war his former backers, Rwanda and Uganda, waged against him starting in August 1998, could be the reason for this confusion. During the four years of his rule the country was confronted with a war of aggression. The necessity to restore the unity of the country while rebel groups occupied a large portion of the country made it difficult to end the transition period.

Following the death of Laurent-Désiré Kabila in January 2001, his son took the presidential sit in the midst of a war which had divided the country into three independent entities. Following the cease fire accord in Lusaka in 1999, a global accord was signed in South Africa in 2002; a constitution for the transition was adopted providing a two years transition period before presidential and parliament elections under the Constitution of the Third Republic. During the transition, a new constitution was enacted and adopted by a referendum.

THE THIRD REPUBLIC, FROM 2006 TO DATE

Constitution

The constitution of the Third Republic was promulgated on February 18th 2006, after it was accepted by a referendum on December 19th 2005. The constitution established an united nation but very decentralized with 26 provinces. This constitution had many similarities to that of 1964. The constitution was written by belligerents from the war that had divided the country into three parts. It was believed that good governance was needed and that could easily be delivered by a very decentralized government.

Face with the failures of managing efficiently a large country from the center, it was obvious that a decentralized state could bring the public administration closer to the people and the public opinion was favorable to the option. It is also a fact, that international institutions such as World Bank, IMF and Western powers were in

favor of a federal state or a very decentralized state which all thought could improve the management of the large country.[12]

As in the 1964 Constitution, provinces are in charge of provincial political and administrative institutions and also of the management of purely provincial matters. The central government is in charge of fundamental states matters such as security, defense, foreign affairs, finance, economy, education, justice, customs ... Local governments and decentralized territorial's entities (ETD) are entrusted with the management of local problems.

It was agreed that 40 % of revenues collected by national tax authorities be ceded by to provinces to cover their operating expenses. This measure has not been applied so far.

Although the constitution was promulgated in 2006, the 26 provinces were only set up in 2015, with nominated state commissioners acting as governors. Since local and communal elections have not yet been organized, the decentralized territorial entities are managed by appointed personnel.

The Constitution of the Third Republic which set up a decentralized state has not yet been fully implemented. It is hope that the elections which should start this year will be fully completed so that provincial, communal and local authorities could also be elected for the first time. The slow implementation of the constitution could not only be attributed to the lack of adequate financing but also to the unwillingness of those in power in the center to give up some of their power to the provinces as stated in the constitution.

Major crises and armed conflicts

The Third Republic was born through a rebellion. The state of war which gave its birth is not totally ended and seems to be without end. The major phases of the conflict are as follows.

"The Liberation War", from 1996 to 1997

The so called war of liberation brought Laurent-Désiré Kabila to power. The onset of the war was the downing of the Rwandan

President's plane in April 1994 which ignited a wave of unprecedented killings of Tutsis and moderate Hutus by Interahamwe, an extremists Hutu group close to the government of Rwanda. More than 880,000 people are supposed to have been killed mostly with axes and machetes. This genocide was followed by an exodus of more than 2 million Rwandan to refugee camps, mainly in Kivu. This uncontrolled mass exodus has until today enormous political, economical, environmental and social implications in D.R. Congo and in the region.

As time passed, the refugees organized themselves and started attacking the government of Rwanda which is dominated by Tutsis. Taking advantage of the chaotic political and security situation in the DRC, Rwanda decided to pursue refugees deep inside D.R. Congo. Finding no resistance from the demoralized Congolese security forces, Rwanda, Uganda, Eritrea, Burundi and later on Angola decided to remove Mobutu from power. To make the whole process look like a rebellion not an aggression, Laurent Kabila, a veteran opponent to Mobutu regime was appointed leader of AFDL ("Alliance des Forces Démocratique pour la Libération du Congo"), the opposition group with heavy dominance of Rwandan Tutsis and Banyamulenge (Congolese Tutsis of Rwandan origin).

The success of the rebellion attracted financing from adventurers and multinationals mining companies which expected in return to get easy access to natural resources after the war. Kabila signed several contracts with mining companies with obscure content during his march from the eastern fringes of the DRC to Kinshasa. Some Western interest groups even thought of splitting the country, in order to better control the mineral resources essentially in the Eastern part of the country. Although Rwanda, Uganda and Angola claimed to have invaded the Congo for security reasons, Prof. J. Maton of the University of Ghent was the first in 1999 to state that it was a minerals war.[13]

The Congolese population was at first hostile to the AFDL because of its Tutsi dominance but later became favorable to the rebel-

lion when Kabila claimed leadership of the rebellion. At that time, the Congolese were tired of the democratization process started in 1990 which was not making any progress toward the promised elections. AFDL soldiers entered Kinshasa in May 17th 1997, a day after sick and weakened Mobutu had gone into exile to Morocco where he died later that year.

Kabila brought with him a motley bunch of people: Rwandans, Ugandans, and Congolese from the diaspora, many having no work experience. The Rwandans in majority, Tutsis who occupied several high posts in government, administration and army behaved like conquerors. Furthermore the basic political and philosophical contradictions inside AFDL made the running of the state rather chaotic. AFDL's erratic policies led to the suspension of political freedom and stopped the democratization process. Kabila's course of action frustrated also his outside backers and those inside the country who had been waiting for democratic elections for a long time.

Unable to control and manipulate the man they put in power, Rwanda and Uganda plotted a coup d'état in August 1998. In a spectacular move, a plane was hijacked in the East of the country and landed hours later in the military base of Kitona in the West, thus allowing the new rebel group to open a front close to Kinshasa.

The war of aggression from 1998 to 2003

The second phase of the war started in August 1998 when the country was attacked early in from the East and West by unknown group. Three days later RCD ("Rassemblement Congolais pour la Democratie"), a new rebel group, claimed responsibility for the attacks allegedly aimed to free the country from Kabila's autocratic rule. Similarly to what had happened a year earlier, the leader of RCD was a Congolese from Maniema while soldiers were mostly from Rwanda. The RCD leadership comprised a strange mixture of politicians: former Mobutists, radical left wingers, regional barons,

NGO figures and well known representatives of Rwandese interests. All those politicians were frustrated for having been excluded from power by Laurent Kabila. The RCD was backed by Rwanda, Uganda and Burundi who admitted one year later to have intervened in Congo. The war that was supposed to be short because of the porous borders and disorganized Congolese security forces became a protracted conflict involving many countries.[14]

Later on, another rebellion group MLC ("Movement de Liberation du Congo"), led by JP Bemba and backed by Uganda, attacked the DRC from Ugandan borders and, very fast, occupied a large portion of the Orientale province and a part of Equateur province.

Within three weeks the rebels were on the outskirts of Kinshasa after having taken the Inga dam and cutting power to Kinshasa. Only Angola, Zimbabwe and Namibia among SADC (Southern Africa Development Community) members intervened on Kabila's side and later Chadians soldiers joined the fighting alongside Kabila. South Africa and other SADC member countries abstained and dissociated themselves from the decision. Through international pressure, a cease fire was obtained and later on negotiations in Lusaka led to a peace treaty in 1999 which allowed UN soldiers to be deployed in the country. As Laurent Kabila dragged on the implementation of the accord, he was killed in his office in January 2001.

Joseph Kabila, who succeeded his father, pursued the implementation of Lusaka's peace accord signed in Sun City, South Africa, by all warring groups, political parties and civil society. A government of national unity and two chambers of National Parliament were set up. The regime which was commonly known as 1+4 (a President seconded by four Vice-President), involving all the belligerents was assigned the main objective of organizing elections, was inaugurated in 2003.

During the war of aggression each side exploited mining resources to finance the war. In fact, the ceasefire obtained in Lusaka made Rwanda and Uganda de facto masters of parts of the DRC in which they exploited natural resources. Hence, they were not in a

hurry to end belligerence. The greed of the two countries led them to war in Kisangani in 2000, which resulted in enormous human casualties and material destruction in the city.

The exploitation and traffic of Congo minerals were organized at the level of state for Rwanda. However in Uganda it was mainly for personal enrichment of some members of the government. The RCD who controlled the Eastern part of DRC and their Rwandan backers were unable or rather unwilling during more than three years to destroy the militia (FDLR) opposed to the government of Rwanda, which showed that their main concern was the exploitation of Congolese natural resources and not fighting the militia.

Zimbabwe and Namibia to a lesser extent, obtained from Laurent-Désiré Kabila access to rich mining concessions. The war was self-financed. As P. Le Billon said, natural resources can contribute to the likelihood of armed conflicts as well as influence the duration, course and impact of the conflict upon population.[15]

War against Militias, from 2004 to date

At Sun City in South Africa, rules governing the transition to an elected government were set up and the power was shared between all major political forces in the country as well as belligerents to the conflicts. It was agreed that the national army, FARDC ("Forces Armées de la République Démocratique du Congo"), will result from integration of all the armies of the belligerents. It was proposed also that some soldiers had to be demobilized. It is worth noting that the international community accompanied DRC in the implementation of the Sun City accords. Beside UN soldiers and civilian personnel, European Union Forces (EUFOR) were sent to the country to secure the election process. To further peace and stability, several European countries financed projects in the DRC and in the region under bilateral or multilateral arrangements. One such project is the International Conference of the Great Lakes Region, which has been pivotal in easing tension in the region.

However, during the transition period, in 2004, trouble erupted in Bukavu because some RCD officers (mostly Tutsis) refused to be integrated and decided to remain in the East under the pretense of fighting the FDLR ("Front Démocratique pour Libération du Rwanda"), a rebel group opposed to Kagame's regime). The FARDC and UN soldiers intervened to restore order and peace.

Joseph Kabila was elected President and took office in December 2006. Later on, Nkunda, an ex officer of the Rwanda army and commander of RCD in Kisangani during the war with Uganda, refused to be integrated in the FARDC. He instead set up a rebellion group, CNDP ("Congrès National pour la Défense du Peuple") and threatened several times, possibly with the blessing of Rwanda, to take over the town of Goma in December 2007 and in 2008. His principal argument was that the government was not fighting the FDLR. Several other armed groups, such as the various Mayi Mayi militias, are still fighting each other and the FARDC for political reasons and for the control of mining sites and the trade in minerals. In January 2008, under the government's auspices, all the armed groups in Kivu signed a peace treaty and decided to solve the difference by dialogue. However, this was short-lived since the CNDP restarted the war a month later and threatened again to take over Goma, prompting the African Union to negotiate a peace deal in Nairobi in late 2008. In January 2009, a joint military operation of the FARDC and the Rwandan army tracked down FDLR bases in Kivu and at the same time another joint operation of the FARDC and Ugandan army were attacking LRA bases in Ituri. The government tried to integrate members of CNDP in FARDC, but the process failed. Instead in 2012, an armed group called M23 was created by former CNDP rebels and restarted the conflict. In November 2012, Goma was occupied by M23 in spite of the presence of UN and FARDC soldiers. Later on, a joint force of UN and FARDC soldiers pushed them to Uganda.

Since 1994 to date, the state of war prevails in Eastern part of DRC notably in the provinces of Ituri, North Kivu and South Kivu.

Several militias operate in the area, some of foreign origin such as the LRA and ADF NALU (from Uganda) and the FDLR (from Rwanda) and several local militias regrouped under the common name of Mayi Mayi. The continuation of the state of war in DRC, back by foreign and local interests could be a strategy in the process of the balkanization of the country.[16]

The Rwandan genocide in 1994 triggered the crisis which then spilled over mostly the Eastern provinces of DRC (Ituri, North Kivu and South Kivu). The war in DRC cannot be understood as an isolated event, it is a result of bad governance and public mismanagement since independence which turned the country into a "black hole" creating insecurity, and attracting rebels opposed to neighboring states. The concern of improving the country governance is the key motive behind a decentralized state as expressed in the constitution.

It is very simplistic to consider that the cause of Rwanda genocide is only ethnic; the action should be examined globally and could be also understood in the framework of population pressure. In fact, Rwanda has one of the highest population densities per square mile (760), approaching that of Holland (990) and close to that of the United Kingdom (665). Agriculture being the main activity of the population, the land issue is a major problem that needs to be taken into account to avoid another crisis. Let us not forget that good political and economic governance and political freedom are important factors for the stability of a country dominated by two ethnic groups.[17] Besides demographic pressure and land ownership issues, the cause of continuation of the war in the East is the identity problem between natives and those who arrived later in the area, mostly Tutsis and Hutus and of course access to natural resources exploitation and trades.

About 365 different ethnic groups live in the DRC, none of which constitutes the majority in any provinces.[18] The so call ethnic conflicts have not much to do with ethnicity. They are often a strategy conceived by candidate to gain power in a very competitive environ-

ment. Elite competing for political or administrative posts which give access to financial and material gains use demagogic propaganda based on promotion and defense of their respective ethnic group.[19] But while in power, the manipulated populations are abandoned in a worse situation. Land ownership conflicts are present in almost all the provinces of the country and exceptionally acute in the Eastern part because it is densely populated. Land problems are a result of dual management of land ownership by customary law and statutory law. While educated elite used statutory laws, rural populations believe and rely only on customary law. These conflicts which are sometimes deadly are usually solved by local communities on their own. Even the Lendu-Hema conflict in Ituri in early 2000, originated in landownership, but was exacerbated by external interventions. It found solutions through negotiations between all Ituri communities' leaders.

CONCLUSION

The Constitution of the Third Republic aims at establishing a very decentralized country with powers share between elected authorities in the central government and elected provincial and local authorities. The slow implementation of the constitution since 2006 has created a weak power at the local government level, which is still managed by appointed authorities often chosen not on qualification and efficiency bases. Efficient elected local governments will have the capacity to resolve local conflicts, which in DRC are usually linked to land ownership.

It is political will more than financial difficulties, which impede fully application of the constitution. This delay of more than ten years could lead to a major crisis, if it is not remedied immediately.

||| **PH.D. KALULU M. TABA**
University of Kinshasa, D.R. Congo

NOTES

1 Known as Belgium Congo before its independence in 1960, the country has changed name several times, Republic of Congo (1960-1964), Democratic Republic of Congo (1964-1971), Republic of Zaïre (1971-1997), Democratic Republic of Congo (1997 to date).

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FEDERALISM AND DEVELOPMENT COOPERATION: AN INDIAN PERSPECTIVE

||| Shakti Sinha

INTRODUCTION

One of the paradoxes of recent political history has been India's success as a democracy. Of all the countries that emerged out of colonialism in the post-World War II era, India has the unique record – beside some very small countries like Mauritius and Belize – of having nurtured social and political inclusion continuously for almost seven decades – aside from a very small, nineteen-month interregnum (June 1975 - February 1977), when Prime Minister Indira Gandhi clamped internal emergency and suspended fundamental rights. What makes the unlikely success of Indian democracy even more of a mystery is that India started as an extremely poor, ethnic and religious diverse country, which led many – including Winston Churchill – to argue that India was as much of a nation as the Equator was.[1] India took to universal adult franchise from the very first election held after achieving independence. Others, like the historian Ayesha Jalal have held that – in view of large-scale poverty, and economic inequality – India cannot be called a *substantive* democracy, that at best it is a *procedural* democracy that holds elections. Many have also argued that India is not a federation in the classic sense of the term since the Union has a preponderant role, and that in any case, this was not a case of units coming together and forming a federation.[2] These criticisms have an element of truth but are exaggerated. Though incomplete, India's federal democracy has emerged as a powerful instrument of social, political and economic inclusion that should serve as a model in the globalisation of

democracy with particular relevance to large, diverse countries since it is built on platforms of horizontal and vertical cooperation, where pluralities do not degenerate into majoritarianism since consensus and positive discrimination in favour of the historically social disadvantaged are firmly embedded in the political architecture of the State.

INDIA – AN UNDERESTIMATED DEMOCRACY

Until quite recently, many serious observers of India were convinced that due to the country's bewildering ethnic, religious, linguistic and social diversities and the widespread poverty and persistent armed insurgencies, it was only a matter of time that the country as a single, political entity would break up. This sentiment was best reflected in what Selig Harrison, the respected American journalist who was based in India for many years and seen as a sympathetic observer, wrote in 1960 that "the odds are wholly against the survival of freedom [...] the issue is, in fact, whether any Indian state can survive at all. "[3] Of the two countries that emerged out of British India, Pakistan was seen as both cohesive and a better economic prospect as compared to India. Besides India's adoption of socialism and of planned economy, its growth rate in the 1950-1980 period was sub-par, 3.5 % per year, and it was not seen as a significant economic player on the world scene. Its policy of equidistance from both the blocs (led by Soviet Union and the United States of America) during the Cold War, and the mutuality of interest with the erstwhile Soviet Union in its immediate neighbourhood, placed it in conflicting positions with the western democracies on a range of issues. This meant that while there was considerable support for assisting India to meet its economic challenges (until the Vietnam War and USA's desire to align strategically with China against the Soviet Union), the unprecedented politico-social transformations taking place in India passed under the radar. Observers like Harrison misunderstood that importance of caste was an instrument of political mobilisation. Rather than leading to permanent

divisions, such mobilisation actually made sense only in the context of building horizontal alliances with other multiple caste groups to obtain power at the local and provincial level.

What happened instead was that acting on universal principles drawn from western societies, scholars were "often prone to fall for a general presumption of crisis in multi-ethnic developing democracies" that "have endured in defiance of the grim predictions made in the literature during the early decades of their emergence".[4] That one third of people living in democracies and 40 % of people living in federal countries are Indians is a fact that has not attracted adequate attention of political scientists.[5] Developing this idea of political scientists not being able to understand the Indian record of democratic governance, it has been argued that this unease about India's socio-economic record is because of "suspicions that India's success on diversity and democracy may be too good to be true".[6]

So is it appropriate to call India a democracy? Federalism and development cooperation would be relevant only after this proposition is established. India's free and fair elections need no certification. It sees regular changes of incumbents, both individuals and as parties / ruling groups, without the losers questioning the impartiality of the process. Can it be argued, as Ayesha Jalal has done that India and Pakistan should be placed on the same level because on her opinion "elections are deceptive and unreal"?[7]

It has been argued that obviously "equality strengthens democracy" but that "inequality does not make it impossible".[8] The *elective* principle should not be underestimated. The only way that "societal objective can be determined is through competitive elections, not by authoritarian means, however laudable". When Robert Dahl's two-fold principles of contestation and participation are applied,[9] India passes the test. Ruling parties at the Union and in different states have lost elections, despite control of the government machinery. Franchise is freely and fairly exercised; India emerges as an exception to the conceptual framework of democracy requiring homogeneity and high income.[10]

Nevertheless, is India really an exception? A group of scholars looked at 141 countries over the period 1950-1990. In all, there were 238 regimes, 105 of which were democratic and the rest (133) were authoritarian. Of these 238 regimes, 41 saw a transition, from authoritarian to democracy and vice-versa.[11] Of all the indicators looked at, per capita income was the best predictor of democracy; in 77.5 % of the cases, it predicted that a country with a high per capita income was a democracy. No other predictor – religion, colonial legacy, ethnic diversity, international political environment etc. – came close to it.

India is the biggest outlier, falling in the 22.5 % group that was a democracy despite not having a high per capita income. If one looks only at the decolonised countries, India's case becomes even more exceptional: the others in the group are Mauritius, Belize, Jamaica, Papua New Guinea, Solomon Islands and Vanuatu. Besides size, all the others have a much higher per capita income. In fact, India should have been a dictatorship for the entire period if income basis was a fail-safe indicator. There are other exceptions, e. g. South Africa, Taiwan, Chile, Portugal and Spain. Mexico, as per data, should have become a democracy in the 1950s, not in the 1990s. If India is the biggest exception on the low-income side, Singapore is the biggest surprise on the high-income side.

Looking deeper into the study, there is a reasonably robust link between growth rates and probabilities of democratic breakdown. Countries that grew at less than 5 % had a much greater chance of such breakdown than countries that grew at greater than 5 %. Again, India was an exception during the years 1950-1980 when its economy grew at 3.5 %. The study also drew a distinction between the emergence of a democracy and its survival. The causes of emergence were many, e. g. wars, death of a dictator, economic shocks, foreign pressure, end of colonial rule etc. However, economic growth was key to survival as a democracy. There was no causal relationship but patterns were clearly identifiable. It must be kept in mind that "statistical arguments tend to be probabilistic, not deterministic."[12]

There are both structural and contingent factors for the success of democracy in India.[13] Structurally, since the dominant strain of the national movement for freedom was democratic, the Constitution sought "to represent the views of the many than the opinion of a few". Contingently, India was lucky to have a leadership that was ready to get rid of the "dead wood of traditionalism"; a political elite that shunned authoritarianism.

Where India was fortunate, was that its cleavages were not just class but also "language, religion and caste".[14] Horowitz has argued that there is "conceptual difference between dispersed and centrally focussed ethnic structures".[15] Keeping this paradigm in mind, "India's identity structure is dispersed, not centrally focussed; and identities cross-cutting, instead of cumulating".[16] Where identities are centrally focussed, conflicts "tend to escalate throughout the system". On the other hand, in dispersed systems, ethnic conflicts tend to remain localised, with the centre able to handle one conflict at a time, "without worrying about the nightmare of having the whole polity getting affected".[17]

As we will see later, since linguistic groups are concentrated geographically, the approach to them has been accommodative. Caste groups on the other hand are localised; they "typically split state politics, generally not allowing any given state to become a cohesive, united front against the centre".[18] The crosscutting nature of Indian identities, traditionally and shaped by the national movement and the Constitutional provisions, has tended to dampen conflicts. There have been, and continue to be, a number of armed insurgencies but the "intensity of conflict rarely reveals a level constituting an existential threat to the entire nation".[19]

INDIAN CONSTITUTION – DEMOCRATIC AND FEDERAL

To better understand India as a democracy, one should look at its constitutional arrangement of power between Union and the States as well as its balance between the fundamental rights of

individuals and the enabling provision of positive discrimination to the historically socially disadvantaged groups. Parallel to this structure, which retains its core features even as it has shown considerable flexibility in adapting to changed circumstances, exist developments in politics, social relations and economics that have interacted with each other and the resultant impact on the federal democracy that India has developed into.

The word federalism does not appear in the Indian Constitution; rather the Indian nation is defined as a *Union of States* with sovereignty resting in the people. The Indian Constitution, which came into effect on January 26th 1950, was the product of multiple influences. There were developments in constitutional governance that the British were forced into introducing under pressure from the national movement for freedom. Separately, the Indian leadership was developing their own ideas on what the government of free India should look like. The government of colonial India introduced the system of diarchy in 1919, in what was known as the Montagu-Chelmsford Reforms, which led partially elected legislatures based on restricted franchise that had jurisdiction over a limited number of transferred subjects. It was to be reviewed after ten years. Congress boycotted the subsequent Simon Commission (1927-1928) and instead, along with the Muslim League, it set up the Motilal Nehru Committee that recommended a federal form of government with a bill of rights, a supreme court and linguistic provinces. The last is particularly important and was consistent with the resolution of the Belgaum session of the Congress (1920) that had first proposed this. Contrary to the arbitrary borders of Indian provinces then prevailing, which were based on historical accidents of British conquest of different kingdoms and principalities, the Congress party set up its provincial committees based on linguistic lines.

The governance structure of this Act was largely modelled on the Government of British North America (Canada) Act 1867, and in turn greatly influenced the Constitution as eventually adopted. The draft Constitution was introduced in the Constituent Assembly

on November 4th 1948 and adopted on November 25th 1949. It was discussed threadbare not only in the Constituent Assembly but also in provincial councils, premier's conferences, representatives of Chambers of Princes and in the media.[20] It is a federal constitution as it satisfies Dicey's definition, viz., "distribution of the forces of the State among the coordinate bodies each originating in and controlled by the Constitution".[21] There is separation of powers and checks and balances between the executive, legislature and judiciary (horizontal) and between the Union and the Provinces / states (vertical). Unlike the US system which is presidential and whose federal features arose out of the failure of the Articles of Confederation (1777), India can be said to be parliamentary federalism or executive-federalism since the executive is anchored in the legislature. As in Canada, it ties in Locke's separation principles with *selective federative features* namely the Union-States division of powers but *ensuring supremacy of parliament*. It has been said that the Indian Constitution embodies three sets of Contracts: between the People and the State, between the three organs (executive, legislature and judiciary) at the Union and state levels, and between the Union and the states.[22]

At the core of the Indian Constitution are popular sovereignty and social justice. The long freedom struggle that emerged over decades moved out of meeting rooms of elites and involved the people at large. Freedom from colonialism or sovereignty meant equality for all. This in turn created a modern nation that was conscious of social inequalities and "the undesirability of caste constituted the background for the growth of democratic aspiration and political consciousness".[23] Hence, on one hand, there can be no discrimination on grounds of religion, caste, ethnicity or sex, the State can make special arrangements or positive discrimination for persons belonging to socially disadvantaged communities. Initially, such provisions were limited for the scheduled castes (SCs) and scheduled tribes (STs), but have gradually been extended for the Other Backward Classes (OBCs) in terms of government jobs and

educational opportunities. Reservations in the legislatures are still restricted to the SCs/STs.

