11

Exploring post-conflict governance options for South Sudan's 'permanent' constitution-making process

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Abstract

South Sudan stands at a crossroads as it embarks on its 'permanent' constitution-making journey, a process outlined in the 2018 Revitalized Agreement on the Resolution of the Conflict in South Sudan crystallised in the Constitution-Making Process Act, 2022. This chapter delves into governance options that align with the aspirations of the people of South Sudan and which might be the centre of contestation among political elites and the citizenry as they address the root causes of conflict. The chapter examines the historical quest for federation, the definition and scope of federalism, the nature of federal structures and institutions, and finance in federated governance.

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The chapter asks the question: What governance models are being considered during the constitution-making process in South Sudan? What are the implications of these models? How should post-conflict constitution-making deal with such complex questions? The chapter adopts a doctrinal method in analysing these questions, and makes critical observations that are meant to inform policy decisions in South Sudan. It considers the federal system of government as a catalyst for lasting peace, unity, and stability in a post-conflict South Sudan.

Key words: *federalism; conflict resolution; peace-building; unity in diversity; permanent constitution-making; decentralisation; system of governance*

1   Introduction

After more than five decades of protracted conflict against successive governments in Khartoum, Southern Sudan gained its independence on 9 July 2011. Independence was widely celebrated across the region and beyond. As the United Nations Secretary-General remarked at the time, 'The birth of this new nation marks the culmination of a long struggle – a struggle that saw terrible violence, a struggle that destroyed so many lives for so many years.'[1] However, he warned against failing to harness South Sudan's rich diversity as a source of strength. Stressing the fragility of the moment, he reminded leaders of both Sudans '[to] remember that key aspects of the peace process have not been completed', and concluded with an assurance of international support, saying that 'the presence of so many world leaders in itself confirms the engagement and goodwill of the international community'.[2]

Yet even before the referendum, concerns about the potential for instability in South Sudan were evident. President Omar al-Bashir of Sudan, speaking to *Al Jazeera* days before the vote, stated: 'The stability of the south is very important to us because any instability in the south will have an impact on the north. If there is a war in your neighbor's house, you will not be at peace.'[3] This cautionary statement hinted at

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1   See https://www.un.org.
2   United Nation (n 1).
3   *Al Jazeera* 'Bashir doubts south's viability' 8 January 2011 https://www.aljazeera.com/news/2011/1/8/bashir-doubts-souths-viability (accessed 8 July 2025).

Khartoum's reluctance to fully accept the referendum's results, especially with valuable oil fields located along the border at stake.

Indeed, just months after independence, some of these fears began to materialise. Fighting broke out in several contested border towns, including Abyei, Heglig, Kafia Kingi, and the 14-Mile area. The African Union High-Level Panel, led by former South African President Thabo Mbeki, mediated a peace deal in Addis Ababa. As part of the agreement, South Sudan was required to pay a lump sum of approximately $3 billion as a Transitional Financial Arrangement, in addition to fees for oil processing, transportation, and transit through Sudan. This payment mirrored the earlier agreement brokered in Naivasha, Kenya, in 2005, where South Sudan agreed to share its oil revenue equally with Sudan to secure peace. Despite these measures, South Sudan faced an even more devastating crisis when internal conflict erupted on 15 December 2013. President Bashir's earlier prediction of instability proved prescient. According to Wol, the war was fuelled by several factors, among them power struggles within the Sudan People's Liberation Movement (SPLM) party and perceived political exclusion.[4]

The Intergovernmental Authority on Development (IGAD) mediated the conflict and brokered a peace agreement in 2015. However, President Salva Kiir initially refused to sign the agreement in Addis Ababa, agreeing to do so only later in Juba under conditions. This led to a fragile treaty that soon collapsed, with renewed violence erupting at the Presidential Palace. Subsequently, Riek Machar fled to the bush. In a dramatic turn of events, the Sudanese government intervened, dispatching a plane to extract Machar from the forests of the Democratic Republic of Congo. He was taken to Pretoria, South Africa, with the consent of the South Sudanese government, ostensibly for humanitarian purposes and to facilitate constructive dialogue.