Two sets of developments have over the decades strengthened the democratic and the federal features of the Indian State. The first was the "success of the popular movements for linguistic re-organisation of states". This "offered a reassuring principle of legitimisation of regional governance as ways of reducing the distance between the citizens and government".[24] So, while on one hand, the Indian Constitution did not recognise ethnicity except is so far as it made special provisions for the traditionally socially disadvantaged communities, and the Indian State was based on pure territoriality, it did allow for "moderate accommodation of group demands, especially demands based on ethnicity, and some decentralisation strengthen democracy".[25] Though the Belgaum Congress (1920) had accepted this decades before India became free, Nehru as prime minister was reluctant to move on this. This was partially understandable as the circumstances accompanying India's freedom were traumatic – partition of India, mass migration and killings, integration of 565 princely states which led to police action in Hyderabad and the Kashmir conflict. India also faced considerable economic stress and the adoption of central planning meant the need for a strong centre. However, Nehru was forced to concede the Telugu demand for Andhra (1953) and this led to the States Reorganisation Commission. The stage was set for the creation of linguistic states, and later on grounds of ethnicity (tribal states of North East), accession to India (Sikkim), colonial history (Goa), and regional backwardness (Uttarakhand, Jharkhand, Chhattisgarh and the latest, Telengana).[26] India started with seven states at independence; it now has 29 states and 7 federally run territories of which two (Pondicherry and Delhi) have elected governments with varying powers. The Indian State "has proved to be fairly responsive to the demands for relatively autonomous Statehood".[27] This massive rearrangement of the sub-national governance arrangements, far from adding to centripetal pressures actually ended up creating a robust

federal union, since linguistic reorganisation created "cohesive cultural and political units [...] effectively cooperating through a broad spectrum of federal bodies".[28]

The second development is unique: the democratisation of the Indian polity and society. While the emergence of a large middle-class is given, what is even more fascinating is "the rising aspirations and assertions of social groups for a share in political power as well as economic resources and benefits from the State".[29] In the Indian context, political democracy was not enough and the adoption of universal suffrage in an illiterate and exceedingly poor society combined by features of the Constitution, and of laws adopted post-independence, that tried to carry out social engineering, led to social empowerment on a large scale. Of the two countries that began their journey in August 1947, carved out of the same block, India alone has seen the broadening and deepening of democracy. It was clear that "the democratic idea has penetrated the Indian political imagination, and began to corrode the authority of the social order and of a paternalistic state".[30] The institutionalisation of political equality has been established quite substantially, which is even more remarkable considering that this has happened "in a society which was hierarchical, stratified and highly exclusionary". Accordingly, it has been asserted that the "accommodation of those who mount powerful challenges by granting them greater autonomy and / or a share of resources has been central to the strengthening of democracy".[31]

Paradoxically for political scientists, this is because the "level of conviction in democratic processes is inversely related to wealth, status and power", because the "struggles within democracy in India are primarily for equality and inclusion".[32] It is the *ordinary people* who defend democracy from those who "seek to subvert it". Participation on democratic processes empowers the disadvantaged who are then able to transcend their *social location*. This process picked up momentum in the 1990s through what has been identified as the "second democratic upsurge".[33] Political participation, accelerated

by the Mandalisation process,[34] broadened and those belonging to the socially underprivileged moved into the politic arena in a big way, so much so that the profile of the participants "differs not only from India's own past but also from that of most existing democracies".[35] While on one hand it has meant that the rural areas, and poorer people, see turnouts greater than those obtained in urban areas, and among the better off, on the other hand, this gradual process of democratisation has led to a "reduction of social privilege". Therefore, though "the dominant classes discover new ways of reinforcing their hegemony, the march of democracy is inevitable". This is because the "constitutional premises of equality are bound to reverberate in other domains".[36] The result was that not "only did India feel more democratic, but democracy itself began to feel more Indian".[37]

INDIAN FEDERALISM AND DEVELOPMENT COOPERATION

Several other procedural and substantial developments have pushed the federal and democratic agenda and contributed to a "sustainable mode of development cooperation" between the Union and the States.[38] For various political and economic reasons, India saw a move towards centralisation for the first 32-33 years, yet which has since reversed itself. However, the collapse of one-party near monopoly of power and the rise of regional parties to power not just in their states but also as part of the ruling coalition saw the fulcrum of power move away from the centre.[39] This meant that the Union's propensity to use Article 356 of the Constitution dealing with breakdown of the constitutional machinery in a state to destabilise governments headed by opposition parties was muted. The Supreme Court's judgement in the SR Bommai's case (1994) made such action by the Union government open to legal challenge, effectively making it an exceptional instrument that the Constitution originally intended it to be. This has restored a much-needed balance in federal relations.

The other development that has made the Union and States partners in development cooperation rather than unequal patron-clients have been the economic reforms. Central planning meant that public investment driven by the Union was the major factor in determining where investment flowed. The politicisation of investment flows and other distortionary policies like freight equalisation etc. reduced states to become clients of discriminatory Union decisions, which results in sub-optimal development outcomes. India, faced with economic collapse, opted out of central planning and gradually deregulated economic policies. On the one hand, states competed with each other to attract private investment flows, which has led to a widening of inter-state disparities. On the other, this has forced the Union and States to come together and try and improve the investment climate across the country. The adoption of a common Value Added Tax (VAT), for example, through the mechanism of the empowered group of state finance ministers was a major achievement. Failure to agree on replacing VAT with a nation-wide common Goods and Services Tax (GST) is seen as a major national failure, highlighting the need to overcome politically inspired roadblock that is damaging the national economy.

A complex constitutional architecture has developed through political changes and developments as well as judicial pronouncements; this has led to "a negotiated balance between the general, regional, sub-regional needs, sentiments, support and demands". Rather than a "distributive theory of power", this is an expression of a "productive theory". Developmental federalism in the Indian context has led to agents, despite of their mutual problems, collaborating leading to their "expanding a common pool of capability". The best example of this was the adoption of VAT, and which has received a major boost through the Union's abolition of the Planning Commission and its acceptance of the recommendations of the Fourteenth Finance Commission (FFC).

FISCAL FEDERALISM

Federalism is a multilayered structure with decision-making shared by all levels of government; empowering people politically; directly elected local government officials thereby making them accountable to citizens. Local governments (municipalities and panchayats) are part of the Constitution with the enactment of the 73rd and 74th Amendments to the Constitution (1992). Traditionally speaking, federalism has three components, specifically political, administrative and fiscal federalism. Politically and administratively, India has established itself as a federal country, but how does it fair in terms of fiscal federalism? Does the evolving structure support development cooperation within the federation?

The Planning Commission, abolished by the present government in 2014 and replaced with the NITI (National Institution for Transforming India) Aayog, was neither a Constitutional body nor a statutory one; it was a creation of a resolution of the Union cabinet. It reported to the Prime Minister, who was both its Chairman and its Minister. The NITI Aayog is the same in these respects so it can be nobody's case that this change has in any way adversely affected the federal equilibrium or that it will lead to an increase in centralisation in the office of the prime minister. Nevertheless, where it differs from the Planning Commission is that it actually seeks to give the states a role in its management, and creates a mechanism to sort out regional issues. Unlike the unitary nature of the Planning Commission, the NITI Aayog has a governing council whose members are Ministers of states and Lt. Governors of union territories. Further, it can constitute regional councils on "specific issues and contingencies impacting more than a state or a region".

Now there is no need for state plans to be approved by the NITI Aayog, which is essentially a think-tank. Further, this artificial distinction between plan and non-plan expenditure in the Union Budget had become meaningless. A better categorisation can be between capital and recurrent expenditures. The NITI Aayog is a platform that brings the Union and the states to determine national priori-

ties; it is to champion the interests of states by having the latter nominate an officer who would work with the Aayog; bring about greater coherence and coordination between ministries in the Union government; form time-bound action-oriented sub-groups of states with common interests, problems and regional projects; a think tank for Union and state governments using in-house expertise and pool of external domain experts; monitor implementation of development programmes and projects; assist states in preparing development plans for villages upwards and aggregate them; and collect and disseminate best practise that would lead to greater development effectiveness.

The decision to accept the recommendations of the Fifteenth Finance Commission (FFC) is revolutionising the relationship between the Union and the states and is making cooperative federalism a reality. The founding fathers of the Constitution realised that in a vast developing country like India that was in the process of initiating, generating and sustaining economic growth, governments, both Union and in the states, would evolve. The government would take on new responsibilities, the balance between the Union and the states would undergo changes across time and sectors. Therefore, a fixed formula of devolution would lead to restricting the flexibility that the governance structure and processes would require along the way. They also had in mind that, though the states would have the major responsibilities in meeting social and economic challenges, it was administratively and politically more convenient to collect revenues through agencies of the Union government. Sensibly, they mandated the establishment of a Finance Commission once every five years that would give its recommendations to guide fiscal devolution every five years. No permanent body meant no baggage and successive finance commissions have exercised both independence and pragmatism while making their recommendations. Unfortunately, the Planning Commission had hijacked the fiscal devolution process through an administrative fiat in 1970 that give it the final say in the allocation of plan (development) funds.

The abolition of the Planning Commission in this context has been referred to as the "strongest statement of intent" that the Modi government was "serious about restructuring Centre-state relations and strengthening the principles of co-operative federalism".[40]

What has changed is that the FFC has moved beyond incrementalism when it recommended that 42 % of tax revenues devolve to the states, from the existing 32 %. To put it in perspective, the two previous finance commissions had devolution numbers going up by 1 % and 1.5 % respectively. When one adds the other transfers, well over 50 % of all Union tax revenues would now devolve to the states.

CONCLUSION

The Indian narrative is an ongoing one with many innovative features that have been largely successful in developing a platform of development cooperation based on "the countervailing pressures of regional autonomy and interregional bonds that are essential for a robust federal system".[41] There are still major questions on poverty reductions and quality of life where the system has underperformed but which, if recent trends are an indicator, points to a much better future.

||| **SHAKTI SINHA**
Director of the Nehru Memorial Museum
and Library, New Delhi

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[25] Kohli, Atul: Introduction, in: The Success of India's Democracy, ed. by Atul Kohli, Cambridge 2001.

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FEDERALISM IN SOUTH AFRICA: A COMPLEX CONTEXT AND CONTINUED CHALLENGES

||| Erwin Schwella

FEDERALISM IN SOUTH AFRICA: SETTING THE SCENE

Federalism in South Africa is a contested concept and reality. This is illustrated by the extent to which there are differences of opinion on whether South Africa is an example of a federal state or not, as well as differences of opinion and conviction on whether it should be or become, if it is not yet, a federal state. This opinion on the contested nature of federalism in South Africa is supported by Haysom[1] where he states that, during the negotiation for a democratic constitution: "... the federalism issue – the question of the extent and nature of provincial autonomy – became the most heated, intense and enduring of the constitutional disputes."[2] He then argues that this suggests that the question of provincial autonomy became a vehicle for expressing the expectations, insecurities and anxieties of the fundamental political changes the new constitution might put into effect. Indeed the way in which the political parties lined up on the issue is eloquent testimony to the disputed nature of the federalism debate in South Africa.

Haysom[3] elaborates by pointing out that the parties which supported the maximum devolution of power and the greatest degree of autonomy of provincial governments were all associated in one way or another with the desire to retain at least some of the formal or informal features or structures of the pre-1990 South Africa, namely the National Party (NP), the Freedom Front (FF), the Democratic Party (DP) and the Inkatha Freedom Party (IFP).

On the other hand, those that were most concerned with a transformation of the institutions and patterns of privilege and power in South Africa were those that supported a unitary state. This group included the African National Congress, (ANC) and the Pan Africanist Congress of Azania (PAC). Furthermore, apart from the IFP, the parties which supported federal principles were not *per se* the representatives of geographically confined minorities or parties with a strong tradition of geographically confined support. Indeed, save for the apartheid experience, which was seen by all parties as a failed attempt at social engineering, there was either a limited indigenous tradition of federalism or none at all.

The contested nature of federalism in South Africa is of course linked to the South African context, which will receive more attention in the next section of this paper. For now it has to be noted that the historical and societal contexts of South Africa are characterised by strong conflictual societal perspectives on what the South African reality is and should be. It is also clear that South Africa is a highly complex society with serious challenges including poverty, inequality, unemployment, diversity and deep rooted racial, ethnic, political and economic divisions. All of these contextual dimensions and challenges impact on the positions of South African role players related to governance systems, including federalism. This complexity and challenges will also receive some attention in a next section of the paper.

Given these conflictual perspectives, the complex context and the serious challenges of a divided society still grappling with a troubled history of colonialism and apartheid, it is understandable that there will be differences of opinion and conflicts on the governance models and institutions that will most effectively and ethically deal with the South African reality. This includes differences of opinion on whether South Africa is or should be a federal or unitary state.

One analytical explanation of these differences of opinion and policy positions rooted in the political economy of South Africa and reflected in the stands of political parties in South Africa as illustrated

by the observation of Haysom *supra*, is to attempt to explain the differences in perspectives and perceptions in terms of the fundamental political analytical question of "Who benefits?" or "Cui bono?".

According to Clift,[4] this analytical approach to political economy, based on the works of, inter alia, Harold Laswell[5] who grounded his analysis of politics in his classical work *Politics* on the question: "Who Gets What, When and How?", and Susan Strange[6], who explains political choice and behaviour in terms of interest based analyses linked to the question of choices made by political actors in terms of who benefits, and of course, whether they or their supporters will benefit and how. In adapted format the analysis is based on political actors making choices on the basis of how they perceive they will benefit in real or comparative terms given competition and conflict for available benefit and value. This interest based type of analysis will also to some extent inform the further development of the reasoning in this paper.

The "Who benefits?" question, from a federalism perspective, and the perceptions and positions of stakeholders on how to position in this regard is addressed by Rodriguez[7], where she introduces a public value or value perspective to the conceptual federalism debate. She argues that the question of the value generated by federalism has no single answer. This is also true for the corollary question of how the system should to be structured to maximize its virtues. The value generated by decentralized decision-making will appear different depending on the perspective adopted when considering the matter. The impact of these perceptual differences on preference and choice is also valid for choices about the ideal design of inter-governmental relations.

Taking a perspective from within the system itself and from an institutionalist point of view, the answers will reflect the interests of the system's actors and take on partisan and bureaucratic characteristics. From an external perspective, either from a popular or scholarly vantage point, the answers will become more ideological and normative.

According to Rodriguez,[8] from this approach, the question of the value of federalism breaks down into several related inquiries, being:

- Of what value is it to the central government to have state and local governments to contend with?
- Of what value is it to state and local governments to be embedded in a system with a strong central government and a myriad of competing governments?
- Of what value is it to the people to have government power split and decentralized?

The reasoning thus far tends to illustrate that it would be rather naïve in general and definitely so in the South African case to assume that all role players and stakeholders will have a consensual universally held view on the value and benefits in terms of how their interests will be served and how they will benefit from a federal system in South Africa. Opinions and positions would be different in terms of perspectives and perceptions held by the stakeholders based upon their assessments of who would benefit and whether their interests will be served by having a federal state system in South Africa.

This deduction is provisionally supported when observing and analysing the positions of the South African stakeholders and specifically the major political parties and the current ANC national government on the federal option for South Africa. These positions were already made clear during the constitutional negotiations prior to 1994. These positions are still mostly unchanged today with the ANC in general and seemingly increasingly supporting a more centralised and unitary governance system and the DA in general supporting a more devolved and decentralised federal governance system for South Africa. This is still very much in line with the position at time of the constitutional negotiations prior to the acceptance of the Constitution of the Republic of South Africa, 1996.

It is symbolic and significant that the Constitution does not refer to the nature of the South African state and that there is no explicit reference to federalism made in the Constitution.

There is however fair consensus amongst informed academic and legal experts that the South African stateincludes strong elements of federalism incorporated into the country's governance system even if the federal option was not the preferred option of the ANC who became the dominant and governing political party after the 1994 democratic elections in South Africa.

Haysom[9] in this regard states that if the South African constitutional schema were to be analysed against a formal federal checklist, it could, with justification, be classified as federal. The South African governance system illustrates all the hallmarks of a federal system, in that:

- It is constituted by nine sub-national political entities called provinces, with each sub-national entity possessing constitutionally protected boundaries.
- In each province the Constitution requires a democratically elected legislature and an executive accountable to it and through the democratic process to the inhabitants of that province.
- The powers of each legislature and its provincial administration are original and constitutionally protected.

However, closer examination reveals that the treatment of provincial or regional powers in the final Constitution promotes or sanctions an integrated system of government in which both national and sub-national governments are deeply implicated in each other's functioning and more so than one might expect in a federal system.

This evaluation of the South African state, as an example of a federal state, is also supported by Sturm[10] who refers to South Africa as an example of unitary federalism and by Brand[11] who refers to the South African system as integrated federalism. According to Brand[12] this integrated South African federal system exhibits the following characteristics:

- Constitutionally, powers are divided among the three spheres of government, namely central, provincial and local government. The bulk of powers and functions are allocated concurrently to national and provincial governments;
- Division of fiscal authority, where the bulk of the taxing powers resort with national government, and
- Cooperative government as the overarching principle requiring the spirit and commitment to act co-operatively and to support one another across the spheres of government.

The point of departure is that there is a three sphere system of government; the national government, the provincial government and the local government each with some authority in its own sphere and all encouraged to work co-operatively, but also with the power to stimulate and under select conditions ensure co-operation.

In conclusion, the concept and practice of federalism in South Africa is contested even to the extent that Haysom[13], with some sense of humour, refers to the avoidance of the word federalism in the South African Constitution and constitutional and governance debate historically and currently. He states that in this debate the use of the word "federalism" became more of a hindrance than a help. Against this background, the parties tacitly agreed to drop the "F"-word from the Constitution. Federalism is to this day still a highly loaded and contested political concept in the South African context.

SOUTH AFRICAN GOVERNANCE: CONTEXT AND CHALLENGES

According to Schwella,[14] South Africa has a very traumatic history, also linked to the heritage of the universally condemned apartheid governance system. This system has left South Africa with a plethora of governance challenges related to bad governance, poverty, inequality, and underdevelopment. This heritage continues to impact negatively on South African society, and those dealing

with present-day governance challenges in South Africa need to take this legacy into account. Since the demise of apartheid during the 1990's progress has been made, but a large number of challenges remain, many of which have some roots in the apartheid past.

In this regard, Goldman Sachs[15] raised 10 areas of challenge that remain pertinent in South Africa and impact on South African governance, being:

- Unemployment and inequality remain South Africa's biggest hurdles. Unemployment remains stagnant at 25 % in 2013, from 23 % inherited in 1994. Also, 70 % of the unemployed are young people, aged between 15 and 34. In respect of inequality, 85 % of African people remain in the lower income categories, while 87 % of white people remain in the middle – to upper-class categories. Unemployment has subsequent to this assessment increased and is calculated to be somewhere between 35 % with youth unemployment probably at about 50 %.
- The current account deficit remains high at 6.5 %. The deficit has increased since.
- The volatility of equity and bond flows between 1995 and mid-2007 demonstrates the vulnerability of South Africa if it relies on these flows as a major source of finance. The report estimates that a correction equivalent to around 2 % of GDP is required to remove the vulnerability and to restore the external balance.
- The poor savings rate and high consumer indebtedness have impacted on national investment into the economy. Household debt to disposable income has soared from 57 % in 1994 to 76 % in 2013.
- The contribution of mining and manufacturing to GDP has fallen to 23 % in 2013, from 38 % in 1986.
- The mining and labour uncertainties are unsettling markets and could result in diminishing investment and, even, capital flight.
- Poor education and health outcomes and an underperforming public sector remain a challenge, and service delivery is inadequate and increasingly the source of protests.

- Infrastructure is under pressure, and there is a need for improved maintenance and increased infrastructural investment and development.
- Computer and internet access, research and development, and new patents registered remain a challenge, and show a lack of capacity to innovate.
- Sovereign credit ratings are under pressure and the credit ratings have declined over the last number of years, impacting on the cost of foreign loans and finance. There is currently (2016) a real threat that South Africa's credit rating may deteriorate even further into junk status.

An important political economy question, especially in the South African context related to the role of the state and governance system, is whether and how the system provides for the dual and simultaneous necessity, to, firstly create wealth, and then, secondly to distribute this created wealth productively, equitably and fairly. This dual political economy challenge links directly to the context and challenges experienced by South Africa economically, socially and politically and is directly linked to the issues of unemployment, poverty, inequality and bad governance.

The inequality and unemployment challenges are also linked to the apartheid heritage as well as to the challenges of the current underperforming governance and service delivery system. These issues have been raised consistently by other observers including in the National Planning Commission's[16] Diagnostic Report of the National Development Plan.

It is accepted that the massive backlogs resulting in deficient service delivery in the areas of governance are still to some extent a consequence of the legacy of apartheid. It is however proposed and argued here, that a complementary hypothesis for the continued challenges in the South African context may be that the backlogs are now increasingly the result of the underperforming South African government and public sector, in combination. It cannot therefore

be denied that the apartheid legacy still impacts on service delivery and creates governance challenges, especially given the continued levels of poverty and inequality. However, as the past dissipates over time the quality of governance, linked to public service capacity – or lack thereof – will increasingly need to be part of the explanation for inadequate performance of the state in service delivery.

Having referred to the challenges remaining as a consequence of the apartheid system it is now possible to focus on the current challenges. The challenges identified in the Diagnostic Report on the National Planning Commission (NDP) present a good base to relate to the current South African governance challenges.

While introducing the NDP in Parliament during the State of the Nation Address debate in 2013, the then Minister in the Presidency, Minister Trevor A. Manuel summarised the challenges identified in the NDP for South Africa as follows: "The two main objectives we arrived at in the plan are that we want to eliminate poverty and reduce inequality."

This statement calls for the consideration of the political economy considerations about the creation and distribution of wealth recorded *supra* and which should guide and inform good governance choices for South Africa including the form, structuring and functions of the state and governance system.

The NDP Diagnostic Report[17] identified and elaborated on these challenges faced by South African society starting from the premises and confirming that widespread poverty and extreme inequality still persist in South Africa. The Report emphatically states that the key South African strategic objectives are the elimination of poverty and the reduction of inequality.

From this point of departure the nine priority challenges for South Africa are then identified as:

1. Too few South Africans are working, the unemployment challenge.
2. The quality of school education for most black people is substandard, the education challenge.

3. Poorly located and inadequate infrastructure limits social inclusion and faster economic growth, the infrastructural challenge.
4. Spatial challenges continue to marginalise the poor, the marginalised poor challenge.
5. South Africa's growth path is highly resource-intensive and hence unsustainable, the sustainability challenge.
6. The ailing public health system confronts a massive disease burden, the health challenge.
7. The performance of the public service is uneven, the public service capacity challenge.
8. Corruption undermines state legitimacy and service delivery, the corruption challenge.
9. South Africa remains a divided society, the divided society challenge.

For current purposes, a brief elaboration will be given on challenges of unemployment, the marginalised poor, corruption and South Africa as a continued divided society as identified by the National Planning Commission in their report.

The unemployment challenge is again also linked to inequality. The NDP Diagnostic Report[18] provides some perspectives on this challenge.

It is argued that poverty and inequality are largely driven by high unemployment. Although real per capita income has increased by 2 % per annum since 2001, this rate is inadequate to make a significant impact on poverty and inequality. The proportion of people living below the poverty line has dropped from 53 % in 1995 to 48 % in 2008, but is still very high, and it seems as if the trends are set or are becoming even worse. The share of income for the poorest 40 % South Africans has remained stable since 1994, but now comes from social grants, rather than income and remittances for work done.

There are a number of causes for this seemingly persistent unemployment. These include growth in the labour force outstripping employment creation, while many of these workers also lack skills

in line with the needs of a modernising economy. The persistence of the problem is illustrated by the fact that almost 60 % of all unemployed people have never worked.

An inadequate number of jobs are created, and most of the jobs created are in skills-intensive sectors for which the South African labour supply is not properly qualified. Employment growth has been concentrated in less labour-intensive sectors. Salary increases have often exceeded productivity growth, and the economic environment is not conducive to small business. All these factors contribute to the challenge of unemployment, and reinforce patterns of poverty and inequality.

The marginalised poor challenge, according to the NDP Diagnostic Report, is related to apartheid settlement patterns and lack of infrastructure where the poor continue to live. Reversing the effects of spatial apartheid will be a central challenge in the decades ahead. In this regard, there are three major related challenges, namely:

- The fact that the poorest still live either in former homelands or in cities far from where the jobs are.
- A failure to coordinate delivery of household infrastructure between provinces.
- The challenge for government either to move people to where the jobs are or to move the jobs to where the people are.

In order to deal with these challenges, the NDP Diagnostic Report[19] also referred to the need for much more effective institutions. In this regard, the fact that infrastructure is poorly located and inadequate, creates limits to social inclusion and growth. Simultaneously, the modernising of infrastructure is complex, involving high costs while also helping the shift towards a more labour-absorbing, knowledge-intensive economy incompatible with the skills of the current workforce.