Following two years of negotiations and shuttle diplomacy between Addis Ababa, Pretoria, Khartoum, and Juba, IGAD mediated a new peace agreement, the Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS). Signed in Khartoum in 2018, the Agreement offered renewed hope for the country. Crucially, the R-ARCSS included provisions for federalism to be adopted as the system

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4   DMD Wol *Politics of ethnic discrimination in Sudan* (2022) 152-159.

of governance during the permanent constitution-making process, as detailed below.

2   Governance options in the constitution-making process

The debate on the system of governance in South Sudan was addressed by the 2018 R-ARCSS, which has clear provisions for adopting a federal system. The Preamble explicitly recognises that federalism is a popular demand of the people and emphasises the need for the Revitalized Transitional Government of National Unity to reflect this demand by devolving greater powers and resources to lower levels of government. Article 1(4)(11) commits the parties to the principle of federalism, while article 4(1)(5) and 4(1)(6) addresses the fiscal dimensions of federalism by outlining the devolution of powers and resources which is required in order to enable lower levels of government to perform their functions. These provisions effectively conclude the long-standing debate on the system and nature of governance in South Sudan. The R-ARCSS mandates the initiation of a federal and democratic system of government through various institutions as part of the permanent constitution-making process.[5] To ensure the future implementation of federalism, the Agreement establishes its supremacy over the Transitional Constitution of South Sudan, 2011 (as amended).[6] Collectively, these provisions in the R-ARCSS firmly make federalism the country's system of governance.

    The inclusion of federalism in the R-ARCSS was not incidental but a response to sustained advocacy by South Sudanese delegations during the peace negotiations held in Addis Ababa between 2014 and 2018. As noted earlier, federalism emerged as a popular demand of the people, one explicitly recognised in the Agreement's provisions. During the peace talks, delegations from across South Sudan – particularly governors, civil society groups, and faith-based organisations from the Equatoria region – frequently visited Addis Ababa to emphasise the necessity of including federalism in the peace agreement as a cornerstone for future governance and a parameter for the permanent constitution-making process.[7]

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5   R-ARCSS, art 6(2)(2).
6   R-ARCSS, art 8(2).
7   Wol (n 4) 158.

This advocacy was not new. Before the conflict of 2013 and even prior to independence, the Equatoria states convened three conferences emphasising the importance of federalism in South Sudan's governance structure. At the Greater Equatoria region conference, a resolution was passed demanding the implementation of a federal system, a move widely supported by youth leaders, who praised their governors for representing the interests of their citizens.[8] In contrast, Bahr el Ghazal held a conference dominated by government officials, but its agenda did not explicitly endorse federalism and reportedly remained unclear.[9]

The Upper Nile region did not organise a similar conference due to insecurity, given that it remains a hotspot for militia activity destabilising the country. The region is also politically significant, as four of the five most prominent political figures expected to challenge President Salva Kiir in 2015 – Riek Machar Teny, P'agan Amum Okiech, Rebecca Nyandeng de Mabior, and an unnamed fourth candidate, according to a Sudd Institute report – hail from this region.[10]

The outcomes of these conferences and the persistent advocacy for federalism strongly influenced the latter's inclusion in the peace agreement. The conferences underscored the broad-based support for federalism as a system of governance in South Sudan, particularly as a framework for the post-election permanent constitution-making process. This momentum made federalism a central element of the R-ARCSS and highlighted its significance as a pathway to stability and inclusivity in the Republic of South Sudan.

Unfortunately, the momentum for federalism and constitutional reforms was disrupted by the outbreak of conflict in 2013, which derailed the process and delayed critical milestones. The implementation of the R-ARCSS, initially designed to span three years during the transitional period, has also faced significant delays. Key provisions, including in regard to the permanent constitution-making process, have remained unfulfilled, leading to repeated extensions under the pretext of insufficient progress.

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8   Sudan Tribune 12 May 2013.
9   Sudan Tribune (n 8).
10   LA Deng 'Regional conferences in South Sudan are imperative' Sudd Institute Weekly Review, 25 June 2013, https://suddinstitute.org/publications/show/regional-conferences-in-south-sudan-are-imperative (accessed 1 July 2025).

However, there is renewed hope that the 24-month extension in effect at the time of writing will provide an opportunity for stakeholders to prioritise the permanent constitution-making process and pave the way for credible general elections by December 2026. This extension offers a critical window for addressing lingering challenges and ensuring that federalism, as enshrined in the R-ARCSS, becomes a reality in South Sudan.

3   South Sudan's quest for federalism: A historical perspective

The origins of South Sudan's resistance to external domination and its quest for identity and autonomy can be traced to Turko-Egyptian rule in 1820. During this period, colonial expansion into regions such as the Great Lakes, Bahr el Ghazal, and Darfur was driven by factors such as resource exploitation and the transatlantic slave trade.[11] The atrocities of the slave trade drew attention around the world, with anti-slavery organisations in Europe vehemently condemning it.[12] While agreeing that an aim of the invasion was to exploit the resources of men and natural goods, PM Holt claimed that Muhammad Ali's primary motive in invading Sudan was political.[13]

Nationalism began to take root as Southern communities resisted British-Egyptian Condominium rule (1899–1956). Spiritual leaders, chiefs, and notables such as Ngundeng Bong of the Lou Nuer, Awuou Kon and Dhieu Allam of the Atuot, Mayen Mathiang of the Agar, Bol Yel (Ariath Makuei) of Aweil, and Gbudwe Bazingbi of Yambio, led resistance movements against colonial oppression at various stages.[14]

In the early 20th century, concerns about the growing collaboration between Egyptian and Sudanese elites prompted the British government to re-examine its policies in Sudan. The Milner Commission in 1920 recommended dividing Sudan into two distinct entities – North and South – with Southern provinces operating independently and linked more closely to East African territories such as Kenya and Uganda.[15]

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11   GR Warburg 'Some social and economic aspects of Turco-Egyptian rule in the Sudan' (1989).
12   Warburg (n 11).
13   PM Holt *A modern history of the Sudan: From the Funj sultanate to the present day* (1971) 35.
14   A Alier *Too many agreements dishonoured* (1990).
15   RO Collins *Shadow in the grass* (1983).

This policy was formalised in the 1922 Closed District Ordinance, which restricted Northerners from accessing Southern provinces and discouraged the use and practice of Arabic language and culture in the South.[16]

The British policy of separate development, known as the 'Southern Policy', aimed to protect Southern autonomy but inadvertently delayed the emergence of political movements in the South. By the 1940s, Northern political resistance, led by the Graduates Congress, opposed the policy, calling for the removal of restrictions on Northern traders, the unification of the educational system, and the cancellation of financial aid to missionary schools.[17]

The 1947 Juba Conference marked a critical moment in South-North relations, as Southern leaders were invited to discuss the future constitutional relationship between the two regions.[18] Despite highlighting disparities in education, culture, and development, Southern representatives were persuaded by their more educated Northern counterparts to agree to the formation of a unified legislative assembly. This decision expanded the Advisory Council, previously limited to the North, to include Southern representatives.

Another turning-point came with the 'Sudanisation' of the administration in 1953, when Northern political parties excluded Southerners from key positions during the transition from British rule.[19] Southern leaders condemned this exclusion, advocating for federalism as a means to ensure regional autonomy. This push culminated in the Liberal Party's formation, which campaigned for federal arrangements in Sudan's governance. Despite initial successes, such as persuading Parliament to consider federalism during the declaration of independence, the party was dissolved in 1958 under General Abboud's military regime.

By 1955, the marginalisation of the South triggered the Torit mutiny, which marked the beginning of the first civil war between 1955 and 1972. This conflict, followed by a second civil war between 1983 and 2005, claimed more than 2.5 million lives. The Addis Ababa Peace Accord in 1972 provided a brief decade of tranquility but ultimately

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16   M Arop *The genesis of political consciousness in South Sudan* (2012) 11.
17   Arop (n 16) 45-46.
18   Arop (n 16).
19   Holt (n 13) 149-150.

failed to resolve the underlying issues. After decades of bloodshed, the Government of Sudan finally recognised the South's right to self-determination, culminating in the 2011 referendum that led to South Sudan's independence.

Despite gaining independence on 9 July 2011, South Sudan's hopes for peace and prosperity were soon dashed by internal power struggles. The new nation descended into civil war, sidelining the governance frameworks envisioned during the referendum process. As South Sudan grapples with post-conflict recovery, it is imperative to assess the governance models that suit its unique cultural, historical, and socio-economic contexts. Factors such as ethnic diversity, geographical vastness, resource availability, and political history must guide the selection of governance structures that can uphold democratic principles, federalism, and institutional accountability.