Corruption undermines state legitimacy and service delivery. On corruption, the NDP Diagnostic Report states at the outset that, having declined after 1994, corruption may once again be on the

rise. Rising corruption undermines state legitimacy and services. Corruption is defined as the misuse of an official position for personal gain. Corruption occurs in both the public and private sectors, but it is particularly damaging the good relations between citizens and the state. It undermines confidence in the democratic system by enabling the better-off to exert undue influence over the policy process or obtain preferential access to services.

Perceptions that corruption is high in government are increasingly held by more members of society, and are confirmed by state agencies tasked with fighting corruption. These state agencies are also of the view that corruption is at a very high level. Furthermore, weak accountability and damaged societal ethics make corruption at lower levels in government almost pervasive. It seems as if efforts to fight corruption are fragmented, and institutions dealing with the prevention and combating of corruption are often weak. As a result of corruption in infrastructure procurement, prices rise and thus result in poorer quality of service.

Corruption is also exacerbated by deficient and lacking capacity within the institutions and organisations tasked with the mandate to curb corruption, for example the Special Investigating Unit, which is not able to investigate all the major cases referred to it. This is of particular concern because the probability of being caught and successfully prosecuted has a major impact on the level of corruption. The numerous anti-corruption agencies, laws, and forums also present their own problems, due to overlapping mandates and the lack of strategic coordination of investigating bodies.

The divided society challenge indicates that, despite significant changes since 1994, South Africa remains a divided society. Overall, for South to achieve the social and economic objectives set out in the Constitution, South Africa needs to make faster progress in uniting the South African people. This requires improved implementation of redress measures, and faster expansion of opportunities for historically disadvantaged South Africans through improved education, job creation, career mobility, and entrepreneurship. In the absence

of progress in improving educational standards and in getting more people into work, redress measures on their own are likely to be ineffective and to contribute towards social strife rather than unity. The following challenges remain and require attention:

- The redress of the past and the broadening of opportunities for the future are societal imperatives.
- Building national unity and inclusiveness is vital.
- Strong economic growth and expanding employment are conditions for success.
- South Africa requires a broad social compact to create jobs while growing the economy.

Finally, the NDP Diagnostic Report relates all the other challenges to a good governance- and societal leadership challenge by stating: "We need leaders and citizens to commit to a bold programme to build a better future, based on ethical values and mutual sacrifice. The leadership required will think and act long term, rising above short-term personal or political gain. They will think and act in the interests of the nation as a whole, and avoid promoting the interests of one group of South Africans at the cost of others."[20]

Over and above the institutional leadership and citizen competencies, deficient and declining institutional capacity challenges the optimal structuring and functioning of the state and governance institutions. The capacity of South African institutions will be critical to deal with the dual considerations of creating wealth effectively and ethically as well as distributing wealth productively and equitably.

These challenges and considerations need to be considered within the context of state and governance institutional architecture considerations, including the optimal way to organize this state institutional architecture into a more federal or unitary system from a political economy perspective. It is clear that the current configuration as provided for in the South African Constitution and the way in which this is institutionalised provide for a hybrid approach

with characteristics leading to the system being classified by experts as a unitary federalist system[21] and an integrated federalist system.[22] It is now indicated to further consider the conceptualisation and institutionalisation issues in the South African system of federalism.

FEDERALISM IN SOUTH AFRICA: PROBLEMS AND PROSPECTS – A POLITICAL ECONOMY ANALYSIS

In an analysis of federalism in South Africa from a "who benefits?"-perspective linked to the question on how governance models and systems can contribute to the creation and sharing of wealth in an effective and ethical way, it is indicated to focus on how aspects of these questions are dealt with in related research. In this regard the work of Simeon and Murray[23] and Inman and Rubinfeld[24] provide useful insights.

Simeon and Murray[25] contextualise their work on multi-level government in South Africa within broader contextual and conceptual frameworks by asking the question if federalism is an appropriate system of governance for developing countries, facing the challenges of democratization, the need for economic development and the reduction of poverty, and the threat of divisive ethnic, cultural, linguistic and religious differences.

According to them, the theoretical advantages of federalism, or decentralized systems generally, are well known. Some of these advantages are:

- Federalism serves democracy by increasing opportunities for participation, bringing governments closer to the people, and introducing checks and balances that may minimize opportunities for majority tyranny.
- Federalism also serves developmental goals by allowing policies and programmes to be tailored to the specific needs and preferences of particular regions, and may increase transparency and accountability; again by bringing officialdom closer to the people they serve.

- Federalism promotes inter-group harmony by giving each constituent group a political space of their own in which they are able to express their own values, identities and interests without fear of domination or veto by a central government controlled by an ethnic majority.

Simeon and Murray, however also refer to counter-arguments on whether federalism is the most appropriate governance option for developing countries. These counter arguments are:

- With respect to democracy, there is the danger that local interests may frustrate the will of a democratic majority.
- There are also conflicting views as to whether decentralized decision-making is actually less prone to problems such as elite domination and corruption.
- Federalism in many ways is designed to create competing centres of power in weak, fragile states. This may generate instability as rival elites exploit this for their sectional benefit.
- With respect to economic and social development policy and delivery, fragmented authority may impair the ability to mobilize the financial and human resources to address massive developmental challenges successfully.
- Intergovernmental beggar-thy-neighbour policies may frustrate development, and decentralization may make redistribution of wealth, or sharing, more difficult.
- Finally, in respect of diversity, federalism can potentially entrench, institutionalize, perpetuate and exacerbate the very challenges it is designed to manage. It may provide nationalistic ethnic elites with a platform from which to promote secession or ethnic cleansing.

Simeon and Murray[26] then state that the debate cannot be conducted in the abstract as much depends on the specific design of federal or decentralized institutions. Even more depends on the particular circumstances of individual countries, namely:

- the number and character of diverse groups;
- their colonial legacies;
- the distribution of wealth and resources across the territory;
- the skills and capacities available to governments at local, provincial and national levels; and
- the design and effectiveness of other elements in the institutional structure, such as legislatures, electoral systems, the judiciary and Bills of Rights.

Simeon and Murray examine the South African case from the point of departure that throughout the democratisation processes of South Africa, the majority of South Africans were reluctant federalists. They confirm that the preferred position of the African National Congress (ANC) and the broader anti-apartheid movement when entering into constitutional negotiations in 1990 was overwhelming for a unitary South Africa. They also state that this is still the case when assessing the positions in 2008 after more than a decade's experience in operating a multilevel, quasi-federalist regime. Doubts about the efficacy of federalism continue and fundamental reform is up for discussion of the federalism issue as well as many other South African governance issues are firmly on the agenda. This remains the case in South Africa and may even have become more dramatic and important into the second term of the government of President Jacob Zuma in 2016.

Simeon and Murray[27] provide a concise, but rather clear exposition of the reasons why the liberation movements were and remain, what they term, "reluctant federalists".

In the process of designing a new constitutional model for a democratic South Africa, the African National Congress (ANC) and others in the freedom movement were deeply suspicious of federalism in contrast to the out-going white-dominated apartheid regime and the Zulu-nationalist Inkatha Freedom Party which insisted on federalism as a condition of a final constitutional settlement. The ANC supported by the other liberation parties, believed that feder-

alism would contribute to limited government and restrain the majority that was about to take office. Some in the National Party nurtured the dream that in a federal South Africa there might be room for an Afrikaans province or homeland. Inkatha aspired towards a highly autonomous KwaZulu-Natal.

According to Simeon and Murray, as for the ANC, federalism and decentralization were indelibly linked to the apartheid model of Bantustans – quasi-autonomous puppet regimes that would deny Black South Africans full citizenship in South Africa itself. ANC leaders had also studied at the feet of teachers in Britain, Moscow and elsewhere. In this process Harold Laski at the London School of Economics had taught them that federalism was obsolete in a world dominated by capitalism and class differences. ANC leaders were also acutely aware of the immense developmental tasks that would face a democratic non-racial South Africa.

The considerations from the perspective of the ANC at the time were:

- What political system could address the enormous disparities between black and white, rural and urban, that the new regime was to inherit?
- Who could address the challenges of educating South Africans, and providing them with housing, water, electricity, and health care?
- Who could engineer the redistribution of wealth in one of the world's most unequal societies?

For a number of reasons federalism and decentralization advocated by *inter alia,* The World bank, had little appeal for the ANC as the new leaders of South Africa. These reasons included:

- an assumption that dealing with developmental challenges called for a strong unitary state and powerful central government,
- a fear for the possibility of the manipulation of tribal and ethnic rivalries in a divide and rule strategy,
- concerns that the lifting of the repressive apartheid rule might result in linguistic and ethnic rivalries and conflicts.

Simeon and Murray[28] conclude this part of how the ANC leadership was and still remain reluctant federalists and how in spite of this they acceded to a form of federalism in South Africa with the following narrative: "Accepting a federalist system was a difficult pill for the ANC to swallow. It was made a little easier by two visits of delegations of constitution-writers made to Germany – a culturally homogeneous federation that emphasizes cooperative and consensual decision-making and provincial implementation of national legislation. Indeed, the South African system draws heavily on the German model, most obviously in its conception of provinces as primary administrative bodies, implementing legislation that is agreed nationally, and in the design of the NCOP. The perceived centralism of German federalism allayed the worst fears of the ANC negotiators. A senior member of the ANC's negotiating team reported back after a visit to Bonn that Germany 'is not federal at all'."

Simeon and Murray then assess the current state of the functioning of the federalist approach in South Africa, drawing on ANC and government documents and conclude that the drive is towards a continued revision of the federalist characteristics of the South African government system.

The assessment is not overwhelmingly positive about the functioning of the federalism state version in South Africa and also advances some reasons for this negative assessment. In this regard Simeon and Murray argue as follows: "After more than a decade of experience with multi-level government, few today argue that it is serving South Africa well."

They base their assessment on observations which, according to them, seem to indicate that multilevel government is apparently more of a problem to be managed than a contributor to democracy and effective governance in South Africa. From their perspective few of the benefits usually associated with federalism, being that of governments closer to the people and greater opportunities for participation, public policies more closely attuned to local needs and preferences, appear to have been met in the South African case.

With a few important exceptions, neither provinces nor cities have become centres or leaders of economic growth and development. Delivery of basic services to citizens – the primary role of provincial and local government frequently falls short of demonstrated needs.

According to Simeon and Murray,[29] in seeking to understand these weaknesses, three explanations dominate. The first explanation is linked to the lack of political commitment to any form of federalised decentralised model for the South African state and governance system on the part of the ANC starting with its initial reluctance to embrace federalism or, more specifically, a provincial system. As a result, the ANC, the ANC government and the South African state have no clear rationale for, nor a clear vision of the role that provinces should play. There is no strong political commitment of leaders to develop the provincial system, and no mass support for provincial governments.

A second explanation for the difficulties experienced with decentralist proposals in developing countries, and also in South Africa, is governmental capacity – or the lack of it. This can be a problem at any level of government, but in South Africa it is particularly acute at the provincial and local levels. Lacking capacity is a multi-dimensional phenomenon and includes:

- Political capacity – the ability of governments to establish a presence in the minds of citizens as an important centre of authority and initiative.
- Legislative capacity – the ability of legislatures and their ministers to develop and formulate legislative initiatives responsive to their citizens' needs and preferences, and the ability of legislators to monitor and scrutinize the executive.
- Fiscal capacity – the ability to command the resources necessary to carry out assigned responsibilities.
- Bureaucratic capacity – the ability to actually deliver services to citizens.

- Intergovernmental capacity – the ability of all the units and levels to cooperate and coordinate their activities in ways that maximize service delivery and minimize pointless battles over turf, blame avoidance and credit-claiming.

Simeon and Murray then evaluate the South African provinces along these dimensions and conclude that most provinces have not established themselves as autonomous political actors.

With respect to legislative capacity, municipalities are not expected to engage in law-making in any substantive way. As a result of the subordination of provincial governments to the centre, provincial governments have also done little in the way of initiating new legislation, either in exclusive or concurrent areas of jurisdiction. The lead is taken from the centre. Provinces largely act as administrative agencies, implementing and delivering a wide range of services mandated in national legislation.

According to Simeon and Murray[30] a constraint in respect of capacity for service delivery is that Provinces have very few revenue-raising powers. The vast proportion of their budgets – about 95 % – consists of transfers, unconditional and conditional, from the national government. The Constitution mandates that provinces should receive an "equitable share" of national revenue sufficient to meet their responsibilities. Provinces are largely dependent on this central government provided funding to operate, making them dependent upon the central government for most of their funding with implications for their autonomy.

Although there are complaints that provinces are underfunded, there is evidence that the system of transfers and fiscal equalization is working efficiently. The bigger challenge seems to manifest on the spending side where most provinces have great difficulty. Service delivery problems have arisen in key areas of provincial responsibility in most provinces and affect all public services including health, education, social services across the spectrum of constitutionally mandated services. While the relatively urbanized Western Cape

and Gauteng seem to govern and manage well, it is the poorest provinces, and particularly those which inherited the bureaucracies of former Bantustans, that have the greatest difficulties.

Similarly at local level, large dynamic "Metros" such as Johannesburg, Cape Town and Durban have proven a considerable success, embarking on expansive plans to become "global cities". It is the smaller, more rural and new district and local municipalities that have struggled.

The third set of challenges for decentralised governance systems in developing countries is intergovernmental capacity. According to Simeon and Murray the high degree of concurrency in the division of powers, the close fiscal ties, and the extent of central supervision over provinces and local governments and cooperation among all levels or spheres of government is critical in the South African case.

The South African Constitution in this regard calls for "cooperative" government, but the general relationship is less that of a partnership between three levels of government with equal status than it is a paternalistic, centrally dominated process. Elaborate guidelines for these monitoring, supervision, and intervention processes have been developed at the centre. The intergovernmental relations process is also highly structured. It is governed by legislation and for coordination purposes, a wide range of intergovernmental bodies have been set up. However despite attempts to institutionalize the system of intergovernmental relations, co-ordination remains a serious challenge and coordinated governance and service delivery suffer as a result.

From this work of Simeon and Murray[31] and the evidence they present on the challenges faced by the South African state and governance system, it is clear that there are major differences from a "Who benefits?" set of perceptions and perspectives in the South African polity on the value of federalism for the political role players. The evidence is that the current ANC government has been and still is of the opinion that their political interests as well as their views on how wealth should be created and redistributed will be

better served by a strong, centralist and unitary state rather than by a decentralised federal state.

Although this analysis and conclusions of the ANC may be and are often contested by other role players, the ANC and the South African ANC dominated government act in terms of these perceptions resulting in a lack of political will to pursue a federalist agenda. This lack of political will weakens the potential benefits of the already existing federalist institutions in South Africa to optimise the potential benefits of a federalist approach in South Africa. This is in some ways a self-fulfilling prophecy as well as an objective reality grounded in the lack of capacity to implement value adding federalist possibilities given the complexity and capacity challenges inherent in federalism as well as in the South African reality.

There is further evidence of the weakening of the potential of the federal option for South Africa due to political perceptions on who benefits as well as the implications of bad governance in South Africa indicated in the work of Inman and Rubinfeld.[32]

Inman and Rubinfeld[33] develop a formal model explaining how the South African Constitution and its institutions of federalism can provide self-enforcing protection for the economic interests of the largely white economic elite that had ruled during the apartheid era. They show how federal governance, appropriately specified, creates a "hostage" game between a majority controlled central government and elite run provinces (which would eventually be a single province, the Western Cape) that provide important redistributive services to majority residents. This game provides benefits for both sides and they are therefore willing to accept the compromise as both sides derive more benefits than disadvantages from the outcomes of the compromise.

When specified against the actual performance of the South African public economy, Inman and Rubinfeld[34] show that the fiscal allocations from 1996 to the beginning of the current regime of President Jacob Zuma were sustainable as a long-run policy equilibrium with less than fully redistributive taxation.

Inman and Rubinfeld further develop their propositions along the lines of which conditions will be favourable for federalism in the South African context based on their theoretical scheme. They provide an overview of the transition to democracy and a description of the South African political economy which they argue are in many ways a prototypical transition economy with a poor majority ruled by once dominant but now threatened economic elite.

They then deal with three aspects related to the probabilities of success for a federal approach. The first is how a federal governance system can be structured to provide sufficient protection for the economic elite in such a way that they will find the transition to a peaceful majority rule-democracy preferable to the current threatened and therefore costly autocratic regime. Calibrating this model to the South African economy at the time of transition, the proposed federal institutions are seen to provide a stable, majority rule-democracy with less than fully exploitative taxation of the economic elite.

Secondly, Inman and Rubinfeld estimate the long-run economic gains of the transition to the poor majority and the once ruling elite based upon the actual performance of the South African public sector.

They conclude that compared to the alternative of remaining in apartheid, both parties enjoyed significant aggregate economic benefits from the transition. South Africa turned to federal governance as a solution to one of the central challenges of transition politics, being how the new poor majority can credibly promise not to exploit the now vulnerable rich minority?

There are conditions where a federal constitution can provide such protections. Based upon what they term the assignment constraint, the elite must be a low cost provider of redistributive services important to the majority and those services must be assigned to provincial governments. The elite must also have an incentive to punish the majority by capturing intended redistributive transfers when the redistributive tax rate of central government gets too high.

A related constraint which they introduce – namely the border constraint – requires that there must be enough majority residents

in the elite-run provinces so that redistributive capture by the elite hurts the country's average majority resident, but not so many majority residents that the elite loses political control over provincial policy making.

Finally, both the rich minority and the poor majority must be sufficiently patient that the long-run economic benefits of the cooperative, federal outcome. Under these conditions, democratic federalism does offer the promise of elite protection from excessive redistributive demands.

Inman and Rubinfeld then consider whether this promise has been realized in the South African transition and conclude positively. Based on their analysis, compared to the alternative of remaining in apartheid, they conclude that both the poor majority as well as the once ruling elite enjoyed significant aggregate economic benefits from the transition.

Thirdly, Inman and Rubinfeld[35] use their analysis to explore the future of South Africa's federal bargain as protection for elite economic interests and the future sustainability of the federalist option for South Africa. According to them, after the initial successes, the future is less certain. They argue that the current ANC leadership under President Zuma has been responsive to the demands from the ANC rank and file for increased redistributive services, rising by more than 40 % since the last of the Mandela-Mbeki budgets, significant pressure for even greater redistributive spending remains. Were the ANC leadership to significantly increase required redistributive services there is the risk that the assignment constraint will be violated and elite high capture will no longer be a credible threat to maximal taxation.

Inman and Rubinfeld then argue that given the increased demand for redistributive actions there are three options open to the ANC government, being:

First, continue to control ANC policy by isolating the ANC factions pushing for increased redistributive spending and elevate to importance representatives from the emerging black middle class.

Second, relax the assignment constraint's value of the maximal feasible public service expenditures by lowering the protest penalty through increased police presence (a central government function) in the elite province, thereby raising the incentive for the elite to adopt high capture.

Or third, give in to the demands for increased redistributive services, violate the assignment constraint, and expose the current regime of democratic federalism to the possibility of maximal taxation and de facto unitary governance.

Inman and Rubinfeld[36] indicate that according to their evaluation President Zuma has, to date, adopted the first strategy.

Finally, and more generally they indicate that going forward South Africa may provide a direct test of the Weingast theory of democratic transition based upon self-enforcing constitutions.

The Weingast analysis stresses:

- the importance of an unsustainable autocratic status quo because of civil war or outside threats,
- the necessity for any new democratic agreement to be self-enforcing, and
- that self-enforcing compacts require preferences immune to opportunism.

According to Inman and Rubinfeld[37], the third Weingast condition is now being tested by the pressure for increased redistribution by the more radical wing of the ANC.

Given their specification of the South African political economy and the central role of majority demands for redistributive services, a concrete a prediction as to the future of the original democratic agreement between the majority and the elite, can be made.

This prediction is that:

- If the demand for redistributive services moves outside the set of feasible self-enforcing federal constitutions,
- then the original democratic compact will collapse,
- with maximal taxation of elite economic interests, and

- the emergence of de facto unitary governance as final outcomes.

From the political and governance analyses of Simeon and Murray[38] and the political economy analysis some conclusions on the current and future state of federalism in South Africa as well as the federalism of the South African state can be drawn. This will be done in the next section of this paper.

SOUTH AFRICA: ANALYTICAL FUTURE PERSPECTIVES IN THE CONTEXT OF THE SOUTH AFRICAN DYNAMICS FROM A FEDERALISM PERSPECTIVE

It is the thesis of this paper that the future of federalism in South Africa will depend on:

- Perceptions on who benefits and who will benefit from federalism, linked to who holds these perceptions and how powerful the holders of the perceptions are to influence the outcomes related to federalism. This will impact on the political will of the significant decision makers who can determine the future of federalism in South Africa.
- The extent to which the South African state and governance system succeeds in creating through their governance, policy and service delivery actions a functional system capable and capacitated to create and distribute welfare effectively and ethically and re-distribute the created wealth, effectively, ethically and equitably.

Given the historical and current South African context and challenges related to poverty, inequality, unemployment and a fractious social cohesion, linked to increasing worsening governance and declining economic growth the predicted outcome for federalism to sustain and deliver on its promises to provide innovative and productive options for improving the lives of all South Africans are in a range from under pressure to on the way out.

This conclusion is based on the current South African government, the ANC who have never shown a political commitment to a federalist option for South Africa. This deficient political commitment is now amplified under conditions where, due to the bad governance on the part of the ANC government, the governance system to generate wealth effectively and ethically either is not in place or deteriorating. This leads to increasing demands and pressures for radical re-distribution from contesting political parties such as the Economic Freedom Front (EFF) and, increasingly also from a growing faction in the ANC itself.

Should these increased demands be conceded to, the probabilities of the Weingast outcome may well be on the increase. This possible outcome, dealt with *supra,* which essentially postulates that excessive demands for radical re-distribution may result in the collapse of the original democratic compact and a *de facto* unitary state.

The probabilities of the worst outcomes of the Weingast proposition materialising is exacerbated by the perceived complexity of federal systems and the professed capacity constraints in South Africa to deal with sophisticated governance challenge posed by a federal governance system elaborated upon *supra*. It is however the submission of this author that these are at best untested and false assumptions based on interest based ideological and emotional perceptions rather than on evidence based facts. It is in any case also possibly a fallacy to assume that the governance of South Africa as a centralised unitary state will be less complex, or require less capacity than governing South Africa as a decentralised federal state.

There are some conditions that may mitigate the possibilities of the worst case scenario becoming the realised outcome in South Africa resulting in the emergence of a centralised unitary state.

The first is the Constitution of the Republic of South Africa, 1996 and the institutions created under this Constitution which have proven to be resilient and resolute under trying conditions.

Not only does the Constitution provide for a federation in South Africa, but it has also been shown to stand up against political expediency. The constitutional institutions related to the rule of law and the independence of the judiciary and especially the Constitutional Court have consistently resisted the short term political expediency of the government in an exemplary way. It is probable that it will continue to do so in respect of the possibility of the government attempting to tamper with the Constitution and its institutions.

Secondly, there are indications that the ANC may be under pressure through losing electoral support and subsequently power in government. This may, however prove to be a double edged sword. If this losing of power results in the formation of moderating coalitions federal sense may prevail. If, however it results in an authoritarian power grabbing response, unitary centralised senseless autocratic governance may emerge.

It is necessary to engage and work towards the desired outcomes rather than to passively succumb to the possible negative outcomes. In this way all will benefit and the system will increase its capacity to create and distribute wealth effectively, ethically and equitably.

SUMMARY AND CONCLUSIONS

South Africa is currently facing many challenges again and the outcomes are unsure. There is a need for a call for all concerned to contribute to the probabilities of a desired outcome where constitutional democracy with good governance prevail and good governance and economic growth impact positively and constructively in South Africa.

||| **PROF. ERWIN SCHWELLA**
Professor of Public Leadership
Professorial Fellow,
Leiden Leadership Centre, Leiden University,
The Netherlands

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FEDERALISM AND INTERNAL SECURITY IN THE AGE OF TERROR: POLICE IN PAKISTAN

||| Asma Faiz

INTRODUCTION

Like many of its counterparts in the developing world, Pakistan has consistently struggled to develop inclusive and decentralized state institutions. From its inception in 1947, the state has generally operated like a unitary state. Institutional experiments such as One Unit, oscillation between civilian and military rule have all led to creation of an extremely centralized state structure that functions in a top-down fashion. In a deeply complex and heterogeneous society like Pakistan, the creation and operationalization of closed institutions has led to the emergence of autonomy movements, ethnic parties and agitational politics – waged by both majority (Bengali) and minority (Balochis, Sindhis, Pakhtuns and Seraikis) groups. Amidst all the chaos, the state managers in Pakistan have adopted federalism since 1973. This paper will make an effort to provide a brief discussion of the federal structure of Pakistan with a special focus on internal security. Within the domain of internal security, this paper will highlight the functioning, ethos, performance and evolution of police force in Pakistan. The role of other security institutions such as the armed forces, paramilitaries and intelligence agencies will not be directly discussed owing to the limitations of space and time.