The ultimate goal is to build institutions capable of delivering political stability, economic development, security, and peace. Unfortunately, these aspirations have been undermined by internal rivalries and what Hilde Johnson aptly describes as the 'liberator's curse' – a phenomenon where freedom fighters fail to transition into effective state-builders.[20] The people of South Sudan continue to hope for governance systems that honour their sacrifices and provide a dignified life after decades of struggle.

4   Democratic governance in a federal arrangement

In the context of South Sudan, governance systems such as monarchy or sultanate are not relevant. As such, this discussion focuses on a comparison between presidential and parliamentary systems of government.

4.1   Presidential and parliamentary systems: Definitions and features

A parliamentary system, also known as a prime ministerial system, is one where the head of government, the prime minister, is chosen by the majority party or coalition in parliament. A well-known example of this

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20   HF Johnson *South Sudan: The untold story from independence to civil war* (2016) 17-35.

system is Great Britain. Conversely, a presidential system is a form of government where the president serves as both the head of state and head of government. The president is elected directly by the people, as seen in the United States. Some countries adopt a hybrid system that combines features of both presidential and parliamentary systems, dividing powers between the two institutions. This arrangement aims to enhance checks and balances within the executive branch.

In some cases, the president's role is ceremonial, with real power vested in the prime minister. For example, in Israel, the President is elected by Parliament or a special committee and exercises symbolic powers, while the Prime Minister wields executive authority. In a parliamentary system, the prime minister typically appoints ministers from members of parliament. This contrasts with a presidential system, where the president can appoint capable individuals to cabinet positions, regardless of their parliamentary affiliation. Moreover, a prime minister often requires strong party and parliamentary support to pass policies, whereas a president in a presidential system can often function independently of parliamentary support.

Parliamentary systems are prone to situations in which one party controls both the executive and legislature if it secures a parliamentary majority; otherwise, coalition governments are formed. In a presidential system, however, different parties may control the executive and legislature, potentially leading to political tensions and minimal cooperation on national policies.

4.2 Comparative analysis of governance systems in Ethiopia, Kenya and Sudan

Examining governance systems in Ethiopia and Kenya affords insight into the practical implications of parliamentary and presidential models, particularly in terms of addressing ethnic and political challenges.

4.2.1 *Ethiopian parliamentary system*

Ethiopia operates under a parliamentary system where the Prime Minister assumes office through parliamentary majority, while the President is elected by two houses – the House of Federation (Upper House) and

the House of Peoples' Representatives (Lower House).[21] The presidential
role in Ethiopia is largely symbolic, with limited ceremonial powers and
a six-year term. Currently, Taye Atske Selassie serves as President, having
assumed office on 7 October 2024. The Prime Minister, Abiy Ahmed Ali,
has held office since April 2018 following widespread protests that led
to the resignation of his predecessor. Abiy's party, the Prosperity Party,
succeeded the Ethiopian People's Revolutionary Democratic Front
and won a decisive majority in the 2021 elections. This parliamentary
dominance gives Abiy substantial control of both the executive and
legislature.

While Ethiopia's parliamentary system provides a framework for
governance, it has faced significant challenges in managing ethnic
diversity. The centralisation of power within the ruling party and the
prevalence of ethnic federalism have contributed to tensions, threatening
national unity and stability.

4.2.2   *Kenyan presidential system*

Kenya operates within a presidential representative system where the
president serves as both head of state and head of government. However,
political tensions following the 2007 elections, marred by allegations
of electoral fraud, prompted constitutional amendments to introduce
a temporary dual system. This hybrid model emerged as a conflict-
resolution mechanism during ethnic clashes between the Luo and
Kikuyu communities.

The international community, led by a team chaired by former United
Nations Secretary-General Kofi Annan, facilitated constitutional
amendments to create the position of Prime Minister with limited
executive powers. This arrangement was meant to share power between
the two main political factions and prevent further bloodshed. Despite
these changes, power imbalances persisted. For example, while the Prime
Minister, Raila Odinga, sought the dismissal of an Orange Democratic
Movement minister, the President, Mwai Kibaki, overruled the request,
underscoring the dominance of presidential authority. In the subsequent
constitution-making process, Kenyans opted to return to the presidential
system, which many analysts viewed as a more stable governance model

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21   Constitution of the Federal Democratic Republic of Ethiopia, 1995, art 53.

for the country. The debate was put to a referendum on 4 August 2010 as part of a deal to end the conflict, one in which more than a thousand people had died.[22]

From this comparative analysis of Ethiopia's parliamentary system and Kenya's presidential system, it is evident that each model has strengths and weaknesses influenced by specific historical, cultural, and political contexts. South Sudan must conduct thorough research and consultation to determine the most suitable governance model, considering its unique challenges and aspirations. While this chapter advocates a presidential system, such a decision should be informed by comprehensive study and robust national dialogue to ensure that the chosen system promotes stability, inclusivity, and effective governance.

4.2.3   Sudan's pending 'permanent' constitution

Since its independence in 1956, Sudan has struggled to establish a permanent and inclusive constitution. Notable attempts include the 1973 constitution under President Nimiri, which operated under a one-party system led by the Sudan Socialist Union. Another attempt in 1998 by the National Congress Party sought to draft a permanent constitution but was interrupted by the Comprehensive Peace Agreement (CPA) in 2005.

The CPA introduced the Interim Constitution, which provided a framework for shared governance between North and South Sudan. However, this constitution was amended after South Sudan's secession in 2011, delegating limited powers to states. The December Revolution of 2019 briefly raised hopes for constitutional reform, but these efforts were interrupted by the conflict between the Sudan Armed Forces and the Rapid Support Forces in April 2023.

South Sudan's choice of a political system must reflect its unique context, balancing the pursuit of democratic governance with the realities of maintaining security and social cohesion. Lessons from Ethiopia, Kenya and the Sudan highlight the importance of consistency in governance models and the need to incorporate complementary policies. A carefully designed federal system can provide a pathway for South Sudan to achieve stability, inclusivity, and prosperity.

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22   BBC 5 August 2010.

5   Political systems under federalism

This section examines the types of political systems that South Sudan might adopt. The challenge of nation-building, particularly for emerging countries aspiring to achieve a high standard of living, is linked to the choice of political systems. While some systems appear desirable, their implementation can be hindered by practical and contextual challenges. The liberal democratic system, widely regarded as the most effective governance model for fostering prosperity, faces significant obstacles in deeply divided societies. Emerging nations must balance their desire for progress with the need to build cohesive societies that can withstand the challenges posed by liberal democracy. Historical examples, such as the collapse of the Soviet Union and the ethnic unrest in Kenya during its democratic transition in 2007, underscore the complexities of implementing democratic systems in fragile contexts.

5.1   Ideological foundations and political systems

The choice of political system is influenced by the prevailing ideology of a nation. Systems based on capitalist ideologies tend to align with liberal democracy, which emphasises free markets, individual rights, and political freedoms. In contrast, socialist or communist ideologies often adopt guided or restricted democracy, paired with state-controlled economic models.

The collapse of many political systems during the Cold War can be attributed to the inconsistent application of governance models and the absence of complementary policies. For example, Western-style liberal democracy thrives on a combination of democratic governance, capitalist economics, and preservation of human rights. On the other hand, restricted democracy, combined with socialist economics and limited human rights, characterised the governance models of the former Eastern bloc.

Nevertheless, these ideological divides are not absolute. Countries like China demonstrate that it is possible to implement a state-guided economy within a rigid political framework while achieving economic success in what Pempel (1999) calls 'the Developmental State', as

opposed to 'the Regulatory State'.[23] Similarly, some African countries, such as Ghana, have successfully adopted Western-style democracy, transitioning to a representative democratic republic with a presidential system. This shift, following the enactment of the 1992 Constitution, has made Ghana a model of good governance and economic progress in Africa.

5.2   Challenges of governance and democracy

While some governance models foster stability and economic growth, they are criticised for poor records in areas such as human rights, gender equality, religious tolerance and failure to perform constitutional duties.[24] For instance, Gulf Arab states, despite lacking democratic transformation and gender equality, are often regarded as moderate due to their strategic alignment with Western interests. Fatima Al Jaber, one of the most influential women of the 2008 Awards, insisted that 'the challenge is to balance the need for better governance with both established best practices worldwide and the realities of the region'.[25] Critics argue that such classifications are influenced by economic and geopolitical considerations rather than objective governance standards.