HISTORY OF FEDERALISM IN PAKISTAN

Pakistan's centralized and exclusionary state ethos can be traced back to the British colonial heritage. The British model of state management in India was transitioned and adopted after independence. In the post-colonial, fragmented and heterogeneous society of Pakistan, establishment of devolutionary federalism should have been one of the first policy decisions. In such settings, federalism acts as an instrument of conflict-management. But this was not the case and the result was a story of political instability and conflict. The history of federalism in Pakistan can be divided into three different phases. The first phase comprises colonial heritage when the Government of India Act 1935 attempted to provide a basic framework of division of powers between Center and provinces. This act of legislation set the stage for provincial autonomy and provided a blue-print for future administrative re-structuring of the post-colonial state in Pakistan. Following the transfer of power, the state managers pursued policies of centralization. In this second phase of federalism, the focus was on enhancing the powers of central government at the expense of provinces. An institutional reflection of this stringent centralization was the One-Unit formula. Both the 1956 and 1962 Constitutions were based on this scheme. The result was a disastrous internal conflict followed by a bloody civil war and cessation of East Pakistan. Following the break-up of the country, federalism finally entered the constitutional and political landscape through the 1973 Constitution. It laid the foundations of a *dejure* federalism in Pakistan. This was an exercise in demos-constraining federalism as Punjab with its 58 % demographic strength was the overwhelmingly dominant member of the federation.[1] The 1973 Constitution provided a theoretical foundation of federalism in Pakistan and created several new institutions such the Council of Common Interest and bicameralism with the foundation of the Senate. However, for a variety of reasons, these institutions failed to live up to the expectations and Pakistan continued to survive as a *defacto* centralized state.

The most important step towards decentralization was taken in the form of the 2010 18th Amendment. This constitutional amendment has been celebrated as a landmark event in the history of constitutional development and federalism in Pakistan. This legislation sought to strengthen parliamentary sovereignty, provincial autonomy and representation of religious minorities in the Senate. Critics of this Amendment have highlighted several shortcomings, including the failure to transfer any substantial financial powers to provinces and limited administrative decentralization. Six years into the passage of the 18th Amendment, the project of creating a federalized Pakistan has been stymied due to logistical and political considerations.[2] Having briefly discussed the general framework and evolution of federalism in Pakistan, I will now examine the theoretical and operational dynamics of internal security in the *dejure* federation of Pakistan.

INTERNAL SECURITY – POLICE

Pakistan being a post-colonial state inherited the security institutions from the British Raj. On the eve of independence, internal security – especially police – was structured around a set of laws and institutions that were first codified in 1861. After independence, it took Pakistan more than half a century to come up with a new legislation covering the bare minimum details surrounding the functioning of police. The colonial police functioned in an extremely centralized and authoritarian manner, driven by the goals of being a "people-frightening organization".[3] During the British Raj, police comprised a collection of semi-militarized and extremely hostile official who enjoyed an almost adversarial relation with the local population. In addition to maintaining law and order, the police had to perform the function of collecting revenues according to the 1861 Act. This fundamental ethos of colonial police unfortunately has been continued after independence. In the post-independence era, the civilian and military regimes regularly used police as an

instrument of oppression against their opponents as well as the wider public at large. It is due to these practices that in terms of popular perception of state institutions, police has been one of the most hated institutions in Pakistan. Part of the reason lies in the way this institution has been used and abused by the state managers. In essence, post-independence leadership of Pakistan continued to rely upon police as an instrument of coercion. In this respect, unfortunately both civilian and military regimes fare equally poorly. The three military regimes of Ayub, Zia and Musharraf unceasingly relied on police to brutally suppress the opposition.[4] This basic institutional ethos surrounding the culture of internal security in Pakistan has generally survived to this day.

As stated previously, the origins of the current police system of Pakistan can be traced back to the colonial period. Having started with some encouraging beginnings, the 1857 Mutiny deeply impacted the colonial state's imagination. Far from establishing a London-styled police in India, the Raj focused on building an oppressive and frightening state machinery that could keep the natives on a tight leash. Hence in the Police Act of 1861, the provincial police departments were to be headed by Inspector General of Police (IG) who was to be centrally appointed. This was a significant policy decision that set the stage for creation of an oppressive and almost-unitary police force in the sub-continent. The IGs were to spearhead a team of Deputy IGs who were going to be appointed on regional and provincial criteria.[5] At the district level, the police was also responsible to District Magistrate, another key position established by the central government to keep a check at the local level developments. As the IG maintained control over technical, financial and organizational sphere of police, the District Magistrate controlled the operational aspects of police work at the district level. Hence according to the 1861 Police Act, the overall structure of functioning of police at the provincial and district level was controlled by a top-down ethos in which center's appointees, i. e. IGs and District Magistrates called the shots at the local level.[6]

There were some initial efforts undertaken in post-independence Pakistan to change the centralized and oppressive character of police forces. One of the earliest proposals dealt with the experimental founding of metropolitan police force in Karachi. In this regard, the Sindh Legislative Assembly passed a bill in February 1948. However, it never led to any serious initiative for re-organization of Pakistan police force. Political instability, institutional inertia and lack of initiative kept the status quo maintained. Police as part of the larger bureaucracy underwent some changes during the Z. A. Bhutto period. After taking over power, Bhutto immediately terminated 1,300 civil and police officers. As a result of Bhutto's reforms, the "constitutionally guaranteed protection of employment" as well as protection from political interference for government officers was removed. Bhutto's reforms led to further politicization of Pakistan police. Through a system of "lateral entry" large number of police officers was inducted by passing the Federal Service Commission. Bhutto also used police force to crush dissent and opposition.[7] Hence Bhutto's overall reforms of police and civil service failed to enhance the professionalism and performance of police force in Pakistan. Another half-hearted attempt at reform was made by the Junejo government in the mid-1980s that proposed the establishment of a new modern metropolitan police force in all the major cities of Pakistan with a population in excess of 500,000. But these policy plans also fell prey to dynamics of decision-making as Junejo government hardly enjoyed any autonomy and was eventually dismissed by General Zia in 1988. Following the return to multi-party democracy, the civilian governments failed to take any steps for police reform.

After the 1999 military coup, the Musharraf regime took up this agenda of police reform. As a result, Police Order 2002 was passed that replaced the previous colonial-era legislation. This was by far the most important single piece of legislation dealing with police since independence. At one level, it is a landmark bill considering it has replaced almost 150-years old colonial law. But on the other

hand, it has failed significantly in bringing about the desired changes in the working of police force in Pakistan. In terms of outreach, the Police Order 2002 was confined to the four provinces of Punjab, Sindh, Balochistan and Khyber Pakhtunkhwa (KP) leaving the capital Islamabad, Gilgit-Baltistan and Azad Kashmir out of its purview. As per further developments, this legislation was made part of the 6th Schedule of the Constitution under the 17th Amendment making it mandatory to acquire the consent of the President in consultation with the Prime Minister before any alterations could be made.[8] Several major changes were introduced by the 2002 Police Order. For instance, the district level operational control of police was passed onto the office of *nazim* (elected mayor) – something that was strongly opposed by the bureaucracy. Another positive step in the direction of enhancing the public accountability and credibility of police was the creation of Public Safety Commissions.[9] In theory, the fundamental objective of these initiatives was to make police force more efficient, politically accountable with greater civilian control. But in practice, not much has changed in the control, administration and performance of police in Pakistan. The Public Safety Commissions have remained a redundant structure. Due to the precarious security situation, internal security has been dominated by the military.

These details are significant because we are trying to locate the structure of police within the larger framework of federalism in Pakistan. As we have observed for most of its existence in post-independence Pakistan, police like the rest of the bureaucracy has been centralized and operated with little or no territorial, regional and operational autonomy, even when the structure of federalism in Pakistan underwent changes following the introduction of the 2010 18th Amendment. Here it is important to understand what impact (if any) the 18th Amendment has made on the Police Order 2002. After the passage of the 18th Amendment, the proponents of provincial autonomy and devolution argued in favor of provincializing the police forces. This point of view was opposed by

professional police officers who argued that in times of internal security crisis a one-frame-fits-all kind of police force is necessary to overcome security challenges.[10] The Police Order 2002 as amended in 2004 was part of the 6th Schedule of the Constitution which comprised thirty five laws. Any change in these laws required the prior consent of the President.[11] It has been argued that with the removal of Sixth Schedule of the Constitution through the 18th Amendment, the status of Police Order has not changed. Debate has raged on the issue of provincial control of police forces following the removal of 6th Schedule and the Concurrent List. Beyond these constitutional and legal debates, the single most important factor that has influenced the autonomy of police force in Pakistan has been the escalation of internal conflict during the last one and half decade.

TERRORIST VIOLENCE

During the last fifteen years, Pakistan has faced heightened political violence and terrorism. Pakistan's traditional security framework has been dominated by threat perception vis-a-vis its eastern neighbor and rival India. Its security forces have been trained and equipped to deal with conventional warfare fought against external actors. However, the events of last one and half decades have shown the inadequacy of this traditional security paradigm. Within a span of a decade (2003-2013), terrorist violence cost the lives of more than forty seven thousand Pakistanis including both the security personnel and ordinary civilians. This is a staggering number that shows the severity of challenge faced by the Pakistani state. Some of the country's leading public figures such as former Prime Minister Benazir Bhutto, former Punjab governor Salman Taseer and moderate Sunni cleric such as Maulana Sarfaraz Naimi have been assassinated. There has been an upsurge in violence against minority communities.[12] There has also been an international cost of this violence with neighboring states and international community constantly holding Pakistan responsible as a sponsor of terrorism. Pakistani

state's alleged support to the Haqqani network and other offshoots of the Afghan Taliban prompted the US to launch military strikes inside Pakistani territory through un-piloted drone attacks. These drone attacks have led to killings of countless ordinary civilians, generating resentment against the US and Pakistani government thereby providing an excellent propaganda opportunity for militants in their quest to win the hearts and minds. The famous "good Taliban vs. bad Taliban" approach epitomized the lack of clarity in the thinking of Pakistani establishment. This confusion however did not remain confined to the security establishment alone. Political parties, media and the wider Pakistani public especially the Western-educated upper and middle classes expressed a sympathetic and almost apologetic attitude towards Taliban and their band of brothers. In March 2010, Punjab's Chief Minister Shahbaz Sharif after a particularly prominent terrorist attack requested the TTP to spare Punjab since PML-N did not support Musharraf government's policy for coalition with the US in the war against terrorism.[13] The PML-N is known to have historically close linkages with some of the banned terrorist sectarian outfits. Pakistan Tehreek-i-Insaaf (PTI) along with religious parties such as Jamaat-i-Islami (JI) and Jamiat-i-Ulema-e-Islam (JUI) have consistently adopted Taliban-sympathetic attitudes. However, this ambiguity towards Taliban was finally brought to an end by the events of 16 December 2014. On this day a handful of Taliban terrorists stormed a school deep inside the cantonment area in Peshawar and went on a rampage. This gruesome attack on Army Public School (APS) Peshawar that claimed the lives of almost 150 school children finally brought to an end Pakistani state's policy of ambiguity and confusion towards non-state actors. Within days, a comprehensive counter-terrorism policy was announced. Known as the National Action Plan (NAP), this plan attempted to provide a comprehensive solution to military, strategic, economic and ideological dimensions of terrorism in the country. The current strategy proposes to tackle the triad of "insurgency, terrorism and radicalization".[14] The Pakistani police

has been at the front line of this war against terrorism suffering extremely high casualties.

The NAP has created parallel, sometimes overlapping security institutions that have tended to undermine the morale and motivation of regular police officers. For example since the enactment of NAP, a new Counter-Terrorism Force (CTF) has been established. The members of this force are deployed in special counter-terrorism cells in police stations and enjoy much higher pay scales than average police officers (the difference sometimes exceeds up to 50,000 per month). It has led to resentment and de-moralization among regular police officers. While exploring the effect of new counter-terrorism security institutions, it is useful to briefly focus on the on-going security operation in Karachi. Since March 2015, the Rangers have launched an active military operation in Karachi. The Rangers rely on a separate chain of command and are nominally controlled by the provincial government. With their active involvement in the Karachi operation, they have taken the initiative away from Karachi police. It has led to marginalization of civilian institutions. Parallel security institutions have been established such as ISI-supported counterpart to the Citizen-Police-Liaison-Committee (CPLC). Parallel call-in complaint centers have been established. Often the review meetings to oversee the progress of Karachi operation take place in the army headquarter. These meetings are led by the Army Chief Gen. Raheel Sharif. Provincial government is completely kept out of these discussions. The police officers have complained that Punjabi-dominated Rangers seem to have targeted certain ethnic groups (e. g. recent Pakhtun migrants for their alleged linkages with the TTP) during this operation. They feel that such tactics will create long-term problems by generating sympathy for criminal gangs in the targeted groups.[15] In addition to the all-pervasive influence of Rangers, another parallel institution that has been created are the apex committees. These committees comprise of both military and civilian top brass. In practice, it is the military that sets the agenda.

With the introduction of NAP and an escalation in counter-insurgency operations, there has been an unfortunate tilt towards centralization. While there have been some measures taken during the last decade to beef up the police. All in all the deepening of internal conflict in Pakistan has further strengthened the hands of the military establishment. Civilian political leadership, bureaucracy and police have all been further sidelined. Civil-military imbalance has further increased. The war on terrorism has resulted in further curtailment of civilian and institutional autonomy of police force. This statement stands true in the post-18th Amendment Pakistan. During the last decade especially since the return to civilian rule, the number of police officers has doubled, jumping from 220,000 to 430,000 according to one estimate.[16] But an increase in numbers is meaningless in the absence of operational autonomy, training, equipment and resources.

CONCLUSION

This paper has briefly attempted to understand the dynamics of federalism in Pakistan with a focus on police force. I have argued that Pakistan inherited a centralized and exclusionary state structure on the eve of independence. The *dejure* federalism established in the 1973 Constitution was reformed through the 18th Amendment of 2010. The Police Order of 2002 finally brought an end to the colonial era-legislation governing the police. It was a step in the direction of making police force more autonomous, people-friendly and accountable. But with the escalation of internal conflict in Pakistan, the objective of federalization, devolution and regional control of security remains a distant dream.

||| **ASMA FAIZ**
Teaching fellow in the Humanities and Social Sciences Department of Lahore University of Management Sciences (LUMS) and author of the book *Making Federation Work: Federalism in Pakistan After the 18th Amendment* (2015)

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6 Ibid, p. 15.

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POLICE WORK IN DECENTRALIZED GOVERNMENTS IN VENEZUELA

||| Luis Cedeño

INTRODUCTION

The current state of citizen security in Venezuela is at its most critical situation ever. In modern times, Venezuelans have never experienced the rise of criminal violence such as the one established in recent years. Homicide rates are among the highest in the region; nearly 64 per one hundred thousand is the official number, but some NGOs place that number near 90 in 2015. That represents over 27,000 homicides a year. Most common are robberies, which have been widespread all over Venezuela. Caracas, Venezuelas capital, has traditionally been the most affected by crime. Most criminal rates in the capital surpass greatly the ones in other areas. This has been a sustained trend that has not been addressed in the technical sense, and mostly with isolated efforts. Areas mostly deemed secure now face serious crime waves. Homicides and kidnappings have become commonplace in urban areas.

The great problem presented today by criminal activity is due to a multitude of causes, and the police system plays a huge part in the problems presented. The police system has suffered deep changes, not always good and always responding to political interests. This is the main objective of this short essay. It will not dwell into the complexities of crime in Venezuela today. Rather, I want to address the problems with the current models of policing in Venezuela, which have traditionally catered to national security over citizen security. This has placed citizens at a disadvantage and has undermined human rights in the country.

Civil society has developed and diversified rapidly to defend human rights in Venezuela in the past two decades. Paz Activa[1], where I develop most of my work, is an NGO dedicated to bringing solutions to local police on crime prevention and peaceful living. We have developed successful strategies to reduce crime locally. Our work is all about making communities safer and harder to penetrate by crime networks. We believe, it is at the local level where strategies to reduce crime are more effective. Understanding local issues and adjusting crime policy to communities rather than having a national crime policy for all, is the way to move forward towards a safer country.

POLICE FORCES IN VENEZUELA

The police model implemented in Venezuela has always been a reactive one and has always been subject to political interests. Most notably was the Seguridad Nacional (DSN)[2], which functioned as a political police for the Dictator Marcos Pérez Jiménez (1948-58).[3] During that time, this national police paralleled others inasmuch as their wholly function was to keep tabs on opposition leaders, follow and imprison them when they considered it necessary. Their methods included torture and forced disappearances and they were feared, primarily because of the brutality of their chief, Pedro Estrada, who was politically untouchable and close to Jiménez.[4]

During dictatorship years, criminal activity was minimal and heavily penalized. Prisons were harsh places, with heavy labor routines that languished men and drove them to a premature death.

Other police forces were created when democracy took hold. These new forces included the Policía Técnica Judicial (PTJ)[5] that for decades was heralded as one of the best investigative police forces in the region. It focused on solving murders and complex crime, it developed innovative and cutting edge technology and investigative techniques. State police forces also developed at a regional level, mostly in administrative and preventive activities. These forces were under the control of the state governor and they themselves were handpicked by the president of the republic.

Decentralization (1989-98) of government brought multiple challenges to governance. Part of the challenge was to offer more democracy, more elected officials, and local accountability. State governors were to be elected by popular vote, as they were previously designated by the president. Municipal reforms also occurred, as new mayors were elected and they were given new responsibilities. These new responsibilities included the creation of local police forces. At the forefront of these efforts was PoliSucre[6], the first local police force that served one of the biggest municipalities in Caracas. Thereafter, many others were created in the main cities of Venezuela. Although there are more than 300 municipalities nationwide, nearly half of the countrys' police forces were established as part of the new reforms. Some municipalities did not have the resources to maintain a police force, so they relied on state police.

These local police forces developed organically and operated autonomously, independent from any centralized oversight or coordinating body. Local police forces in the same city did have little coordination or planning between them. Responding to local authority, they developed unevenly, depending on the investment and resources that local authorities were willing to assign to citizen security. Some local police forces became highly developed, while others remained underfunded and chronically lacked the resources needed to combat crime, creating more of a problem than a solution for local authorities.

Each of the newly created local police forces operated on a different budget, and according to different particularities. Some forces were well equipped and well-trained, with their own police academy, while others were not and depended on outside help for training. Communication ran sometimes on Ultra High Frequency (UHF) or on Very High Frequency (VHF) platforms or not at all. Some had basic firearms; others were able to develop SWAT teams.

This allowed for some deviations and errors in their development. Without the guidance for their establishment, some of these small

forces became personal security for local authorities. Some with the ability to buy firearms became distributers of weapons to local patrons and gangs. And some just operated beyond any law or control, becoming the local thugs in remote areas of the country.

POLITICS AND POLICE

In 2002, there was a movement to undermine Venezuelan president Hugo Chavez' rule and to stop him from transforming the state structures into the socialist model he proposed to the Venezuelan people. He came upon great resistance from the middle classes, especially the one depending directly on the oil industry, which was a privileged one. A nationwide strike ensued, spearheaded by Petróleos de Venezuela (PDVSA)[7], the national oil company. After almost two months, on the April 11th 2002[8] an opposition march was summoned by its leaders. By the thousands people were participating in another of many marches organized against Chavez, but this time they were shepherded towards downtown, a notable Chavez stronghold. This marked a departure from previous protests, which had generally been held elsewhere. Chavez' supporters met the opposition with gunfire and repelled the demonstrators.

The mayor of Caracas, Alfredo Peña, a former journalist, was a supporter of the anti-Chavez movement. As mayor, he had Venezuela's largest police force, the Metropolitan Police (PM), under his jurisdiction. Alfredo Peña, Ivan Simonovis[9], and several Caracas police officers were tried and found guilty of instigating the deaths occurred during the anti-Chavez protests. Today, they are considered political prisoners of the regime,[10] as their trial was widely derided as a sham, with no substantial evidence presented to prove their guilt. They became scapegoats for the anti-Chavez opposition movement.

The events of that day are well-known on the annals of modern Venezuelan history. Whether there was a coup or resignation of the president, the truth a commission created to evaluate what happened did not shed light on this issue. What was made clear that day to

Chavez was that armed police forces under the control of the opposition posed a potential threat to his rule. The Metropolitan Police escorted the opposition marchers, and acted to protect the opposition from the *Chavistas* who fired upon the unarmed protesters from Puente Llaguno, in downtown Caracas. Popular outrage over the government's violent response to the protesters and the high number of victims unleashed a series of events that temporarily ousted Chavez from power.

In the wake of these events, Chavez, upon being reinstated as Venezuela's president, set forward an agenda in which he dismantled the Metropolitan Police and, in its place, created a National Police that would answer only to him. This new police force quickly became closely identified with the socialist project. The events of April 2002 that left 19 dead and more than 100 injured[11] became a historic landmark of the revolution. The gunmen who illegally fired upon the unarmed protesters were hailed as heroes and saviors of the Chavez regime.

The PM was doomed after their participation in the coup that ousted president Chavez for a couple of days. Dismantling the largest police force in the country (over 15,000)[12] was not easy and produced very undesirable results. Legally bound to the metropolitan municipality, a parallel city government was created and appointed by the president that stripped away most of the competences of the metropolitan government publicly elected. One of them was policing. The police force was eliminated, and the force's former employees found themselves unemployed and lacking any legal recourse.

Long before the events of 2002, corruption had taken hold of the PM. Many of its members were practically criminals in uniform. They had strong connections with local gangs. This was exploited by some local government officials, who organized the Círculos Bolivarianos with the help of corrupt PM officials.[13] These groups, highly identified with the revolution, were to be at the forefront of the defense of the Chavez regime. They were organized locally and

named after dates and figures of revolution, which were imprinted in tricolored circles on their clothes. They were meant to intimidate opposition movements, protests and marches; they rode motorcycles and bore firearms, and travelled in packs of 10 to 50. Sometimes their presence was enough to intimidate, other times they would use their weapons and casualties would occur. They were organized and financed by the government. Although the Circulos Bolivarianos actions were illegal and its members were involved in racketeering and drug trafficking, government authorities would disappear and local police would not touch them in fear of government backlash. The disappearance of the PM left a void in citizen security and the subsequent lack of policemen helped to give rise to increasing criminality.

CRIME POLICY AND STATE

In 2006, there was a special effort to evaluate the police system in Venezuela. The National Commission for Police Reform (CONAREPOL)[14] came upon three key cases that shook public opinion. One of these cases was the massacre at the Kennedy Community, a low income neighborhood founded in honor of John F. Kennedy's visit to Venezuela, in which investigative police forces (CICPC)[15] had set up a check-point during their search for a cop killer.[16] One car with university students failed to stop at the check point and was fired upon, wounding some of them, and then deciding to execute all of them to cover their tracks. Three male students were killed and the three women were saved by the community who denounced the killings. An investigation ensued and over 23 police officers were sentenced to various lengths of imprisonment for their actions and the cover up.[17] The second case involved the kidnapping and killing of the three Foudoul brothers, as well as their chauffeur, by the police.[18] The third and final case revolved around the kidnapping and subsequent murder of Fillipo Sindoni, a renowned local pasta company owner, by criminals posing as police officers.[19]

CONAREPOL spearheaded a comprehensive study of national, state, and local police forces that resulted in the evaluation of 134 different police forces. There was also a first national crime survey conducted by the National Statistics Institute (INE).[20] The data produced by the commission and survey revealed the true weaknesses of the police system and uncovered data on crime more adjusted to reality. Moreover, they uncovered what most already knew: Police forces were involved in crimes themselves. In an estimated 20 % of all crime, police had been somehow involved.

One of the conclusions drawn from these studies was the necessity of creating a National Police that would serve as unified force for investigating crime at national level and assist local and state police. It took three years for the law to be passed and in 2009 it finally allowed the National Police to be born. As many institutions during the Chavez regime, it had to have the imprint of the revolution. So, against the recommendations of many, the new police was born with the *Boliviariana* surname, and Chavez made sure that the formation of the new police answered to the revolutions ideology and command. The institutions created by the new police law included Policía Nacional Bolivariana (PNB)[21] and the National Experimental University of Security (UNES).[22] There were some dispositions on how the different levels on police should operate and coordinate efforts.

This was all good in paper but in practice was very difficult to implement. The difficulties lay not in the policy's technical implementation, but were due to the fact that politically, the country was deeply divided between two sides. The fact that Venezuela's various states and municipalities were controlled by two opposing sides made it very difficult for any type of cooperation between police forces.

The best example of this is Caracas. It is divided in five municipalities, four of them are under opposition control, and the most populous, Libertador, is a *Chavista* stronghold. The state police of Miranda also claims those four municipalities under its jurisdiction,

and that the PNB has jurisdiction over the whole capital area. Those are seven different police forces working in Caracas with little collaboration among them. Examples like this can be found throughout the country.