A unique model, namely the republican kingdom system, has emerged in some states, allowing leaders' children to inherit power. Examples include Syria, the Democratic Republic of Congo, and Gabon, where leadership transitions from father to son, often ending in rebellion or coups.

The debate over whether democracy and welfare societies are prerequisites for good governance remains unresolved. While the primary function of any government is to maintain security and order, leaders often use this responsibility as a justification to curtail human rights and suppress dissent. Balancing security needs with democratic principles is essential to ensure that such measures are not used as pretexts

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23   TJ Pempel 'The developmental regime in a changing world economy' in M Woo-Cumings (ed) *The developmental state* (1999) 137-138.
24   ZA Awan 'Democracy in West and East are different versions' Modern Diplomacy, 13 February 2024, https://moderndiplomacy.eu/2024/02/13/democracy-in-west-and-east-are-different-versions/ (accessed 1 July 2025).
25   INSEAD 'Governance in the Gulf: In search of best practice and a common view' (2010).

for authoritarianism. Similarly, opposition groups must avoid exploiting democratic freedoms to undermine national stability.

6   Federal political economy

This section examines the economic systems that could be implemented in South Sudan under a federal arrangement. While an economic system complements a country's political system, it is important to emphasise the interplay between these systems and their influence on national development and prosperity. As discussed earlier, a country's political ideology inherently shapes the corresponding economic model that it adopts. For South Sudan, aligning its economic system with its federal governance structure is crucial for stability, growth, and sustainability.

6.1   Diversification beyond oil dependency

Over-reliance on oil revenue poses significant risks to economic stability, as evidenced by resource-dependent economies globally. South Sudan must prioritise diversifying its economy by leveraging oil revenue as a catalyst to develop agro-industrial opportunities.[26] As an agriculturally endowed nation, South Sudan can focus on modernising agriculture and establishing value chains for export-oriented industries.

6.2   Maximising geographical advantage

South Sudan's central location in Africa and its wetlands, the largest in the world, are significant assets. Its position can facilitate foreign trade as well as attract air transport investment and carbon trade, enabling the country to become a continental hub. Creating a favourable business environment with robust infrastructure and trade policies would unlock South Sudan's potential as a key player in regional and international commerce.

6.3   Harnessing human capital

South Sudan possesses a wealth of human resources, both within the country and in the diaspora. Attracting skilled professionals back to the

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26   JG de Mabior's speech of 16 May 2005 in Kenya, Nairobi.

country will require the implementation of progressive labour policies and incentives that encourage their return and participation in nation-building. These policies should focus on job creation, fair compensation, and fostering an environment conducive to innovation and productivity.

6.4   Investing in social services

Investment in education and healthcare is essential for preparing the next generation to drive South Sudan's development. Building a strong foundation in social services will ensure a skilled, healthy, and resilient population which is capable of sustaining long-term economic growth and stability.

6.5   Sustainable use of natural resources

South Sudan's abundant natural resources – including water, forests, wildlife, and livestock – are the true backbone of its economy. These resources must be managed responsibly and strategically by the relevant ministries to ensure their sustainable utilisation and contribution to economic growth. The governance framework and economic and political systems adopted by South Sudan will determine its stability, prosperity, and global recognition. By diversifying its economy, capitalising on its geographical position, leveraging human resources, investing in social services, and sustainably managing natural resources, South Sudan can build a resilient and thriving federal political economy.

7   Federalism: Definition and scope

The term 'federal' originates from the Latin word *foedus*, meaning covenant, pact, or treaty. Federalism, as defined by the US Center for the Study of Federalism, is both a form of government and a guiding principle. It is described as 'a voluntary form of government and mode of governance that establishes unity while preserving diversity by constitutionally uniting separate political communities'.[27] Malla argues that 'legally, a federal constitution is one in which the legislative and administrative authority of the national and state governments is both

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27   Center for the Study of Federalism 'What is federalism?', https://federalism.org/explore-federalism/what-is-federalism/ (accessed 1 July 2025).

subordinate to the constitution, and coordinate to one another'.[28] In the context of South Sudan, the country's history of political marginalisation, resistance against domination, and persistent demand for federalism make federalism a fitting system of governance for the nation.

The R-ARCSS explicitly incorporates federalism, dedicating it as a framework for the permanent constitution-making process. It leaves the task of defining the specific federal model most suitable for South Sudan to be addressed through this process.