Even among police forces under the same political spectrum, collaboration is difficult to establish. There is a tendency throughout government promoted by the revolution not to disclose any information on government activities or statistics.

CHALLENGES TO POLICING

There are many challenges to policing in Venezuela. One of the first things that must be done to improve policing is the removal of the Guardia Nacional Boliviana (GNB) from police functions. Although it is allowed to utilize armed forces in citizen security functions, it is only as a last recourse when civil police is overwhelmed in emergency situations. The army's continuous involvement in policing and crime policy has had a negative result overall. This in turn has weakened the civil standard of the police system. The army's involvement has also diverted resources that would otherwise been invested in strengthening all levels of police force. Wages and equipment need to be upgraded for all police forces nationwide.

A real shift in crime policy must occur. The current reactive model of standard police work aimed at capturing criminals would be refocused to crime prevention techniques. Although there is much to do in the crime control area, it would be useless if the justice system does not improve upon the current impunity rates it has for most crimes. A shift to a model that is more proactive, with a focus on crime prevention is necessary and the only short term measure with some chance of making an impact.

Coordination and technology are also high in demand. The creation of national and local platforms to allow data sharing and cooperation will greatly improve policing on all levels.

Developing and assisting police officers in creating a career in law enforcement that matters to them and society is a recipe for crime policy success. This can only be achieved by elevating wages that will attract better candidates to police academies. Promoting early police-school programs that expose the youths to the activities that police officers perform will draw new recruits to police academies as well.

Improving the negative perceptions many Venezuelans have about police must be a central element of any successful national crime policy. Citizens must come to perceive the police as allies and not as aggressors. Community policing and a total shift towards crime prevention can align these objectives of modern policing. When police work alongside communities and get involved in cultural activities, such as sports, empathy is created between these two sides.

But most important are resources. The current national budget destines around 1 % to citizen security according to Transparency Venezuela. This is too little to address one of the top three problems Venezuelans face according to all surveys. Crime affects everyone without distinction but it is the poor who suffer most from violent crimes, such as homicides.

The cost of crime has not been established in Venezuela, but similar countries with high crime rates estimate that crime can add up to a loss of 25 % of the GDP. Crime is not a result of poverty, but the other way around, crime generates poverty. Economic progress is hampered by crime. Citizen and judicial security are prerequisites of economic prosperity. Countries like Colombia have experienced an economic boom in recent years mainly because they overcame huge crime problems, reducing kidnappings and homicides. Now, people visit Colombia without the fear they may have had twenty years ago.

A new national crime policy must be implemented and should be at the top of government plans. That means assigning a meaningful percentage of the national budget to citizen security. An allotment

of 15-25 % of the budgets at national, state and local level are necessary to implement the needed changes to police, courts and prison systems.

The president and all government entities must align themselves in the crime reducing effort. This has never been done, and during President Chavez's rule, the crime issue was discarded as one created by the opposition media and planted in people's minds. This was enforced by government policy in 2005 of not disclosing crime statistics to the press. With no public official crime data, it became apparent that government had no real political will to understand and tackle the problem.

While there is a heightened perception of crime, there is no room to overlook the hard evidence we are confronted with. The country is facing a citizen security crisis that affects all aspects of civilian life. To overcome this crisis, all social, economic and political powers must come forward in a united national effort.

||| **SOC. LUIS CEDEÑO, MA**
Executive director of Paz Activa, a Caracas-based organization dedicated to reducing violent crime and enhancing citizen security in Venezuela.
He also served as secretary of the Metropolitan Council for Citizen Security of the city of Caracas and as a consultant to police forces on innovative ways of tackling crime.
He is a leading voice in the field of citizen security and crime reduction in Venezuela.
Mr. Cedeño is currently conducting research on the phenomenon of organized crime.

NOTES

1 Paz Activa (Active Peace) is a Caracas-based organization dedicated to reducing violent crime and enhancing citizen security in Venezuela. Founded in 2000, its initial focus was access to justice and alternative methods of conflict resolution. As crime rose in the following years, it has shifted towards addressing what has become one of the most complexes and challenging of problems: rising violent crime. It has also diversified into observatories on Organized Crime and Road Safety in recent years. Paz Activa has been a Hanns Seidel Foundation grantee since 2015 with two programs currently running, one on crime prevention in Caracas (Sucre municipality) and the other on evaluating crime victim assistance in Miranda state, www.observatoriodot.org.ve, www.seguridadvial.org.ve, retrieved: 12.12.2015.

2 The National Security (NS) was a former Venezuelan police agency established during the government of Eleazar López Contreras and dissolved on January 24th 1958, when one day before President General Marcos Pérez Jiménez is the subject of a coup. Its director was Pedro Estrada during the administration of Pérez Jiménez, https://es.wikipedia.org/wiki/Direcci%C3%B3n_de_Seguridad_Nacional, retrieved: 12.12.2015.

3 Marcos Evangelista Pérez Jiménez (1914-2001) was a military man and Venezuelan politician. He reached the rank of Major General in the Army of Venezuela; and was appointed President of Venezuela de facto provisionally by the National Constituent Assembly proclaimed Constitutional President for the period 1953-58, https://es.wikipedia.org/wiki/Marcos_P%C3%A9rez_Jim%C3%A9nez, retrieved: 12.12.2015.

4 Pedro Estrada de Alcántara Albornoz (1906-89) was a politician and Venezuelan pólice commander. It was the second and longest serving Director of the National Security who served as political police for President Marcos Pérez Jiménez. He was dubbed by the opposition as "The Jackal of Güiria" and "Don Pedro" by the incumbent Venezuelan society of the time, https://es.wikipedia.org/wiki/Pedro_Estrada, retrieved: 12.12.2015.

5 The Scientific, Penal and Criminal Investigative force (CICPC), formerly Technical Judicial Police (PTJ) is the lead agency for criminal investigations of Venezuela. It is responsible for the scientific investigation of crimes with a view to later application of justice by the competent bodies, https://es.wikipedia.org/wiki/Cuerpo_de_Investigaciones_Cient%C3%ADficas,_Penales_y_Criminal%C3%ADsticas, retrieved: 12.12.2015.

6 https://alcaldiamunicipiosucre.gob.ve/gobierno-municipal/institutos/polisucre/, retrieved: 11.12.2015.

[7] Political events known as "Paro Petrolero" of 2002-03, a general and indefinite labor strike against the government of Venezuela headed by Hugo Chavez, mainly promoted by the FEDECAMARAS (national chamber of industry and commerce) and seconded by the directors and employees of Petróleos de Venezuela (PDVSA), the opposition parties grouped together in a democratic coalition, the Union Confederation of Workers of Venezuela (CTV), various organizations like Súmate and even private media press, radio and television. The strike lasted from December 2002 to February 2003, one of the longest general strikes in history. Supporters of Chavez, called this event "oil sabotage" or the "oil coup", while the opposition called it a "national strike", http://www.eluniversal.com/economia/121202/a-10-anos-del-paro-de-2002, retrieved: 15.12.2015.

[8] The crisis of April 2013 marked unrest in Venezuela. The first decade of the century, and the last of the previous century would be marked by political instability in a coup centered on the person of Hugo Chavez. This time, the struggle between workers and employers against the national government, reached its climax with an indefinite strike that threatened to undermine economic activity and led to the forced departure of Chavez for a few hours, http://www.elimpulso.com/noticias/nacionales/crisis-del-11-12-y-13-de-abril-marco-conflictividad-en-venezuela/, https://www.youtube.com/watch?v=w2nvIQPUpx0, retrieved: 15.12.2015.

[9] Two years after the events of April 11th 2002, Ivan Simonovis is detained at La Chinita International Airport in Maracaibo by officials of the DISIP, without an arrest warrant against him, http://www.eluniversal.com/nacional-y-politica/140508/cronologia-del-caso-ivan-simonovis, retrieved: 15.12.2015.

[10] The sentence received by the Deputy Commissioner of the Metropolitan Police Marcos Hurtado is that on April 11th 2002 he was not in the place of the events, on Baralt Avenue, where the two victims were for which he was charged: Erasmo Sánchez and Rudy Urbano Duque, who died from gunshots in Llaguno bridge and at the gates of the Chancellery, http://www.eluniversal.com/nacional-y-politica/130407/los-policias-sentenciados, retrieved: 15.12.2015.

[11] The 11th of April is described by some as the day when the revolution was curtailed and as the day Hugo Chavez was tumbled. A time that, according to Patricia Poleo in her column in El Nuevo País in 2007, the day marked a before and after for those 19 dead and over 100 injured, http://www.noticias24.com/actualidad/noticia/33622/11-a-2002-un-dia-de-muchas-caras-y-muchas-versiones/, retrieved: 15.12.2015.

[12] In a press release of the Deputy Minister of Police Integrated System (Visipol), the measure which was published in Official Gazette on the 22nd of April was signed by the then minister of that portfolio, Nestor Reverol ordered definitive dismantling of the Metropolitan Police, http://informe21.com/actualidad/ordenada-supresion-definitiva-de-la-policia-metropolitana-0, https://es.wikipedia.org/wiki/Polic%C3%ADa_Metropolitana_de_Caracas, retrieved: 1.1.2016.

[13] Hugo Chavez called to the formation of the Bolivarian Circles on June 11th 2001, instances conceived as a "mechanism of participatory democracy we are starting to build", http://www.avn.info.ve/contenido/c%C3%ADrculos-bolivarianos-comenzaron-construir-democracia-participativa-hace-13-a%C3%B1os, http://runrun.es/nacional/venezuela-2/160575/que-son-los-colectivos.html, retrieved: 1.1.2016.

[14] "The Commission for Police Reform was created in April 2006 with the purpose of consultation and diagnosis of police forces, a new police model that would yield results in the process of democratization and social inclusion in the country's justice system." Recommendations for Police Reform, CONAREPOL, Caracas 2007, http://www.derechos.org.ve/actualidad/coyuntura/2007/pdf/Conarepol%20recomendaciones%20finales.pdf, retrieved: 1.1.2016.

[15] "Cuerpo de Investigaciones Científicas, Penales y Criminalísticas." National investigative police.

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ECONOMIC PRECONDITIONS FOR A STABLE FEDERAL STATE: WITH REFERENCE TO NEPAL

||| Hari Bansh Jha

BACKGROUND

Federalism is a political organization that involves relationships between the central government and the regional units.[1] In several countries, federalism has made significant contribution in bridging the gap between the government and people and providing resilience to democracy. Since there is division of power in a federal system between the centre and the regional units, each of the unit has independent jurisdictions to make decisions with regard to governance and other developmental activities.

Since the purpose of federalism is to remove disparity in representation of different geographical units of a state, the chances for addressing the problems of weaker sections of the society become greater in this system. In cooperative federalism, the centre, states and even the local bodies are expected to work in cooperation with each other to ensure the growth and stability of the nation for which intergovernmental relations are promoted.

Under the federal structure, the different tiers of government not only ensure checks and balances, but they also ensure accountability and generate opportunities for greater competitiveness. This provides larger scope for the optimal and efficient use of the resources for the balanced growth of the economy. Prospects are often high in the federal system to meet the needs and aspirations of diverse groups of population.

Yet, federalism has not one but different hats. Activities of one federal regime vary with that of the other. In minimal federalism, the states are loosely allied. On the contrary, most of the power lies with the centre in maximal federalism. At the global level, 25 countries including major democracies like India, the United States of America and Canada, accounting for nearly 40 % of world population, have adopted a federal system.[2] Nepal happens to be the youngest federal democratic country in the world.

FEDERALISM IN NEPAL

Nepal promulgated its federal constitution on September 20th 2015. With 28 million populations, the country is quite small as compared to two of its two giant neighbours i. e. India in the south and China in the north. But it is widely diversified in terms of language, ethnicity and religion. As per the 2011 National Census report, there are 123 languages spoken as first mother tongue in the country. Besides, there are over 100 ethnic communities, apart from the presence of 10 religions.[3]

In Nepal, a great need had been felt for the introduction of a federal regime due to the failure of Kathmandu to address the genuine aspirations of diverse ethnic communities. As far back as in the 1950s, Vedanand Jha, the leader of Nepal Terai Congress raised demand for the introduction of a federal system. But with the defeat of this party in the General Election of 1959 and the imposition of authoritarian party-less Panchayat System in 1960 by King Mahendra, the voice in favour of federalism was subdued.

Political development in Nepal took a different course after the restoration of multi-party system in the country in 1990. The Terai-based Nepal Sadbhavana Party formed by the Madheshis revived their old demand for federal structure. Subsequently, the Communist Party of Nepal (CPN-Maoist) put forward federalism as one of its core agendas after the People's Movement in 2006. As per the popular demand by the people, the Interim Parliament passed a bill

on December 28th 2007 to make Nepal a "Federal, Democratic Republic". Subsequently, when the CPN (Maoist) emerged as the largest political party in the first Constituent Assembly (CA1) elections in 2008, the tilt in favour of federalism grew more than any time in the past. Accordingly, the first meeting of the CA1 on May 28th 2008 officially declared Nepal a federal country.

Nevertheless, federalism remained more as a political rhetoric rather than a reality. The CA1 was not able to draft a federal constitution till it was dissolved in 2012, which was mainly due to its failure to resolve the contentious issue of restructuring of the states. Even after the CA2 elections in November 2013, not much headway was made in constitution making process until the deadly earthquake of April 25 and May 12 in which over 9,000 people were killed and physical property worth over US $ 7 billion was destroyed.

In early June 2015, when the earthquake victims needed urgent care to address their problems, three or four persons from the major political parties, including the Nepali Congress (NC), Communist Party of Nepal-Unified Marxist-Leninist (CPN-UML) and Unified Communist Party of Nepal-Maoist (UCPN-Maoist), which until its unification with Communist Party of Nepal (Unity Centre-Masal) was known as CPN (Maoist), made a decision to make the constitution on a fast track basis. Unfortunately, the Madheshis and Tharus, the two most dominant ethnic communities living in low land of Nepal's Terai (plain) area bordering India, were deliberately excluded in the constitution-making process and their concerns were overlooked. Estimates of Madheshis and Tharu population in Nepal vary from one-third to one-half of the country's total population. The constitution was passed by CA2 following "majoritarian" principle despite the strong opposition from the Madheshis, Tharus and other Janajati (indigenous) communities.

Consequently, the nation was polarized. A section of the people applauded the new constitution and made jubilation in Kathmandu on the day of promulgation of the constitution on September 20th

2015. But at the same time the Madheshi, Tharus and other Janajati groups observed this occasion as a black day. They staged strong protests against the constitution as they have a feeling that the present constitution is more regressive than any of the past six constitutions introduced in the country ever since the 1950s.

It cannot be denied so easily that the new constitution has several flaws. In the fiscal area, power is disproportionately concentrated in the hands of the central government, which has sole monopoly over foreign grants, aid and loan. As such, the states will have to live just at the mercy of the central government because they have limited power to manage resources for their development. Of course, even the states have been allowed to receive foreign grants and aides, but for this they would have to take prior permission from the centre. In no case, they can mobilize resources from loans.

Besides, the distribution of fiscal power between the centre and states is vague. Both the central and state governments have been given authority to levy service charge and mobilize resources through penalties and fines. Similarly, both the centre and states have been allowed to impose excise-duty (Annex One and Two). This kind of duplicity in imposition of a certain tax will not only increase the cost of production and thereby affect the growth of industries, but it would also inflate the prices whose burden will ultimately be shifted to the consumers.

Another flaw in the constitution is that it entitles the centre and not to the state governments to introduce programmes aimed at poverty alleviation. Even in the matter of trade and business, it is only the federal government that enjoys the monopoly of doing trade with the foreign countries. The states can only trade within their given boundaries.

Moreover, the centre enjoys monopoly over customs, value added tax (VAT), corporate income tax, individual income tax, passport fee, visa fee, tourism fee, service charge, penalties and fines. On the other hand, the states are left with the only option to mobilize

resources through tax on remuneration, land and house registration fee, vehicle tax, entertainment tax, advertisement tax, tax on tourism and agricultural income. This will give them limited scope to mobilize funds for their development.

However, the common mass of the Nepalese population hardly discuss the impact of the above fiscal arrangements in the constitution on the economy. This is due to the fact that the agitation in the Terai region by the Madheshis against the constitution has overshadowed all other issues. In the seven-provincial model in the new constitution, most of the ancestral land of the Madheshis in the flat land of Terai has been mixed with the hill districts. The Madheshi people have been given only one small patch of state in the Terai covering eight out of seventy-five districts in the country; while the other twelve districts in the region have been mixed with the hill states. This is in violation of the agreement made between the government of Nepal and the Madheshi leaders in 2008 in which the government had agreed to provide "one state" to the Madheshis comprising all the twenty districts in the Terai region from the Mechi river at one end of the country in the east to the Mahakali river on the other end in the west.

Initially, the UCPN (Maoists) wanted ethnicity to be the factor made base for the demarcation of state boundaries. Other political parties wanted to carve the boundaries of the states vertically comprising geographical regions from the north to the south covering the mountain, hill and Terai region. In fact, this was based on the concept of five Development Regions of the authoritarian Panchayat era to suppress the voice of the Madheshis living in the Terai region.

Over and above, the constitution has been opposed for its failure to ensure that the Madheshi people are properly represented in state mechanism. All through the history, those people have been discriminated by the state in recruitments in administration, diplomatic jobs, security agencies, judiciary and other fields. As compared to their population their representation in all such fields is far from satisfactory. Statistics show that the Madheshis comprising 33 % of

Nepal's total population had only 8 % share in government jobs in 2012; while the hill Brahman and Chhetris with 31 % population had 79 % cent share in such jobs.[4]

Moreover, the electoral constituency of both the lower and upper house of the parliament is based more on such factor as geographical land area rather than the size of the population, which is against the democratic principle. The Madhesh-based political parties want electoral constituencies of both the lower and upper house of the parliament to be carved on the basis of population.

In the constitution, provision was made in way that the Madhesh / Terai region with 51 % of Nepal's total population could not get more than 65 seats in the 165-member House of Representative i.e. the lower house; while the hills with 49 % of the population were likely to be allocated 100 electoral constituencies. Even in the 59-member National Assembly, the upper house, each of the six hill-based states are likely to be given eight seats making the total number of hill-based representatives in this body as 48; while the Madhesh-based state in the Terai is entitled to make claim for only 8 seats. Accordingly, the Madheshi and Tharu people in the Terai would be forced to remain in perpetual minority.[5]

Of course, two amendments have been made in the constitution to incorporate some of the grievances of the Madheshis and Tharus, but there is a feeling that this would not address their concerns. During the amendment of the constitution, it was accepted that population would get priority over the geography while making demarcation of the electoral constituencies. But it is not known how much weightage would be given to population over the geography. As per the amendment of the constitution, each of the seventy-five districts would be given at least one electoral constituency for the 165-member House of Representative. In this case, the Madhesh / Terai region with 51 % of the country's total population may get far less of electoral constituencies as compared to the hills with only 49 % population as the number of districts in Terai is only 20 against 55 in the hills.[6]

Moreover, the constitution has made certain provisions whereby the spouse of the Nepalese marrying foreigners would be discriminated in citizenship related issue. Apart from the foreign spouse of the Nepalese, the children borne from such parents are also subject to discrimination. Such children are entitled to get citizenship by naturalization and not by descent. Those with citizenship by naturalization would not be able to reach top government positions. The Madheshi people – who often marry across the border in India – have a feeling that this provision in citizenship issue is discriminatory.

During the six-month long Madheshi agitation, more than 50 people lost their life.[7] Besides, the Terai region remained paralyzed as most of the industries, educational institutions, government offices, shops, transport services and other economic activities were closed. The impact of blockade of the Birgunj-Raxaul trade point at the Nepal-India border during the agitation created acute shortage of essentials like the petroleum products, cooking gas and medicines as over 70 % of the goods coming from India to Nepal pass through this custom point. The supply of essential items from India to Nepal was also hampered because many of the trucks loaded with goods found it difficult to enter into Nepal due to the deteriorating law and order situation in the country.

As the supply of goods from India to Nepal was affected due to Madheshi agitation, prices of such commodities shot up unprecedentedly in the market. For example, an LPG cylinder (cooking gas) cost NRs 10,000 against its normal price of NRs 1,400.[8] As a result, the smuggling of such goods from India to Nepal, apart from the black market in the country increased manifold.

During the Madhesh agitation, Nepal incurred huge economic loss.[9] Nevertheless, the government of Nepal did not address the grievances of the agitating Madheshi communities. Instead, to divert the attention of the people from the core demand, the government made India the "scapegoat" by holding it responsible for the unofficial economic blockade of Nepal.

Apart from Nepal, India also suffered a huge loss on account of the turmoil across its border in Nepal. India incurred an economic loss of US $ 4 billion ever since the conflict began in Madhesh.[10] Most of the 500,000 Indians, including labourers, cobblers, barbers and vendors of fruits, vegetables and fish working in Nepal were equally affected by the agitation. Indians working in companies, businesses or employed in schools and hospitals in Nepal suffered most from the rise in prices of commodities.[11]

During the visit of Nepal's Foreign Minister Kamal Thapa to Beijing, China agreed to provide 1.4 million liters of fuel worth 10 million yuan in grant to Nepal to meet its emergency needs. Earlier in October, too, Nepal received 1.3 million liters of petrol from China to counter severe fuel crisis on account of the Madheshi blockade.[12] But the oil imported from China to Nepal could hardly meet Nepal's needs for more than a week. Due to geo-economic constraint, China could not do anything significant to meet the shortage of goods in Nepal.

Subsequently, considering the plight of the people both in Madhesh / Terai and the hills, the agitating Madhesh-based political parties lifted the economic blockade of the Birgunj-Raxaul trade route early in February 2016 after 135 days.[13] Accordingly, all business and economic activities, including the industries, government offices, educational and health institutions were allowed to open.

Of course, there had been over two-dozen rounds of talks between the government team and the agitating Madheshi leaders to resolve the constitutional and political crisis in Nepal, but they all remained inconclusive. In the meantime, the government "unilaterally" amended certain clauses of the constitution. Besides, it also constituted 11-member political mechanism on February 19th 2016 for the demarcation of federal boundaries within three months' time.[14] But the agitating Madheshi groups rejected this body. And, the Madhesh agitation that started against Nepal's federal constitution is still continuing, though the forms of protests have changed.

ECONOMIC PRE-CONDITIONS OF STABLE FEDERAL STATE

Be it in Nepal or in other countries, federalism in itself is not a panacea to resolve all problems. It does not guarantee peace, prosperity or stability of a nation. Nor does it guarantee automatic transformation of power to the deprived communities. Also, it does not provide any clue to the exploited and oppressed groups to establish their identity, protect their interests, and have self-rule in the states. However, this is not due to the fault of the federal constitution, but it is more due to the lack of feeling of ownership of the disadvantaged groups in the constitution. An attempt has been made below which considers some of the economic pre-conditions that could help the disadvantaged groups to generate the feeling of ownership in constitution, which is so important for the establishment of a stable and successful federal regime.

Resource Mobilization

Often, inadequate supply of financial resources both at the federal and state levels creates political discontent. Therefore, the state governments need to be encouraged to generate resources sufficient enough for the development of their regions and also to meet their constitutional obligations.[15] In this context, they could be empowered to levy taxes, borrow funds through internal sources and also to enter into agreement with foreign countries and multilateral institutions to mobilize more of funds for development, if necessary.

Today, there is growing realization among the provincial governments to make negotiation with the bilateral and multilateral agencies for attracting investment for the development. The provincial governments in India today are not solely dependent on the central government for the resources that they need for their development. They have been supplementing resources from the foreign sources as and when needed. Recently, a private Chinese company has made an agreement with the government of Indian state of Haryana for the establishment of an industrial park in the state at the cost of US $ 1 billion. In fact, this is a marked departure from the situation in the past.

Financial Autonomy

The states cannot have self-rule if they do not have financial autonomy. The entire purpose of federalism gets defeated if the centre controls the resources and all other states are made dependent units. Overdependence of the states on the centre for financial resources at all time is against the spirit of federalism. This might also tend to take the federal states back to the unitary state.

Stability of the federal system largely depends on financial autonomy given by the central government to the states and local units. Such autonomy provides an opportunity to the states to take self-decision and execute the projects as per the requirement for the development of the regions. Financial autonomy to the states also provides opportunities for the healthy competition among the constituent units for mobilizing more and more resources for development.

In the process of providing more financial autonomy, certain federal countries provide up to two-thirds of the public revenue to the states for their development. In India, the Finance Commission in its report has made recommendations to raise the share of the states in the net tax revenue to 42 % from 32 %. A number of federal countries have generously shared revenue with the states by introducing Goods and Services Tax (GST). In India, the Lok Sabha, the lower House of Parliament, passed a bill for the introduction of GST in May 2015 to remove double taxation between the centre and the states, provide relief to the industrialists and the consumers and at the same time raise adequate resources for the country, which might ensure more financial autonomy to the states.

Fiscal Sustainability

Sufficient care should be taken to see that fiscal discipline is maintained in the states. Budget of the states should be balanced. There should not be much gap in revenue and expenditure of the states. Sometimes in the absence of such discipline, the states often have a tendency to get heavily indebted and to address this problem

external intervention becomes unavoidable. So the states should be encouraged not to cross their limits and spend only to the extent their revenue allows them to do so. Those states which somehow become bankrupt by violating the fiscal discipline should not be supported as it would create further threat to the existence of the federal system. Hence apart from the performance based budget, the monitoring and evaluation system should be strengthened so that fiscal discipline is maintained at all levels.

Capacity to Spend

Often, the states do not have much ability to spend. Even the centre has this problem. In such a situation, service delivery becomes challenging. Therefore, the states need to evolve a system whereby the civil servants are empowered enough to discharge their duty to spend funds for the development of the regions. In Nepal, the civil servants do not want to release funds for the development activities fearing that the anti-corruption body would put them into trouble. This is one of the reasons why the budgetary amount is only partially spent. Besides, the timing for the allocation of funds for the development projects is also faulty in this country. Often, the funds are released during the last few months of the fiscal year when it becomes difficult to work. Therefore, it is absolutely necessary that each level of federal units is bestowed with sufficient powers to transfer the funds for development projects in time.

Governing Capacity

Governance is a great art in which very few states are efficient. The states cannot discharge their responsibilities effectively if they are weak in governing. It is through greater interaction between the centre and the states that the governing capacity of the states can be promoted. Only the interdependence rather than independence in the relations between the centre and the states could help the states to improve their governing capacity. For this, what is essential for the centre and states is to ensure greater exchange of information,

share each other's competence, negotiate funding arrangements and create joint institutions. Also, it is necessary for the states to make appointments for the civil servants through a certain independent agency without any discrimination. Rules and regulations for the recruitment need to be transparent and based on open competition. There should be no compromise in merit during the promotions of the civil servants. Only the civil servants selected through some of these criteria could contribute to a growth-oriented governance system and be effective in service delivery, accountability and effective utilization of public resources in the states. In addition, protection of human rights and maintaining rule of law could also be possible through such committed staff.[16]

Ground Greening

The way the climate change is posing a threat at the global level is a major challenge for the survival of human beings and other species on the earth. All the essentials of human life including water, soil and air are polluted and getting bad to worse each successive day. Measures to improve the situation on these fronts are far from satisfactory. Against this backdrop, it will neither be possible for the centre alone nor by the states to address this gigantic problem. Therefore, the centre and state governments need to work in cooperation with each other to make the ground green through tree plantation and also by taking measures to reduce the level of pollution of earth, water and air.

Infrastructure

The stability of federal states cannot be envisaged in the absence of adequate development of infrastructural facilities like education, health, roads, railways, airports, power, irrigation, etc. Hence, they need to develop those crucial sectors either independently – if the federal law allows them to do so – or else, they could get the support of the central government for the development of those projects. Infrastructural facilities are pre-conditions for poverty alleviation as well as for wealth creation.

Entrepreneurship

The entrepreneurship quality helps create something new and innovative business of small size. Often, the entrepreneurs do not follow any prescribed path and grab opportunities wherever that is available. Because of some of these skills, the entrepreneurs are regarded as change agents in the federal states. They not only create jobs but also reduce poverty. As such, most of the business companies in today's world are driven by the entrepreneurs who reallocate resources for business promotion in the most productive way. The United States of America are developed mostly due to their highest level of entrepreneurial activity. Most of the companies in this country have been created by the entrepreneurs. About the need for entrepreneurship development in India, Gauravraj Deshpande has recently said that this country needed 10 million entrepreneurs to resolve the problems of a billion people.[17]

Information and Communication

In today's world, information and communication have become a most powerful tool in bringing about change in the society. It influences people as to how they should live, learn and work. Also, its role is crucial in facilitating a dialogue between government and civil society, which is so important for the implementation of policies and programmes in the states.

Vertical and Horizontal Interaction

For the success of the federal system, there should be vertical interaction between the central government and the constituent units. Equally important in this system is the horizontal interaction between different constituent units. Such kind of interaction has brought desirable result in the United States of America, Switzerland and Germany. In the United States of America, it was possible to sue the tobacco companies to recover health costs through the horizontal cooperation between forty state governments.[18]

Vertical and horizontal interaction between the centre and the states and also among the constituent units is both formal and informal. Formal interaction is made through certain constitutional and legislative provisions; while informal interaction is made through political understanding. Such interactions at the horizontal level enable the constituent units to have a common stand on certain issues that are necessary to influence the national policy debates and also to neutralize the growing centralization of authority.

Cooperative Federalism

Just passing responsibility to the states through the allocation and distribution of resources does not automatically produce desired results. Therefore, the centre should try to undertake projects together with the states and share expenditure with them. In such an effort, let the states be allowed to make decisions on their own while executing certain projects. Besides, they should also be encouraged to advice the centre, if necessary, for the improvement of the situation during the phase of implementation of projects as per "bottom-up approach".

Competitiveness among the States

In competitive federalism, the states compete with each other to attract investment and for better delivery of services and public goods and also for the removal of disparities among the constituent units.[19] Healthy feeling of competitiveness among the states is essential to reduce the level of disparities among them. It is also desirable to enable each state to catch up the economic growth rate of other states that are doing better or even exceed the other in this area. In India, during last few years, competitiveness among the states for better performance in all such sectors as investment, job creation and development has been growing. As such, development has become one of the agendas of each major political party in the country to win the elections both in the states as well as at the centre.

CONCLUSION

Federalism begins from where the unitary form of political system fails. However, merely a change in the political system from unitary to federalism is not likely to address the problems of the weak, exploited, marginalized and other disadvantaged sections of the society. Therefore, it would be necessary for the federal regimes to meet certain economic pre-conditions for the better delivery of the service. Some of those countries that have met the economic pre-conditions have done better and achieved desirable result. But the others who did not do so lagged behind.

Unfortunately, Nepal's newly promulgated federal constitution has failed to meet the genuine aspirations of disadvantaged communities like the Madheshis, Tharus and other indigenous communities in the country who together comprise over two-thirds of the country's total population. Also, not much effort was made by the constitution makers to consider economic pre-conditions that are so essential to generate the feeling of ownership among different sections of the society. Hence, it is unlikely that the constitution would be implemented in its present form.

If the government of Nepal does not resolve the Madheshi agitation soon by introducing suitable changes in the federal constitution, it is likely that the country would be engulfed in a bigger conflict, which would be worse than the situation of Maoist insurgency between 1996 and 2006 in which nearly 18,000 people were killed and there was immense loss of physical property. Ominous signs like the radicalization of forces both at the end of ruling political parties and the Madheshi, Tharu and other indigenous groups are observed because of government's inability to make the constitution inclusive. If conflict in the Terai region is triggered, it would derail democracy and federal structure. In such a situation, chances are high for Nepal to fail and join the club of failed states.

||| PROF. HARI BANSH JHA
Executive Director of the Centre for Economic and
Technical Studies, Kathmandu, Nepal and Visiting Scholar at the
Indian Council of World Affairs, New Delhi.
He was formerly Professor of Economics at Nepal's Tribhuvan University
(1976-1998). He has authored/edited over two dozens of books,
including *The Economy of Terai Region of Nepal:
Prospects for its Sustainable Development* (2010) and
The Terai Community and National Integration in Nepal (1993).

Annex One

LIST OF FEDERAL ECONOMIC POWER / JURISDICTION

1. Central planning, Central bank, financial policy, currency and banking, monetary policy, foreign grants , aid and loan
2. Customs, excise-duty, value added tax (VAT), Corporate income tax, individual income tax, passport fee, visa fee, tourism fee, service charge, penalties and fines
3. Central level mega projects for electricity, irrigation and other projects
4. International trades, exchange, ports and quarantines
5. Mining exploration
6. Land use policy, housing development policies, tourism policy, environmental adaptation
7. Social security and poverty alleviation

Source: Constitution Drafting Committee: Constituent Assembly Secretariat, 2014. *Constitution Bill of Nepal 2015*, Kathmandu: IDEA and UNDP

Annex Two

LIST OF PROVINCIAL ECONOMIC POWER / JURISDICTION

1. Banks and financial institution, Cooperatives, and foreign grants and aids with consent from the Centre
2. Tax on remuneration, land and house registration fee, vehicle tax, excise duty, entertainment tax, advertisement tax, tax on tourism and agricultural income, service charge and penalties and fines
3. Provincial level electricity, irrigation projects, drinking water, transport
4. Trade/Business within the province
5. Provincial highways
6. Infrastructure management and other necessary matters of province government offices
7. Land management, record keeping of land
8. Exploration and management of mines
9. Management of national forest, water resources and ecology within the province
10. Agriculture and livestock development, factories, industrialization, business, transportation
11. Guthi (community trust/endowment) management

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DEVOLUTION: THE KENYA CASE

||| Peter Wanyande / Tom Mboya

INTRODUCTION

For close to three decades Kenyans clamoured for a new constitution and a change in the way the country was governed. The search for a new constitution was informed by many factors. One key factor was the dissatisfaction with the highly centralized model of governance, associated with imbalance in resource allocation resulting in ethno-regional development inequalities, marginalization of some communities and failure to involve the people in governance processes, among other ills. The people therefore yearned for a more equitable distribution of national resources and an end to development inequalities between regions of the country, fuelled largely by ethnicity. It is against this backdrop that on 27th August 2010 the country promulgated a new constitution, the Constitution of Kenya 2010[1] (CoK, 2010). The nerve centre is a devolved system of government, comprising one national government and 47 county governments. The implementation of the devolved system of governance commenced in March 2013 following the general elections held that year. It may therefore be too early to conclusively assess the impact of the new system of governance and its intended objectives. We have, however, observed some trends that may give a fairly accurate picture of what to expect as the system is implemented.

This paper seeks to examine emerging issues relevant to the implementation of the new system of governance and what counties and their governments are doing to drive devolution. The discussion will include some of the challenges that the new system of government is facing since its adoption three years ago.

VIABILITY OF COUNTY GOVERNMENTS

We begin with the fact that the counties that were newly established by the Constitution of Kenya 2010 following extensive stakeholder and parliamentary deliberation were at different levels of socio-economic development at the time of establishment. While some counties were comparatively more developed others were not so lucky.

Secondly, some counties were better endowed with natural resources such as rich agricultural land, livestock and more friendly climatic conditions compared to others. Thirdly, some counties were smaller in geographical size than others. Lamu county for example has an area of approximately 6,273.1 square kilometers and a population of 101,539. Kakamega County on the other hand has an area of approximately 3,051.2 square kilometers and a population of 1,660,651. Turkana County has an area of approximately 68,680.3 square kilometers and 855,399 inhabitants while Siaya County has an area of approximately 2,530.4 square kilometers and a population of 842,304.[2] We provide these few examples for two reasons: To demonstrate the differences between counties because they have implications for the economic viability of the counties; as well as to show that some counties had a head start compared to others.

It was due to these realities between and among counties that the transition to the Devolved Government Act 2012 provides criteria for the transfer of functions from the national level to county government. In this regard the Act provides that the Transition Authority[3] (TA) would identify initial functions to be transferred to counties immediately following the March 4th 2013 general elections. Further, transfers of functions could only be made after the TA was satisfied that a county was ready to take on such additional function(s). In this regard, each county was required to apply to the Transition Authority for any transfers to be made. However, counties had varied levels of resources. While some counties were rich in resources such as fertile agricultural land, a strong tax base, skilled manpower, infrastructure such as road networks and port facilities,

other counties were not so lucky. In short, some counties were economically more viable than others and therefore had a significant head start. Many of these differences have their genesis in the colonial era. The colonial government deliberately invested in those parts of the country that had a potential for returns. Regions such as Northern Kenya for example were neglected and economically marginalized. Regrettably, successive post-colonial governments did little to reverse this situation. This was despite the many initiatives introduced after independence to address ethno-regional development inequalities. The most recent attempt to address these challenges is the introduction of devolution of power and functions between the national and county governments. Among the objectives of devolution are: to protect and promote the interests and rights of minorities and marginalized communities; to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya; and to ensure equitable sharing of national and local resources throughout Kenya.[4]

In view of the fact that counties vary in terms of levels of development and resources for development, achieving equitable development is not an easy undertaking. This was recognized by the framers of the Constitution: they made provisions to facilitate efforts to promote equity in development. The major provisions in this respect are the Equalization Fund,[5] conditional grants[6] to counties by the national government and the share of nationally raised revenue between the national government and the county governments.[7] The Equalization Fund is intended to be used by the national government to provide basic services, including water, roads, health facilities and electricity to marginalized areas to the extent necessary to bring the quality of the services in those areas to the level generally enjoyed by the rest of the nation, in so far as is possible.

Two observations are worth making at this point about the Equalization Fund. First, its inclusion in the constitution is an admission that some regions of the country have been disadvantaged and marginalized in terms of development, and that this situation

requires remedy. Secondly, it is a reminder that the situation cannot be remedied through legislation or administrative action as was assumed in the past. In this regard it is worth noting that past interventions aimed at eradicating regional development inequality were mainly legal and administrative in nature. It is hoped that by anchoring these interventions in the Constitution there will be greater commitment to the eradication of regional development inequality than was the case previously. This is because the Constitution is binding to all, including those charged with administering the Fund. This is not the case, however, with legal and administrative interventions. Equalization Fund is thus one way of managing the economy in such a way that weaker regions (counties) are supported to reach the level of the strong counties. This differs from those systems where higher taxes are imposed on wealthier regions to finance the weaker regions. The Fund is a form of affirmative action intended to correct a historical injustices suffered by some regions.

In light of the above, however, it is necessary to make a third point, namely that the implementation of the Equalization Fund has experienced a number of challenges, two of which will be specified here:

The first challenge has to do with the failure to agree on the definition of marginalized areas. The Constitution itself does not define a marginalized area, resulting in different definitions of marginalized areas by different actors. Consequently two schools of thought on this matter have emerged:

One school takes the view that a marginalized area means a county that for historical and / or for other reasons has been unable to fully benefit from national development compared to other counties. To this school of thought, therefore, marginalized areas refer to marginalized counties. This is the position taken by the Commission for Revenue Allocation (CRA). In developing the formula, the CRA identified a number of counties to benefit from the Equalization Fund. The Commission obviously did not buy the idea that an area within a well endowed county can be margina-

lized. It is on this basis that CRA did not envisage a county with this description benefiting from the Equalization Fund. Another school of thought views a marginalized area as any area within a county, and not necessarily a county as a whole, that has suffered or suffers from inability to develop due to a variety of factors.

The two schools of thought are motivated by one common factor, namely the desire to use the Equalization Fund to benefit their constituencies. A leader from a marginalized county would want the definition to be confined to counties. On the other hand a leader in a county that is generally developed but would want a share of the equalization fund would advance the argument that some areas within that county are marginalized. This argument fits well with the definition of marginalized communities and marginalized groups given in the constitution of Kenya 2010. The Constitution defines a marginalized community as:

- A community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole;
- A traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;
- An indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or
- Pastoral persons and communities, whether they are
  - nomadic; or
  - a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic lifestyle of Kenya as a whole.

A "marginalized group" means a group of people who, because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4).[1]

Failure to agree on the definition has obviously been one of the reasons why the Equalization Fund has not been utilized to date. Our own view is that a marginalized community can be found within a county or even across counties. Similarly a marginalized community or group can be found within a county.

The second challenge has to do with the attempts by members of the National Assembly to take away the control and management of the fund from the national government and to have it controlled and managed by themselves. In this regard, a bill by one of the members of the National Assembly to convert the Fund into some form of Constituency Development Fund has been passed. The law has however not been implemented because the Constituency Development Fund had been declared unconstitutional just as the Bill on the Management of the Equalization Fund was passed. The significance of this situation is that the Equalization Fund has not, as yet, been used to uplift marginalized areas or counties.

SHARE OF NATIONALLY RAISED REVENUE

The process of sharing nationally raised revenue between the national government and county governments has also had its share of controversy. This revenue is given to each county to enable each county to finance the functions allocated to it, as per the fourth Schedule to the Constitution. This means that each county should have enough money to finance its development, including development projects. The assumption is that the share and subsequent allocation of nationally raised revenue would be fairly done, as opposed to the previous system in which the centre has decided arbitrarily how much revenue to give to a particular region. The complaint was that sometimes some regions were disadvantaged while others got the lion's share, hence the disparities in development. While the nationally raised revenue has been disbursed to counties on a regular basis, concern has been raised about whether the amount allocated to county governments is sufficient for financ-

ing the functions of the county governments. The opposition party CORD has argued that it is insufficient and is preparing to conduct a referendum to have the amount raised to a minimum of 45 % of the nationally raised revenue. County governments through the Council of Governors are also demanding that the amount be raised from the current minimum of 15 % of the nationally raised revenue to at least 45 %.

OWN REVENUE BY COUNTY GOVERNMENTS

County governments are also allowed, and expected to raise their own revenue by imposing certain taxes in their respective areas of jurisdiction. This is provided for in article 209 (3) of the Constitution. The taxes that a county government may impose include property rates, entertainment tax and any other tax that a county is authorized to impose by an Act of Parliament. A county government may also impose charges for services it renders to its residents and clients. All counties have undertaken this law with tremendous zeal. They have introduced all manner of taxes including chicken taxes in counties such as Kakamega. The problem, however, has been resistance from the counties' residents. The general perception is that the people are being overtaxed. This is because the same residents pay taxes to the national government and feel that additional taxes are too heavy a financial burden on them. In some counties such as Kiambu, residents have successfully gone to court to stop the imposition of some taxes by the county government.

The significance of the above is that the viability of a county government and therefore of devolution depends heavily on the capacity and ability of a county government to be economically strong, viable and independent of the centre. Counties are aware of this; hence the demand for an increase in the amount of money raised nationally. Their enthusiasm about raising their own revenue is also a demonstration that they need some measure of economic independence to be viable and effective.

DECISION MAKING POWERS OF THE TWO LEVELS OF GOVERNMENT

As indicated earlier, Kenya's model of devolution has two levels of government. These are the national government and county governments. A total of 47 county governments were established by the Constitution of Kenya 2010. Each county government has a legislative assembly, known as the County Assembly, and an executive arm. The executive arm is headed by the Governor, who is elected by residents of the county qualified to vote in an election. The two levels of government are distinct,[8] meaning none is subordinate nor superior to the other.[9] It is imperative at this point to observe that article 189 of the Constitution reiterates the need for the two levels of government to respect each other's functional and institutional integrity, the constitutional status and institutions and, in the case of county governments, the respective functions within each county.[10]

Even though the two levels of government are required to consult and cooperate with one another in the course of carrying out their functions and exercising their respective powers, the county governments enjoy a large measure of space and autonomy from the National Government. County Governments have the freedom and power to make and implement decisions without reference to the National Government. These powers are clearly spelled out in Chapter 11 of the Constitution. County assemblies, for example, make laws that apply in a county after approval by the respective Governor. The National Government has no role in this process. The only time the National Government may intervene in the powers and functions of the county level of government is when a county law is inconsistent with national law. But even this is permissible only under specified conditions.[11] There are also circumstances whereby a county and national legislation are in conflict, county legislation would prevail.[12]

Three further observations are in order at this point. First, the model of devolution adopted by Kenya attempts to respond to both

historical and contemporary governance challenges that the county has experienced in the past. The problem associated with centralization of power was a significant consideration in drafting the Constitution of Kenya 2010. Secondly, the three years of devolution have not been smooth. They have been characterized by resistance that sometimes border on attempted sabotage of the new system. Thirdly, if properly and effectively implemented, the devolved system would certainly reduce, if not eliminate ethno-regional development inequalities that have been a feature of the county's governance system and socio-economic development.

REGIONAL DEVELOPMENT CONCEPTS

What goes without saying is that as progressive a Constitution as the Constitution of Kenya 2010 is, devolution is the one aspect that has most captured the imagination of the people of Kenya. With good reason, too! As has been alluded to previously, the previous governance structure was centralized, and thus regional development was dependent upon the goodwill of the centre, or political patronage whereby a region (or its political elite) was sufficiently close to the centre. With the onset of devolution, marginalized regions and communities have, in some cases, for the first time since independence received significant resources, enabling them to embark upon meaningful and long-overdue development projects. In some cases, this has been manifested in the first kilometres of tarmac roads, opening the regions up to the tourism circuit, and much needed health and water projects. All this enables these regions to begin to feel more a part of the growing Kenyan nation, rather than a victim of a new constitutional order.

While there is no question that Kenyans have come to accept and appreciate devolution, the sustainability and viability of 47 county governments and assemblies in a country with a population of roughly 44 million presents a different challenge altogether. While it may not be possible to adequately evaluate the merits and

demerits of this particular model of devolution within the confines of this paper, suffice it to say that 47 regional units are a significant burden on the limited and precious resources of a developing country such as Kenya. By way of example, the State of California in the US has a similar population of roughly 40 million people, yet is represented by only one Governor and 2 Senators. With some already advocating for changes to the Constitution so as to do away with this "over-representation", and given that devolution has so captured the imagination of Kenyans, the suggestion that any County be disbanded is likely to meet with extreme consternation. That notwithstanding, it is necessary to begin a discussion about how to manage this situation.

While the solution to the conundrum above may not appear to be readily apparent, it would seem that the beginnings of those solutions have begun to organically materialize. Various counties have begun to form regional blocs, so as to promote and protect unified regional interests. Some regions, loosely based on former provinces, have begun to look at regional interests with a view to collaborating in the pursuit of those interests. The Commonwealth of Coast Counties (Jumuiya ya Kaunti za Pwani) was one of the first to emerge, bringing together the 6 coastal counties of Kwale, Mombasa, Kilifi, Tana River, Lamu and Taita Taveta. With historically marginalized populations, the coastal counties are also abundant in natural resources, perhaps prompting the desire to collectively leverage such a partnership. Recognizing that working in isolation was unlikely to achieve the kinds of results their residents yearned for, the Governors of the six counties came together resolving to seek meaningful sustainable development and equitable economic growth.

The North Rift Economic Bloc (NOREB)[13] is another regional cooperation effort representing the geographical area on the northern-most part of the Rift Valley. An area of outstanding natural beauty, the bloc is made up of 8 counties, namely: Turkana, Baringo, Elgeyo Marakwet, Nandi, Uasin Gishu, West Pokot, Samburu &

Trans Nzoia. NOREB, too, is awash with natural resources, and seeks to encourage investment within the region. Resources such as wildlife, beautiful scenery and agricultural potential remain largely untapped, presenting great opportunities for the region.

Other regional groupings have also emerged. Some of these include the Mount Kenya and Aberdares Counties Trade and Investment Bloc (in formation) bringing together Kiambu, Embu, Kirinyaga, Laikipia, Meru, Murang'a, Nakuru, Nyandarua, Nyeri, Tharaka-Nithi and Isiolo in an economic bloc seeking to address employment creation and economic growth, tariff reconciliation and attraction of foreign investment. From the Western region of the country, the Regional County Forum on Trade and Investment in Western Kenya Region is a smaller collaboration between Kisumu, Busia, and Siaya Counties. This particular effort includes counties that all lie on the Lake Victoria Basin and share boundaries. Specifically, the objective of the collaboration is to catalyze the development of a regional trade and investment plan for the counties through identification of areas of synergy within the counties to spur economic trade and development.[14] Finally, the Lake Region Economic Blueprint (LREB) includes the counties in the greater Lake Victoria region, including Bungoma, Busia, Homa Bay, Kakamega, Kisii, Kisumu, Migori, Nyamira, Siaya, and Vihiga. These counties share similar ecological zones, natural resources, and cultural histories, making a partnership a natural occurrence. The blueprint presents the socio-economic aspirations of the ten counties and seeks to secure and share the regions destiny.[15]

The initiatives described above have all come about from a single underlying premise: that most counties in their current form are too small to leverage economies of scale, and are thus unable to tap into the requisite pool of skilled labour or funding resources to make their aspirations a reality. Therefore, strategic cooperation between counties with shared interests seems to be becoming a necessity in order to realize the immense potential existing in the counties. Whether in the long term this will lead to a more formal integration

of counties within the blocs remains to be seen. Over time, the viability of these regional efforts will become clearer and will inform their sustainability. One thing, however, appears certain: devolution is here to stay, and a majority of Kenyans are better off as a result.

Beyond this, a further compelling pro-devolution argument can be made, given the recent history of the country. On the one hand, Kenya has been and continues to be a deeply polarized society, along ethnic lines. On the other hand, following the post-election violence in 2007–2008, Kenya has existed in something of a "post-conflict" state, with various initiatives seeking to foster and improve national cohesion and integration. Devolution, in this case, has a significant role to play. As it stands, the 47 counties (with the exception of the largest, most cosmopolitan few) are largely homogenous, consisting of one dominant ethnic group, and various smaller ethnic groups. Thus, political and electoral processes tend to center around the one dominant ethnic group. By extension, employment within the county or county government tends to be dominated by the dominant ethnic group, to the detriment of others, in contravention of constitutional principles on freedom from discrimination.[16] Essentially, this means that those who do not belong to the dominant ethnic group within a county are in perpetual danger of marginalization.