Many scholars view decentralisation as a component of federal governance. Laxmikanth defines decentralisation as 'the dispersal of authority among lower levels of the administrative system',[29] such that decision-making is democratised and shaped by people's participation. However, he cautions that decentralisation may lead to fragility if unity among the people is weak. Laxmikanth emphasises that field officers in decentralised systems are empowered to make decisions independently within defined areas of responsibility, enabling localised governance.[30]

Huntington argues that the way in which decentralisation is implemented varies between countries depending on their circumstances.[31] Similarly, Manor likens democratic decentralisation to a free-market system where citizens (buyers) engage directly with decentralised authorities (sellers), ensuring that their preferences influence governance outcomes[32]

Federalism, as a dynamic and politically oriented governance model, is often introduced to resolve political crises. Some federal systems, however, centralise more power than certain ostensibly centralised governments, depending on the constitutional arrangements. Effective decentralisation depends less on the number of administrative units than on the devolution of powers to lower levels of governance. Decentralisation can be categorised into three types based on the degree of authority conferred. The first form is deconcentration, which is a weak form of decentralisation where powers are minimally dispersed to lower administrative levels. The second is delegation, a more extensive form where authority is transferred to semi-autonomous entities. The third is

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28   RK Mulla *Federalism with particular reference to South Sudan* (2018) 1.
29   M Laxmikannth *Public administration* (2009) 77.
30   Laxmikannth (n 29).
31   S Huntington *The third wave: Decentralization in the late twentieth century* (1992).
32   J Manor *The political economy of the democratic decentralization* (1999).

devolution: this is the strongest form of decentralisation, one in which full authority is transferred to autonomous local governments.

Each type has its pros and cons, and the choice depends on its suitability to the local context and ability to improve people's lives. For instance, India's Constitution provides for a multi-tiered system of decentralisation, while Kenya and Uganda operate at two levels: central and provincial. In these countries, county commissioners wield significant local authority, with central government intervention reserved for national concerns. By contrast, in South Sudan decentralisation under the CPA included multiple levels of governance. However, this structure created overlapping responsibilities. For example, in Juba County, confusion persisted over whether waste management fell under the jurisdiction of the Central Equatoria State Government, Juba County, or Juba Municipality. Such ambiguities underscore the importance of clear federal constitutional arrangements in South Sudan's governance reform.

South Sudan's decentralisation initially followed a deconcentration model under the Interim Constitution of 2005. However, after independence, many powers previously devolved to states were recentralised, leaving states vulnerable due to a lack of revenue and decision-making autonomy. This shift towards delegation created unnecessary dependency on the national government in matters such as local appointments, boundary disputes, and communal conflicts. Resistance from national institutions such as the judiciary and Ministry of Justice and Constitutional Affairs further undermined decentralisation. For example, legal services were centralised,[33] raising tensions between state legal officers and national authorities. These dynamics eroded trust in the system, rendering decentralisation ineffective and alienating local populations.

The current constitution-making process presents an opportunity for South Sudan to adopt a governance model that aligns with its unique needs and aspirations. Federalism offers a viable solution, given the country's vast geography, diverse cultures, and localised resource bases. A federal system would ensure devolve power to the grassroots, enabling effective administration in areas such as education, healthcare,

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33   Transitional Constitution of South Sudan, 2011 (as amended), schedule A, art 8.

and agriculture. While federalism may require significant investment in capacity-building, its long-term benefits – unity, peace, and stability – far outweigh its costs. South Sudan's history of political struggle underscores the need for a governance model that reflects the people's aspirations. The SPLM's philosophy of 'taking towns to people' rather than 'taking people to towns' encapsulates this vision. This philosophy seeks to bring essential services closer to the rural areas that are home to 80 per cent of South Sudan's population.

The implementation of federalism in South Sudan must be guided by the current constitution-making process. Federal arrangements should address long-standing issues of governance while preserving national unity and fostering local development. By drawing on lessons from countries such as the United Arab Emirates, where economic liberalisation transformed a resource-scarce region like Dubai, South Sudan could explore innovative models to integrate public and private sector efforts in delivering services. Ultimately, federalism represents more than just a governance model for South Sudan: it is a pathway to peace, prosperity, and dignity for its people after decades of struggle and conflict. For this vision to succeed, what is required is careful planning, constitutional clarity, and the political will to empower local communities.