This is not an ideal situation for an already-polarized nation, and can indeed be toxic where political mobilization continues along ethnic lines.[17] Regional development initiatives, such as those described above, have the potential to begin to address underlying drivers of ethnicity and ensure greater inter and intra county (therefore also across ethnicities) collaboration towards commonly agreed upon objectives. This may present a logical "next step" to some of the constitutional, legal, and administrative steps that have been taken thus far to foster broader national cohesion.

PROF. PETER WANYANDE
Commissioner at the Commission for the Implementation of the Constitution (CIC) and Convener of the Devolution Thematic Team. He has taught political science at the University of Nairobi for over 20 years.

TOM MBOYA
Analyst and chairman at Democratic Congress (DC), Kenya

NOTES

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2 Kenya Population and Housing Census, August 2009.

3 Transition Authority is a statutory body established by the Transition to Devolved Government Act, 2012 to facilitate the transition from the hitherto centralized system of government to the devolved system of government.

4 Article 174 (e) (f) (g), Constitution of Kenya, 2010.

5 Article 204, Constitution of Kenya, 2010.

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ARGENTINA: FEDERAL DEVELOPMENT AS A STATE PROGRAMME IN THE 21ST CENTURY

||| Pablo María Garat

THE KEY FEATURES OF FEDERALISM

It is probable that societies in the 21st century particularly need federalism to form a system of internal relations as a way of resolving issues that affect the political unity of sovereignty, which historically have constituted, or led to, organisations of a new confederal nature, particularly for undertaking human development with social justice and territorial equity.

Following the objectives of this conference, but before referring specifically to the case of Argentina, we will firstly try to respond to the question of what can be considered the key features of federalism to assure its stability as a form of state for full development in the twenty-first century. We will secondly consider, in the case of Argentina, how it has been received in the constitutional organisation, such as in public conducts of the political leaders, since the late nineteenth century.

In our opinion, the first key feature that we identify for the validity of federalism consists of the way it resolves, in the dynamic of social and political life, the tension between unity and diversity on one hand and authority and liberty on the other. These two dualities are faced by any political community, but especially organisations such as federal states or highly decentralised regions, where the challenge is to look for harmony and equilibrium between them to reach and maintain stability.

The second key feature to assure stability and strengthen authentic federalism and the resolution of these two tensions is identified with the principal of subsidiarity. It seems to us that this is the "cornerstone" of the whole federal system.

Without being original in this, we propose to consider federalism as concrete expression of the principle of subsidiarity with much emphasis. This principle is understood in a negative sense (fail to do) and positive (make subsidiary). As such, the effectiveness of the government is not opposed and is probably why it has been formally received in important constitutional documents at national and international level.

It appears for the first time in the thoughts of the Social Doctrine of the Church in 1931 in the text of the Encyclical of Pope Pius XI, "Quadragesimo Anno", Punto 79, which says: "It is true, and history clearly shows it, that, due to changed social conditions, many things which were done by small associations in former times are only possible today for large associations. Still, that most weighty principle, which cannot be set aside or changed, remains fixed and unshaken in social philosophy: one cannot take away from the individuals and give to the community that which they can realise with their own effort and industry, so also it is an injustice, constituting a grave prejudice and perturbation of the right order, to take away from the lesser and inferior communities that which they can do and give it to a better and more elevated society, since all social activity, by its own force and nature, should help the members of the social body, but not destroy or absorb them."

The last line is emphasised because we want to stress that this principle should be interpreted not only in the sense of "self-governing" but also in the sense of "help", specifically "subsidiary" when the smaller community cannot achieve its goals by itself.

We find it in article 23 of the Basic Law of the Federal Republic of Germany as well as Laws 59 (1997) and 265 (1999) of the Italian Republic.

In Argentina, within the provincial public comparative law, the most modern of the provincial constitutions, that of the Province of Tierra del Fuego (1991), expressly enshrines this principle in the allocation of powers to its municipalities.[1]

Moreover, as we know, it has been formally received in the Treaty of Maastricht (1992) in its Title II, article G, introduced in article 3 b, in the Treaty of the Community of Europe and ratified and specified by the Treaty of Lisbon (2007) as 1 article 3 ter. which, in the consolidated version of the Treaty of the European Union, has remained renumbered as article 5. Likewise we can highlight that in Lisbon the protocol for the application of the principles of subsidiarity and solidarity were also signed which extended even more the recognition of the importance thereof in the community organisation.

Affirming federalism as a concrete expression of the principle of subsidiarity has important consequences:

The Decentralisation of the Federal State

The primary consequence of affirming federalism as a practical application of the principle of subsidiarity assumes to accept a determined interpretation of the term "decentralisation". According to this it does not consist in delegating the power of decision-making and / or implementation but in recognising the right of that decision and implementation and, furthermore, to accept the convenience of delegating the implementation when the right to a decision does not exist, but it is suitable for the efficient action of government; everything under certain rules of distribution and reserve powers of a constitutional nature.

Federalism and Municipal Autonomy

The second practical consequence is that their effective enforcement requires the recognition of the municipal government regime as a sufficiently autonomous regime in all aspects, institutional, political, administrative, economic and financial, as enshrined in the Argentinian Constitution in article 123.

Horizontal Intergovernmental Relations as a base for Cooperative Federalism

In a federal state regime the name of such possible coordination is that of "agreement" or "cooperation". It is always concerned with a regime of full freedom and responsibility with subsidiarity (which is the essence of a federal regime), within which the public actors are horizontally and vertically linked with a special dynamic.

In this sense, the third consequence that we note is that to realise the positive aspect of the principle of subsidiarity, for the application thereof, horizontal cooperation is preferable – as far as possible – before resorting to vertical integration (intervention).

The Internal Regionalisation of the Federal State

The fourth consequence of recognising and understanding federalism as a concrete expression and practical application of the principle of subsidiarity is the necessity to promote horizontal governmental relations – as anticipated – in a regional sense and from the lowest level: districts of local development, especially around medium-sized cities, micro-regions and interprovincial regions or internal interstates. Here, we always use the term "region" as an expression of a territorial scope of interrelation and not as the equivalent of a governmental territorial structure. For these cases, however, the concept could be applied equivalently.

The Distribution of Power and its Effective Exercise in Concurrent Matters

The fifth consequence of the affirmation proposal regarding the principle of subsidiarity is that it leads to a clear distribution of power between the Federal Government, the Provinces (or sub-national states, or regions as governmental territorial structure) and their municipalities as well as the solid and subsidiary coordination in all levels of intergovernmental relations.

The majority of governmental powers are, by their nature, concurrent. For this reason, the rule for their exercise should be that of

the principle of subsidiarity; and this should (we mentioned above the case of the Province of Tierra del Fuego in Argentina) be found to be formally received by the fundamental laws and insured by the political control the citizens have over governments (simple and transparent electoral systems; advisory boards with true sectoral representation; special institutes for political participation; initiative; consultation of the people; referendum; plebiscites; revocation, etc.).

Taxing Power in the Federal State

The sixth practical consequence of considering federalism as a concrete expression of the principle of subsidiarity – that which reflects directly with the possibility of assuring the effective validity of the former referring to the exercise of power by the distinct levels of government within the federal state – refers to the "taxation power" ("taxing power" or "power of taxation" according to various authors).

The consequence in this case is that the taxation power should be distributed in accordance with the criteria which we had proposed in the previous point, with respect to the general powers. That is to say that their exercise must be recognised at all levels in a true federal fiscal system that, so as not to create excessive fiscal pressure, demands coordination, looking for greater and better links between the government and the contributor, commencing at a local level.

The third key feature for federal stability, as a result of all the aforementioned, is that the assumptions set for above are cemented in the distribution and exercise of powers between the distinct levels of government.

We refer here to the need for federalism, expressed both in the relationship of federal or national government with the states, provinces or regions (according to the terminology of every constitutional political organisation) and in that of the lower levels of government, especially with the municipalities and / or cities, which we identify with the historical, natural and determinant bases of all federal or highly decentralised organisations. We are speaking, then,

of a federalism of cooperation and / or governmental agreements on multiple levels.

Finally, the question of the relationship between federalism and democracy has been proposed as a previous thematic area.

To answer this it seems inevitable that we must clarify which concepts of federalism and democracy we use to try to support our opinion. We already expressed our notion of federalism, which seems much more than a constitutional technique of the distribution of power.

Regarding democracy, we cannot enter into an in-depth debate about the significance of the term, due to the limited materials on this.

We start from the following assumption: we understand democracy as a form of government that permits the greatest and the best political participation of the people in the government of their community through a system of representation that, in particular, is supported by the greatest and best permanent link between the representative and the represented.

From this double conceptualisation of federalism and democracy we think that federalism is necessary – in some of its historical forms – to assure the political decentralisation which favours an authentic democracy from the municipal, provincial or regional base of states.

It is not possible to develop a genuine democracy without concrete liberties guaranteed in the context of families taking root and developing primarily. It requires a high level of decentralisation of power to be guaranteed, without which all aspiration for a better standard of political and social participation and representation seems condemned to failure.

An additional consideration regarding the relationship between federalism and democracy is that in the twenty-first century, not only the above is required in order for the political parties to admit the federal principle into their internal life and develop themselves respecting this principle in their organisation, but the high impact of technology must also be considered used in communicating and relating people and groups in this new era.

The phenomenon of "glocalisation" (globalisation / localisation), which shows the man of the twentieth century with one foot in his city and with the other in the wider world, through the web, also requires new answers which respect the old principles.

If federalism and democracy constitute a system of concrete liberties, these will allow for the connection to the people, each time in a better medium, to resolve questions in order to achieve the common good. The way of relating oneself to others has changed substantially, and not only in terms of communication devices. The man of the twenty-first century seems to be an individual, more informed and, paradoxically, more isolated and self-absorbed than ever before in history. Hence the importance of a value directly linked to the effectiveness of federalism which, at the same time, is a condition of true democracy. We are referring to roots.

As a contribution to the debate about roots and their significance, we say that we start with a concept of man as being created free, social and political by nature – the man who marches to his end transcending social life and exercising individual liberties.

Individual liberties of man are located in his family, in his municipality, in his province, in his region, in his national political community. Also the man has his place in the economic order: in his work, his company, his trade union.

The man located in such a way therefore finds himself linked by tradition to a culture, which manifests itself, from the environment in which he was born to the projection of his homeland in the universal. He is the man with roots.

Particular freedoms to reach his immediate goals include starting a family, educating one's children, access to property, work and capital that permits development and participation in civic-political life.

We think that, in order to respect nature, man needs to exercise his individual freedoms in his own matters: family, being the first social community; the municipality, as a family of families; the local and regional economy as a natural scene for development of human work and the creation of productive capital.

Without these conditions, what remains is democracy of the masses, partisan democracy and techno-democracy or the failure of democracy.

Because of this it seems relevant to us to insist that federalism is a system of individual freedoms which favours without doubt the realisation of a true political democracy.

THE CONSTITUTIONAL ORGANISATION AND ECONOMIC DEVELOPMENT IN THE FEDERAL STATE OF ARGENTINA

The federal Argentinian regime represents the natural and historic way of arranging relations between the cities and foundational Councils, and the combination of provinces and municipalities that form the later nation of Argentina. This originates from the end of the sixteenth century, 230 years before the declaration of independence and 280 years before the enactment of the federal constitution. Argentinian federalism is federalism from a municipal basis, in which the provinces have been a territorial and political extension of the founding cities and constitute the political regime of their historic tradition.

When the Viceroyalty of Río de la Plata was created in 1776, the founding Argentinian cities had existed in a politically organised manner, but autonomously, under the regime of councils for almost 200 years. These were progressively weakened by the centralist and administrative characteristics of the new viceroyal organisation. However, they were primarily the principle actors in the emancipation process from Spain (1810) and later on the Declaration of Independence (1816). They were also the seed of the 14 foundational provinces of the Argentinian Republic which was organised constitutionally from those between 1853 and 1860.

These 14 provinces, between 1820 and 1860, through more than 100 interprovincial pacts and agreements, established the base of the Argentinian Confederation which represents our historic and traditional federalism. Thus it was established in the national constitu-

tion: Argentina would be a presidential republic in accordance with the form of a federal state and in accordance with the "pre-existing pacts" which are mentioned expressly in its preamble. Including, according to article 35 of the national constitution, the (interchangeable) official names of the country, "United Provinces of the Río de la Plata, Argentinian Republic and Argentinian Confederation".

This long process, which included attempts in 1819 and 1826 to constitutionally establish a unitary state and was followed by a large civil war between "Unitarians" and "Federals", concluded with the San Nicolás Agreement (1852), the consequence of which is the definitive agreement between the provinces, except Buenos Aires, to constitutionally organise the federation. In 1860, Buenos Aires was finally incorporated into it and the original constituent cycle was happily closed.

The configurative federal rule of the constitutional order of 1853/60 is very clear: the federal government, headed by a strong presidency, has emergency powers and resources. Provinces reserve other powers and agree their share in the first instance with such a design that they performed this sacrifice to ensure national unity and consolidate peace.

We can synthesise then that originally in 1853/60:

1. The Argentinian nation constitutionally adopted the form of a federal state for their government (article no. 1).

2. The national constitution of 1853/60 implicitly recognised federalism of three levels, with a municipal base, to establish the obligation to "assure the municipal regime" on the part of the provinces in article no. 5.
   However the formal organisation and the distribution of power only expressly acknowledge two levels: federal government and the government of the provinces. Thus the municipal powers could only constitutionally guarantee a delegation of federal or provincial power. Furthermore, there are no references to Buenos Aires, which at this time was not the federal capital.

3. The powers were distributed between the federal government on one hand and the provincial governments on the other, based on the following constitutional rules:
   a) Article 104 (now 121): "the provinces conserve all the power not delegated by the constitution to the federal government and that they have expressly reserved by special pacts at the time of their incorporation."
      In accordance with this rule, the federal government could only exercise the powers delegated by the provinces specifically through the constitution, and those implied, under the jurisprudence of the Supreme Court powers, their permission following the criteria of rationality.
   b) Article 108 (today 126): in accordance with the aforementioned; "the provinces do not exercise power delegated to the nation".
   c) Articles 5 and 106 (today 123): the municipalities may exercise the powers that are recognised by their respective provincial constitutions, but without guaranteeing its autonomy, including in aspect of taxation.

Finally, the constitutional reform of 1994 introduced new highly important clauses for the strengthening of the federal regime: the power of the provinces over the natural resources existing in their territory (article 124); the creation of regions for development on the part of the provinces without federal government intervention (article 1214); the municipal autonomy (article 123); the creation of the Autonomous city of Buenos Aires as a new subject of the federal state structure; the establishment of limits on the exercising of legislative power by the national executive power (articles 76, 80 and 90, subparagraph 3) and the federal tax sharing regime as a way of expressing tax coordination (articles 75, subparagraphs 2 and 3).

Returning to the evolution of federalism in Argentina, the federal regime was weakened after the battle of Pavón (1861) in which the federal forces of the confederation were defeated by the province of

Buenos Aires. This started a disfiguration of the federal regime of Argentina and the development of what was called the period of national organisation, with its good and bad implications for the progress of Argentina but, without doubt, it was clearly negative for the consolidation of the original federalism.

For 121 years between 1862 and 1983 it became difficult to find the traces of Argentinian federalism as a historic model.

Between 1880 and 1916 the autonomist national party, the first big national political party in the history of Argentina appears. In reality this was an agreement of distinct domestic political leagues to construct and assure power as well as the presidential succession – eliminating all possibility for federal recuperation. Its support for the institutional organisation and national development is not the topic of discussion here, but rather its lack of compromise with federalism as a frame to achieve these objectives.

The radical Civil Union from 1916 and the Justicialist party from 1946, the other two big national political historical parties, represented the incorporation of enormous social sectors into political and economic life; the development of national industry; the incorporation of social rights with constitutional range and many more achievements. All of them without sufficient consideration of or – in some periods – with frank indifference towards our federal regime.

The previous periods of validity of the constitution and – for obvious reasons – the de facto governments did not change this state of affairs. These last elements only aggravated it more. In all these historical milestones the fight was for power and the republic – not for federalism.

The provinces and their leaders, far from being a stranger to this – for the abandonment of their ruling class responsibility and historical mission – were the determining factors for this course of events.

From 1983, with the recuperation of constitutional order, an institutional cycle with marked elements in favour of the recuperation of federalism was initiated. As if the constitutive genetic memory

guides the course of the most relevant decisions, the political forces in their totality are orientated to the recuperation of our municipal-based federalism.

Between 1985 and 1991 a group of clear political initiatives were set out that paved the way for constitutional reform, which finally took place in 1994, including topics which were directed towards strengthening the federal regime, as we have already mentioned.

Despite all this favourable evolution to the recuperation of federalism between 1983 and 1994, the tendency of "de-federalisation" in the material order continued with particular derivation of:

a) The concentration of the exercising of taxation powers and their administration in federal government, following the economic crisis of 1989/90 and in 1992, the federal tax sharing system began slipping into a system of conditional and unconditional transfers, under the guise of a need to solve the deficit of social security or pensions for federal government.

b) As a consequence of this, the consolidation of the rule of the "emergency economy" to further justify the major exercising of power on the part of the national executive power in decline of the congress and provinces. In particular,

c) The abandonment of the senate of its role as moderator of the exercising of presidential power.

For these reasons, we believe that the debate of a "Federalist Agenda" in Argentina is therefore more current and necessary than ever. It is likely that the new political scene which emerged from the 2015 elections – in which no political force had a sufficient majority to prevail – represents a historic opportunity to initiate a process of authentic recuperation of the federal regime which the national constitution established. This is not only the responsibility of federal government, but especially of the provinces and their representatives in the congress of the nation, particularly in the senate.

FEDERAL DEVELOPMENT AS THE NUCLEUS OF THE STATE PROGRAMME OF THE ARGENTINIAN CONSTITUTION

To properly substantiate the claim that federalism is our constitutional programme of state and that the federal development is the most important of our state politics, it is necessary to realise some previous considerations.

Human development – under any form of state – should always have as an objective, its evolution and growth as a way of assuring its benefits for families and social groups. Under a political regime or form of federal state, these objectives pose the additional challenge of aiming to achieve social justice, with regional equality and full respect for unity in diversity within the recognition of local autonomy, by the validity of the principle of subsidiarity.

In terms of social and fiscal economy, the Argentinian constitution establishes federalism also to assure the economic and social rights which are guaranteed in the preamble.

In this context we are thus convinced that, to assure social justice, peace, regional equilibrium and equity for the provincial and municipal development in all the national territory, federalism is the natural path and the state programme that the national constitution has established with much clarity.

Indeed, in economic, social and fiscal terms, our constitution-established federalism also ensures the economic and social rights that are guaranteed in the preamble and the articles 14, 14 to, 16, 17 and 33 with the framework of: 1; 4; 75 subparagraphs 1, 2, 3, 17, 18, 19, 8, 9 and 6; 41; 42; 99 subparagraphs 8 and 9; 100, subparagraph 1; 103; 124; 125, 123 and 129, that we suggest to read with this sequence as we cannot transcribe nor commentate them here for reasons of space.

But the question, following the themes of this congress, is: What are the previous socioeconomic conditions for stability of a federal or regionalised state? In the case of Argentina: What are the preconditions for the federal programme in order that the development enshrined in the constitution can be completely fulfilled?

In our opinion, a constitutional order of full socioeconomic inclusion requires the previous consensus between all productive sectors and diverse political forces on at least four permanent strategic objectives: the roots of the families in their municipalities' territory for the access of property and work; access to nutrition and basic education for all children; strengthening of regional economies (interprovincial regions in the case of Argentina) for greater integration of value chains in the production of goods and services; balanced and supportive distribution of federal income tax.

However, we also understand that the achievement of full socioeconomic development in the federal state is a prerequisite to the political and institutional agreement with respect to the importance to respond to four specific questions: What activities should each level of government carry out? Who will decide on them and in what order of execution? Where will they be developed? What fiscal resources will be needed to address them?

It should be added that in Argentina the regional question has special characteristics. In our constitutional order, the structure of federal government integrates with three levels of government: federal, provincial and municipal. In addition, the city of Buenos Aires has been recognised as a formal subject in this structure with greater status than a municipality but not exactly identical to that of the provinces.

In Argentina, the region does not constitute a level of government. However, and in accordance with article 124 of the national constitution, the provinces, without intervention from federal government, by their own decision can "create regions for economic and social development and establish agencies for achieving their goals [...] with knowledge of the Congress of the Nation". Inclusively they can organise, from the authorities of the provinces that they integrate, boards of governors, or regional parliaments, with the region not being a formal subject within the constitutional structure of the federal state, but an institutional field of interjurisdictional relations and cooperation.

On this basis, and in the perspective of federal development, in Argentina the regional question is strategic so that one can aspire to a reasonable level of success in the implementation of it, particularly given the high degree of interaction and competition which leads, likewise, to the theme of decentralisation and integration of the actions of government.

Thirdly, it is a precondition in Argentina to achieve full federal development agreement between the federal government and the provinces on a system of distribution of federal tax revenue according to the principles set out in the national constitution in articles 4 and 75, subparagraphs 1, 2, 3.

This is what has been called the "revenue sharing regime" of national taxes being owned by the federal government and the provinces and the autonomous city of Buenos Aires. However the legal regulation of each national tax regime, as well as its collection and distribution are the responsibility of the federal government.

The constitutional design originally envisaged that the federal government could be sustained with the income from export duties and import taxes, or taxes from foreign trade and only exceptionally with internal taxes, but the international crises of 1890 and 1930 led to the national treasury advancing on these resources that corresponded to the provinces. To moderate the consequences of this they adopted a system of tax coordination, a so-called "partnership". Nonetheless, aside from the crisis of the provisional system in the 90's of the previous century and the necessity to finance their deficit with taxes, as well as the dues and contributions from workers and businesses, they produced what Professor Richard Bird called, upon visiting Argentina, the "labyrinth of co-participation". This is a complex maze of taxation laws and others that detracted from the resources of the co-participants, which should have been credited to the provinces to address the social security pension deficit.

Without resolving this question and leaving this "fiscal labyrinth", Argentina will continue to slide towards a system of condi-

tional transfer to the provinces – alien to our original fiscal federal system – and it will maintain a level of taxation pressure which compromises development even more.

The previous is directly linked with the questions posed in one of the cornerstones of congress, with relation to how one can equalise the regional inequalities between economically strong and weak provinces.

In regards to this it should be noted that in Argentina the two instruments of constitutional organisation of major economic, financial and fiscal policy for the allocation of public resources are the federal budget and the revenue sharing agreement law.

On the one hand if, as it has been said in our constitutional history, to govern is to populate but also to create jobs, we have the conviction to occupy all of the national territory with rooted families, with quality education and genuine employment, it is nothing more than fulfilling the constitutional mandate of article 14 (clause "social") and the new clause of human development of article 75, subparagraph 19 of the National Constitution which states: "to provide for human development, economic progress with social justice, the growth of the national economy, the generation of employment, the professional training of workers, the defence of the value of the currency, scientific and technological research and development, their dissemination and beneficial use."

To make this possible, from the reform of 1994 we have a precisely defined axis in the subsections 2, 8 and 19, second paragraph, of article 75, which links the two instruments cited above.

Subsection 2 refers to the so called "revenue sharing" and provides that "a contract law based on agreements between the nation and the provinces shall establish systems of joint participation for these taxes, guaranteeing the automatic remittance of funds."

In subparagraph 8, it is established: "To fix annually, according to the guidelines established in the third paragraph of subsection 2 of this article, the overall expenditure budget and resource

calculation of the national administration, based on the general programme of the government and the public investment plan and to approve or reject the investment account."

The third paragraph of subparagraph 2 of article 75, which connects the co-participation and the budget as the two most important instruments at our disposal for the allocation of public resources, it is therein mentioned that: "The distribution between the nation, the provinces and the city of Buenos Aires and between these shall be made in direct relation to the power, services and functions of each of account objective sharing criteria; be equitable and unified, giving priority to achieving and equivalent level of development, quality of life and equal opportunities throughout the national territory."

Finally, in the same clause on human development of article 75, subparagraph 19 completes the cornerstone of the constitutional programme for federal development: "Corresponds to Congress. [...] To provide harmonious growth of the nation and the settlement of its territory; to promote differentiated policies designed to balance the relative unequal development of provinces and regions."

This aspect of the architecture of the reform of 1994, linking the subparagraphs 2 and 8 of article 75 and incorporating the second paragraph of subparagraph 19 of the same article (without forgetting norms of relevance as the new articles 123, 124, 125 and 129), constitutes the appropriate framework for the recuperation and strengthening of federalism, that is, the federal government and governments of the province and autonomous city of Buenos Aires and then in particular the senate of the nation – as the constitutional scope for the fulfilment of the entire federal legislative framework agreement – taking the historic mandate expressed in the preamble, "to form the national union, guarantee justice and to consolidate internal peace" and from this perspective, to promote the federal development and the economic progress with social justice and territorial equity.

CONCLUSION: THE FEDERAL PROGRAMME OF THE CONSTITUTION

In the end, it remains only to reiterate our conviction that the effective and possible response for the recovery of federalism in Argentina in full in the twenty-first century – marked by globalisation, regional supranational integration, the emergence of new actors from outside of politics that affect it, such as economic corporations and non-governmental organisations, and particularly the impact of the technological era that has already begun – lies in the acceptance of that as a practical application of the principle of subsidiarity and the system of specific local freedoms.

We should add that it is also about understanding the roots as an absolutely strategic existential value in the political perspective of the century, when the population of established families is the first requirement for the territorial integrity of a nation.

The town strengthened as a "family of families" – one could seriously think about the recovery and strengthening of the provinces as "hinges" of federalism, of the interprovincial regions as an area of territorial balance and, ultimately, the federal state as a perfect expression of unity in diversity.

It is from this possible scenario that the federal state could face the double challenge of supranational regional integration and globalisation without affecting national identity, territorial integrity, political sovereignty, economic independence, social justice and democracy with full participation and genuine representation of all the peoples – in the plural – as expressed in the first preamble of the constitution of the confederation of Argentina.

||| PROF. PABLO MARÍA GARAT

Pro titular Professor of Constitutional Law and Tax Law
in the Faculty of Law of the Pontifical Catholic University Argentina;
member of the Institute of Constitutional Law of the
National Academy of Law and Social Sciences; member of the
executive committee of the Argentinian Association for Constitutional Law;
member of the Executive Committee of the Argentinian Association of
Comparative Law; member of the Executive Committee of the
Institute of Legislative Studies of the Argentinian Federation of
Bar Associations; President of the Civility Foundation.
Has been legal advisor in the Commission of Federal Tax Revenue of the
Senate of the Nation between 1996 and 2004 and
vice president of the Federal Commission of Taxes in 1997.

NOTES

[1] Constitution of the Province of Tierra del Fuego, Republic of Argentina, article 173, subparagraph 16. "The Province recognises the following powers of the municipalities and the communes: [...] 16- to exercise any other jurisdiction of municipal interest that the Constitution does not exhaustively exclude and while it has not been recognised expressly or implicitly as belonging to the Province, fundamentally abiding to the principle of subsidiarity of the Provincial Government with respect to the municipalities."

DECENTRALIZATION IN TUNISIA: CHALLENGES AND PROSPECTS

||| Néji Baccouche

INTRODUCTION

The Tunisian constitution of January 27th 2014 has opted for a decentralized Republic. The Article 14 imposes on the state an obligation to strengthen and implement decentralization throughout the territory as part of the unity of the state. One of the major contributions of the Constitution is to reserve an entire chapter to "local authority". Therefore, decentralization is no longer a simple administrative organization or a pure territorial management by the state. It is, in fact, the recognition of a real local power which is separated and different from the central government through a strong autonomy. This major change occurred after the revolution of 2011 that led to a constitutional and political break of the old regime. The separation of powers cannot only be seen horizontally in the classical way between the three traditional powers: legislative, executive and judicial, but also vertically between central and local authorities who, by definition, should govern themselves within the framework of a unitary state whereas until that time, communities were reduced to a simple relay of the central government. They were affected by its illegitimacy.

Once it becomes democratic, the central government no longer imposes, it proposes. It must seek to convince enormously and find acceptable solutions. It must have the ability to adapt its proposals and to deal with diversity. But will the central government be able to break with its inherited habits that exist since many years that

were shaped by despotism? It will have to deal with citizens and no longer with subjects as it was used to. Its agents must get used to renounce their privileges and admit that they have no longer the unique position to realize the public interest. Furthermore, they are asked to make concessions, sometimes painfully, especially when it comes to government funds, in other words financial issues. At the regional level, the elected president of the local community will have the priority, including in terms of protocol.

Nevertheless, the fast democratization brutally awakened social tensions that are only a reflection of the cumulating failures of ruling authorities, including the aftermath of the revolution. Furthermore, even the politics of social transfers monitored by the independent state led to the evolution of a broad middle class that guaranteed stability for half a century despite the notorious democratic deficit and severe repression of the opposition. At least, successive governments have not been able, until now, to design a consensual manner of a system socially acceptable for tax and allocations of public funds even if that requirement is much easier to profess than to achieve.

The financial crisis in Tunisia is certainly related to exogenous factors but it is also the product of a policy that became, at least, irrational for three decades. The economic, financial and administrative reforms to introduce transparency and rational management have been slow down to give the ruling forces the credit of confidence they need. The tax incivility is increasingly shared which does not surprise the public opinion. From the perspective of a large selection of the population, it is "legitimate". Among other things, the financial crisis results from the behavior of the taxpayer. This has an influence on the decentralization process that is constitutionally and politically necessary to obtain a society that is independent from cultural assistance, including both, individuals and communities. This culture is burdening the country.

More generally speaking, the process of decentralization already initiated by the constitution, has to face a lot of challenges concern-

ing the institutional, legal and financial systems, which are related to political, economic and social difficulties. The regional geopolitical environment and terrorism make the equation even more complex. Meanwhile, present local authorities are far from satisfying local citizens who, for their turn, are dissolved the duty to contribute and follow the law. Although the local organization dates back to the nineteenth century,[1] practiced decentralization since independence, established in 1956, is just pure fiction. Centralization was a political choice which addressed the need of rebuilding a united state which was able to fight against an ancient tribal system. In the Constitution of the June 1st 1959, decentralization was not a priority. The concept was not even used. On the contrary, the constitution of 2014 has been very generous in terms of decentralization.

However, as generous as it is, the constitutional text by itself is not enough. It needs to be translated into a consistent legislative system within the new constitution. The reform of the legal system alone is insufficient; it has to be reconsidered which is far from being assured concerning the issues and habits obtained by the officials with regard to the reform. More important than the revision of the legal framework, its implementation implies the deployment of human and financial resources that the country needs to mobilize with all necessary precautions to avoid possible excesses. Especially as in the collective imagination, responsibility of the central government will not disappear with the election of local governors.

CONSOLIDATION OF LEGAL FRAMEWORK

The State established a real project in order to reconsider the legal framework to govern future local communities. While the constitution of 1959 had declared, (in a unique and deliberately incomplete article[2]), municipal councils and regional councils as entities responsible for the management of local and regional affairs, the Constitution of 2014 contains, apart from its aforementioned Article 14, 12 Articles providing enough rules and principles relating to local power. This chapter introduces three local authorities

who are superimposed for each part of the territory: the town, the region and the district. Each of the three covers the entire national territory. The ambition is great and may seem excessive if one considers the financial resources and cultural heritage of the country that is not favorable to decentralization.

Having the results of decentralization during the last five decades in mind, the creators of the constitution of 2014 were aware of the abuses under which the local authorities suffered during the old regime, among others, caused by the laconic text of the 1959 constitution even if the generosity of that text cannot prevent alone centralism and its corollaries. The new constitutional device is used to place a series of principles and rules that dictate a mandatory revision of the current legislative framework which concerns the method of leading authorities as well as prerogatives and means of decentralized entities. The texts, governing decentralization, cannot remain immune to these profound changes concerning the dialectic issue between the two modes of organization and government of the territory.

The new principles and rules included in the supreme text:

- The principle of free administration of local authorities (Article 132)
- The principle of democratic election of local leaders (Article 133)
- The principle of participatory democracy and good governance (Articles 137 and 139)
- The principle of financial independence (Article 132)
- The principle of subsidiary and its progressive implementation by means of a scheduled transfer of skills and resources (Articles 135 and 136)
- The principle of granting own means and resources to local authorities in line with the powers assigned to them (Article 135)
- The principle of the transfer of resources to deal with any transfer of new powers (Article 135) and the principle of balance between revenue and expenditure (Article 136)

- Equalization rule to reduce inequalities between communities under the principle of solidarity (Article 136)
- Recognizing the benefit of decentralized authorities a regulatory power in the area of their jurisdiction (Article 134)
- The recognition of a right to court proceedings against the State for the benefit of local communities to assert their prerogatives and rights and to protect their lives and their territory (Article 142)
- The removal of guardianship and control a priori of the legality of their acts (Article 138)[3]

The town and the region will be led by councils elected by direct universal suffrage, free, secret, honest and transparent. With regard to the districts, they will be directed by elected councils who are members of municipal and regional councils. Especially mentioned is the need for the electoral law in order to guarantee, in addition to the equality between women and men, youth representation in local councils. A draft code supplementing the electoral law of May 26, 2014 was presented in January 2016 in front of the Parliament and should be examined as soon as possible[4] to enable the organization of local elections in 2016.

Nevertheless, the objective of organizing local elections before the end of 2016 seems to be compromised. Due to the delay of the parliamentary work that result from the Assembly's composition and the lack of a homogeneous majority which is able to adopt the text within a reasonable time without blocking the legislative renewal process imposed by the new constitution that concerns almost all of the legislation. Even though they remain unavoidable, compromises require negotiations that take time, sometimes unnecessarily long, but they are irreplaceable in a democracy.

Meanwhile, Tunisian authorities have established a much more important site in order to develop a code of local government whose objective is to unite almost all texts governing local authorities in one single code in the light of the new constitution.[5] This code will

have the advantage to facilitate the access to the legal system and thus break the fragmentation of texts that unfortunately characterizes the Tunisian legal system in most areas.[6] The legislature itself needs this codification in order to deal with possible revisions while maintaining the coherence of the legal system. Its adoption by the Parliament is a challenge considering the tensions within the institution. Even for texts that are much shorter than the code of local authorities, the Assembly debated for months.[7] We will see how the Parliament will proceed with such a heavy project, containing many sensitive issues.

The draft code to be presented to the Cabinet in the coming weeks put the constitutional principles in concrete terms while taking into consideration the reality of communities that lack of financial and human resources. Similarly, the inequalities between existing communities have to be considered with regard to the disparities in resources disposed by the decentralized entities. Therefore, one of the adopted principles is the progress in the implementation and consolidation of decentralization, even though it is not explicitly mentioned by the constitutional power; it becomes evident in the general constitution. The State will have the sensitive task of transferring both the prerogatives inherent in the management of local affairs, but above all sufficient financial and human resources capable of managing local affairs. However, the progress should not become a pretext to postpone the implementation of decentralization. That's why the code establishes a five-year plan of decentralization approved by the Parliament. The government will submit annual reports to the Parliament on the implementation of the decentralization program.

The Code provides an asset management plan, local public services and the local public policies setting methods in social and economic development. The community has to cope with the difficult task of adopting, with the assistance of the State and the competent public entities, its own local development plan and its own urban planning while respecting environmental requirements.

The social issue, including many factors (employment, childhood, women, and social classes without support), as well as culture will be priorities to be observed by the local authorities who must satisfy the local people. The participation of local citizens is, meanwhile, a real challenge because the tradition has turned them subjects that must obey.

The division of powers between the three categories of communities (municipalities, regions and districts) that will interfere in the same territory will be based on the principle of subsidiary required by the constitution. The generalization of municipalities on the entire territory will be subject to the extension of the scope of those located in the provincial capital of the delegations because these decentralized districts cover the entire territory. However, the description of the institutional framework is easier to have on mind than to realize.

THE RESTRICTIONS FOR THE IMPLEMENTATION

The constitution promised to be an auspicious project of decentralization. However, the provision of the decentralization process runs through the mobilization of institutional, human and financial resources. Following the local elections, institutions designed to guarantee the effectiveness of decentralization will be first of all established as the representative body of decentralized entities: the Board of Governors of local communities. The constitution established the representative structure of the councils of local government with headquarters outside the capital, called "The High Council of Local Communities".[8]

To introduce decentralization, the code of the project envisages, under Article 135 of the constitution, a revision of the financial system of the communities. This reform is the key to achieve effectiveness of decentralization but also the most difficult to approve because, by nature, the Ministry of Finance will not give up its prerogatives especially in times of crisis and local citizens resisting the payment of their taxes. The constitution did not grant the power

to levy and collect taxes to the communities but the project code provides them with the competence to set the amount of royalties, taxes and other amounts in exchange for benefits. The code determines the list of charges and taxes whose amounts would be fixed by the elected local councils. At the same time, the code has set up a High Authority of local finance chaired by a magistrate at the Court of Auditors and including MPs, including the opposition, as well as experts and officials of the departments concerned to ensure the fair distribution of funds mobilized for decentralization and equalization. The distribution must stick to the principle of solidarity and get away from partisan considerations. It will be based on objective criteria and ensure to reduce inequalities between different areas of the country.

The existence of marginality was found out long time ago.[9] The financial problem is chronic for local authorities in Tunisia despite the changes recorded since independence.[10] The financial position of local authorities is far from meeting the minimum requirements of the local people. It deteriorated after the revolution of 2011.[11] The state subsidizes about 25 % of resources by using the common funds of the communities, represented until 2010. The dependence of communities on the state has increased after the revolution because their own resources decreased to about 49 % in the course of 2011. The State has been obliged to subsidize municipal budgets by 51 % compared to the global competition. Within the year 2012 there was a slight improvement thanks to the adjustment of ceilings of certain tax deductions for the communities, which allowed the communities in 2014 to achieve 64 % of their total resources with great inequalities from one municipality to the other.[12]

The financial deficit characterizes a significant number of municipalities. In 16 municipalities, the volume of wages represent 138 % of own resources and to 34 other cities, the volume of wages exceeds 75 % of their own resources. For only 111 of the 264 municipalities, payroll is less than 50 % of their own resources while it is between 55 and 60 % for 104 municipalities. Since 2012, the

deficit has forced the state to establish a new section of exceptional assistance for cities that are not able to balance their spending, if the amount of public remunerations they provide exceeds their approved budget a lot. Local taxation has not allowed communities to take the resources to cover the main burden they must support.[13] Even today, its reform is difficult to realize with regard to the multiple restrictions to be noticed. The recovery of local claims is one of the difficulties that communities will have to overcome with.

Moreover, the local government debt was the subject of provisions in the code to impose a minimum of discipline and good management. These provisions prohibit borrowing funds to finance the operating budget and require its dedication only to investments. Equally, public salaries are limited in order to avoid the flooding of decentralized entities by officials. The local government code aims the consolidation of the current local government debt so that it can fit into the logic of financial autonomy which is the basis of decentralization.

The rational exploitation of public property is a source that will be given back to the community's significant resources. In this context, the fees for occupying public domain communities need to be fixed as well as a substantial revision of their rates. Their periodic updating is part of good management.[14] A considerable number of people occupies with impunity the municipal or state or area without paying royalties or without any authorization. Furthermore, the heritage of local communities can be enriched by the transfer to local authorities as part of the state area seeking for a better management. Empowering local authorities and transparency regarding the conditions for the granting of this occupation by the use of competition are likely to guarantee the operation of optimizing the domain for the benefit of local communities that are concerned.[15]

Based on the idea that local democracy cannot be established overnight, especially in an economic and geopolitical unfavorable context, the Parliament is expected by the code to adopt a five-year planning law (duration of a parliamentary mandate) of implemen-

tation and periodic evaluation of decentralization which must ultimately develop effective capacity to manage local affairs. The inability of the central government to meet the development needs of regions paradoxically creates an opportunity for local authorities to entrust the management of their matters through mechanisms that try to encourage both, the participation and responsibility of local citizens. The modalities of participation of citizens concerning the management of local affairs are organized by several provisions of the code. This is a bet that must be won to motivate people and encourage their cooperation.

The development of local capacities to govern requires the mobilization of capable technical and administrative staff in almost all decentralized communities by the use of good management which is necessary to ensure the control of local matters while mastering the staff's remuneration. The flexibility of this scheme will allow to employ new personnel and to avoid the overcharging of local budgets. The state must encourage the mobility between headquarters and communities through flexible financial offers depending on the distance from the capital. For executives, the texts may provide a bonus of decentralization to encourage them to serve local communities. The state may, according to the code of communities, affect in the past a team of staff and encourage the establishment of a sort of "central services" to assist and support the decentralization program. This institution will be in charge of the training of personnel and communities as well as the conception of the organization management with the assistance of international cooperation. The National School of Administration shall, in agreement with academic institutions in the regions, relocate part of its business and create 3 or 4 regional offices to provide training and staff development programs that will help the regions. In this regard, the support of international cooperation could be valuable.

To sum up and make the point, decentralization is a challenge for Tunisia especially as the political dividends of decentralization are not made immediately.[16] Local authorities cannot win the trust

of the citizens if they become tools for development which the local population can identify with. However, immediate equation is complex: how to cope with the impatience of the people, particularly in disadvantaged regions, whereas decentralization is a process that, for its implementation, requires patience, conviction and considerable resources. There is a high risk of abuse and slippage, including corruption and embezzlement of funds. However, administrative and financial courts that must ensure control which replaces guardianship, already abandoned, do not exist in the regions. The authorities do not seem in a hurry to install these jurisdictions at least in five "large areas" of the country and without which, decentralization will remain restricted in the texts. Presumably, the transition to decentralization will be longer and more complicated to realize that the so-called democratic transition at the national level and that the country has just completed successfully.[17]

For its concretization, decentralization needs a political will and the conviction of the leaders. The moment of truth has arrived and the next months will show us if the leaders will treat this issue seriously.

||| **PROF. DR. NÉJI BACCOUCHE**

Professor at the Faculty of Law, University of Sfax, Tunisia. He is founder of the Faculty of Law at the University of Sfax and was its dean from 1988 to 1993. Néji Baccouche is co-author of two recent legislative initiatives in Tunisia, of which one is on local authorities and the other on the progress of the municipal and regional elections.

NOTES

1 The Municipality of Tunis was created in 1858. The first text governing the municipalities of the Regency, enacted by the decree of 1 April 1885, had applied the principle of the appointment of members of the city council by the decree (Article 3) even though it was inspired by the French law of 1884. The second text governing the communities, undertaken by the pro-

tectorate (Decree of January 14th 1914), confirmed, in its second Article, the principle of the appointment of municipal councils whose creation was reliant on the importance of the European population and whose effective management was entrusted to a person of French nationality, the vice president who benefited from a delegation. Considering their authorities and privileges, municipalities seemed to be more like decentralized structures (as well as other regional and local structures) than the decentralized structures.

2 During the discussion of the draft of the constitution of 1959, the former government has opposed the inclusion of the principle of election of members of the local council in the constitutional framework.

3 Local authorities are currently the subject of strict rules controlled by the central government and its representatives in the districts. Even though it is necessary for respecting the law and the unity of the state, the supervision exercised over the communities is stifling. Municipalities are subject to dual supervision: administrative supervision exercised by the minister of interior and its agents and financial supervision exercised by both the Finance Minister and the services of prior control of public spending depending on the first ministry. The control over the communities can take several forms. Therefore, council meetings are controlled by the presence of the governor or his representative who can even arrange or demand meetings in camera (p. 33); the control over the consultation of the board by the process of filing proceedings, by the express approval of the proceedings listed in Article 25 (although since 2006 the silence of the Governor during 2 weeks needs an implicit approval) or by authorization (p. 25 of the organic law of the Community budget); the approval of the municipal budget by the Governor except for the municipalities whose budget exceeds a certain threshold or those that have a deficit and increase the number of ministers of interior and finance. This approval also covers financial accounts of the municipality and the budget of Regulation (p. 33 and 34 of the LOBLC); control over court actions against municipalities (Article 133); controls over orders made by the President of the municipal council; control over municipal staff through the visa of the minister of interior for any recruitment, transfer (Article 97 ff.) and the Governor's staff management (Article 101).

4 Since the Constitution 2014 explicitly includes the elections of municipal councils and regional councils, one of the most urgent tasks of the Parliament is to pass the electoral law of 2014. The challenges are especially significant for the political parties. The concern to ensure the stability and

effectiveness should lead the Parliament to adopt a voting system that, while ensuring parity and "representativeness of youth" (Articles 46 and 133 of the Constitution), promote the emergence for majorities that are capable of governing. Small political parties, whose number is abnormally high (approximately 150) will then be encouraged to come together to build representative political formations in order to convince a wide range of voters. Considering the progress made by Tunisia regarding the elections since the Revolution of 2011, the election of local governments at the earliest moment is the only way to ensure a legitimacy that would be likely to reduce tensions and restore gradually the authority of public power.

[5] The main law, known as the organic law of the communities, was the subject of four fairly substantial changes successively in 1985, 1991, 1995 and 2006. The one of 2006 is the most important, at least legally. It renewed the text, including the numbering of its articles. Similarly, the legal framework for local taxation was the subject of a reform in 1997 in the course of the promulgation of the code of local taxation. But it remains true that local government plays only a marginal role in financial and tax matters. The lack of skilled personnel (including managers) in most of the communities has often served as the *Leitmotiv* to keep all the privileges at the central level. Equally, the Organic Law of the regional councils of February 1st 1989 and several other laws on local government finances will be affected by the revision.

[6] Codification meets the principle of accessibility of the law, described by the French Constitutional Council as an objective of constitutional value: Decision of July 27th 2006.

[7] The Parliament has devoted several months to adopt the law in the fight against terrorism. The legislation governing the Supreme Council of Magistracy, submitted by the government on the 8th of March 2015, was resumed twice by the constitutional court, while constitutionally; this law should have been passed in May 2016. We are still waiting for this law.

[8] It was not possible for the legislative assembly to determine the seat of the Association Council with regard to the competition between the regions that claim this privilege and who consider themselves to be the cradle of the revolution. It will not be easy for the Parliament which is dealing with this project code to resolve this issue.

According to Article 141 of the Constitution, the High Council of local authorities examines issues relating to the development and regional balance. It gives its opinion on draft laws relating to planning, budget and local finances. The law will have to ensure the representativeness of com-

munities through an elective procedure for appointing members of the three categories of communities and across the country. The institution will not be born without any difficulties.

[9] Belaid, Najib: Local Government and recent changes in local finances. Tunis: CREA, 1999.

[10] In 1975, the legislature sought to act on local taxes to provide communities with minimal resources since local taxes, established under the French protectorate by the Decree of September 16th 1902, had become too insufficient to meet expenses that increased more and more as a result of the rapid urbanization. The reform of 1975 led to the bursting of the rental tax in three samples: the rental tax on buildings for housing and administration, the tax on institutions with an industrial, commercial and professional character, and the hotel tax. The reform of 1975 has certainly improved the local government revenues, but growth of financial needs of these entities imposed a new reform of local taxation embodied in the code of the local tax of the February 3rd 1997. This has renewed some old samples and replaced them with new taxes. However, this reform, developed without any real consultation of local taxpayers did not improve substantially the resources of local communities. Certainly, if we consider the year 1996, which preceded the reform, as a reference, we will see that there has been an improvement of the own resources rate in the Community budget from 68 % in 1996 to a average that, since 2006, is around 75 % until 2010. However, on one hand there has been a decrease of the rate during the period 2006-2010. On the other hand a fall since 2011 that won't be easy to overcome with for economic and political reasons.

[11] Compared to "governorates", municipalities seem to be in a better position. However, it has to be noted that the part of own resources, from 2006 until 2010, represented about 75 % of resources.

[12] Information provided by the General Direction of Local Authorities as part of the Ministry of Interior.

[13] Municipal affairs are not used properly; they are even underused or wasted. Neither the economic, nor the political system has encouraged a tax reform which is significant enough to strengthen community resources.

[14] The anti-corruption commission created after the revolution noted the modest sums and the low rate of the rise of the fees concerning the occupation of domain for several reasons. One of the most important is the lack of a local authority that is jealous of local interest and responsible for the local people.

[15] Providing the public and supervisory authorities with information relating to operating conditions is necessary to prevent corrupt practices and embezzlement that unsettled the country and discredited public authorities.

[16] The development of seats out of 24 regions is obligatory to separate the region and the governorate and to avoid confusion inherited from the history of both entities. This development constitutes a heavy financial burden for the state whose financial situation is already difficult.

[17] Being honest to the public opinion, even if the operation might be politically counterproductive for now, it is the first step of the long road of decentralization. In this context, the exemplary nature of the local leaders will be decisive in order to regain the increasingly demanded confidence of citizens.

Editor of Publication Series:

Dr. Susanne Luther

Editors:

Hanns Bühler
Head of Division South- / Southeast Asia at the Institute for International Cooperation of Hanns Seidel Foundation. He holds a Master's degree in International Management and Asian Studies from the University of Applied Sciences Konstanz, as well as a Master's degree in European Law from Eberhard Karls University Tübingen.

Dr. Susanne Luther
Director of the Institute for International Cooperation at the Hanns Seidel Foundation since 2013. Prior to her current post, Dr. Luther has been Head of the Office for Foreign Relations at the foundation. She holds a PhD degree in Political Sciences and has worked as Senior Research Analyst.

Volker Lennart Plän
Resident Representative of Hanns Seidel Foundation in India. From 2013 to 2016, he served as Project Coordinator for South Asia at the Institute for International Cooperation of Hanns Seidel Foundation. He holds a Master's degree in International Development Studies with focus on micro-economic research.