7.1   A federal constitutional scheme for South Sudan

There is no greater way to honour the martyrs who sacrificed their lives for freedom and dignity during South Sudan's liberation struggles than by attaining the vision for which they fought. The first shot fired in Torit more than seventy years ago symbolised resistance against Northern domination and exploitation rooted in ethnicity. Over the decades, the rise of Islamist ideology in Sudanese politics – exemplified by the National Islamic Front under Hassan al-Turabi – has fuelled the call for self-determination in the South, ultimately culminating in independence.

The ongoing permanent constitution-making process provides an opportunity to realise the aspirations of the martyrs, war veterans, and ordinary citizens by establishing a governance framework that reflects the country's unique history and needs. While there is no universal model for federalism, South Sudan can learn from the experiences of countries such as the United States and India to develop a federal system tailored

to its context. This section explores key features for a federal system in South Sudan.

7.1.1   Federal structures

A federal constitution for South Sudan should establish a three-tier governance structure comprising national, state, and local levels. Separate municipal administrations are unnecessary since South Sudan lacks cities with populations exceeding five million; city management can therefore be integrated in the federal locality framework. The national capital should be designated as a metropolitan unit with a clearly demarcated jurisdiction, made distinct from the state in which it is located, and managed by its own administration. The number of states and counties or localities should be revised based on criteria for establishing federal administrative units, ensuring a balanced and efficient structure.

7.1.2   Federal institutions

This section further discusses some critical institutions in the federal system of government.

The presidency

The President, as head of state and government, will serve as the commander-in-chief of the armed forces and be supported by two vice presidents from other Greater Regions of South Sudan. The President will appoint a cabinet of ministers as national advisers in their respective fields. He will serve a five-year term, renewable for one additional term. Parliamentary federations are found in Canada, Australia and Malaysia, for example, but these models are not currently recommended for South Sudan, as political parties in the country are weak and based on ethnicity.

The national legislature

The legislature will be bicameral, comprising the Council of States and the National Legislative Assembly. The Council of States will have equal representation from all states, while the constituencies of the National Legislative Assembly will be demarcated based on state populations. The parliamentary term for both houses will be five years.

The judiciary

A Federal Supreme Court will handle disputes between federal institutions and states, interpret the constitution, and hear appeals from state high courts. Each state will have a high court as the superior trial court. Judges for both the Supreme Court and high courts will be appointed based on recommendations from an independent Judicial Council. The Council will ensure that courts remain impartial on political, religious and ethnic matters. States may establish subordinate courts and specialised tribunals for issues within their jurisdiction.

Sharing of finances and other resources

Agreement on resources allocation, including taxation and financial resources, between the different levels of government is essential because it enables the government to achieve its policy objectives within its constitutionally assigned legislative and executive responsibilities.[34] In most federations, the national government controls resources development and revenues. States will have the authority to collect taxes, fees, and duties and operate state enterprises. They will also receive allocations from a federal fund based on criteria determined by a national commission.

State executives and assemblies

Each state will have an elected governor serving a five-year term and removable by a two-thirds resolution of the state assembly. Governors will have the authority to form and dismiss state cabinets. State assemblies, elected for five-year terms, will have their size determined by the population of the state.

State judiciary

The judiciary's appointments, terms, and deployments will be overseen by the Judicial Council to ensure uniformity and efficiency.

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34   Mulla (n 28) 47.

8   Conclusion

The people of South Sudan have high expectations of federalism, and the R-ARCSS offers a critical opportunity to fulfil these aspirations through the permanent constitution-making process. It is imperative that this process include thorough assessments of governance options and deliver a federal model that aligns with the unique needs and values of South Sudanese society. Political commitment by South Sudan's leaders will be pivotal in transforming the nation. By placing the welfare of their people at the forefront, leaders can alleviate decades of suffering and realise the potential of a country described as the 'Land of Great Abundance'. With proper reform and effective governance, South Sudan has the resources and capacity to become a prosperous and unified state. The opportunity presented by the R-ARCSS must be utilised fully to establish a federal framework that guarantees unity, stability, and the dignity of all South Sudanese. This is the path to a brighter future and a lasting legacy for the generations to come.

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