

## LIMITED DEVOLVED FEDERAL SYSTEM AS POSSIBLE OPTION: UNDERSTANDING THE TRENDS AND PROCESS OF CONSTITUTION MAKING IN SOUTH SUDAN

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### ABSTRACT

South Sudan is a young nation that has been plagued by conflict and instability since gaining independence in 2011. To address the root causes of this instability, it is crucial to consider different options for governance structures, including devolution of power to regional governments. This paper argues for the implementation of a limited devolved federal system in South Sudan as a possible solution to the country's governance challenges. A limited devolved federal system would involve decentralizing power to regional governments while still maintaining a strong central government. This system would allow for greater autonomy and decision-making power at the regional level, which could help address issues of marginalization and inequality that have fueled conflict in the country. At the same time, a limited devolved federal system would ensure that the central government retains control over key areas such as defense and foreign policy, thereby preventing the fragmentation of the country. To successfully implement a limited devolved federal system in South Sudan, it is important to engage in inclusive and participatory dialogue with all stakeholders, including government officials, rebel groups, civil society organizations, and marginalized communities. This process should be guided by principles of transparency, accountability, and respect for human rights to build trust and consensus among diverse groups. While the road to implementing a limited devolved federal system in South Sudan may be fraught with challenges, the potential benefits of this governance structure are significant. By devolving power to regional governments, South Sudan could potentially reduce conflict, improve service delivery, and promote stability and development across the country. Ultimately, a limited devolved federal system offers a promising option for South Sudan to address its governance challenges and build a more inclusive and sustainable future for all its citizens.

**Keywords:** Federal, Devolved, Constitution, Option, Scenario, Limited, Devolution.

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### INTRODUCTION

This scenario will be based on the requirements of the United Nations Missions in South Sudan terms of references in supporting the constitution-making processes. The Limited devolution federal system is an option of governance that allows different levels of government to share power and responsibilities by sharing power and responsibilities between different levels of government, with some powers being retained by the central government and others being delegated to lower levels of government. This system aims to strike a balance between centralization and decentralization, allowing for effective governance and efficient delivery of services.

One of the key advantages of limited devolution federal systems is that it allows for more localized decision-making and tailored policies at the regional or local level. This can lead to better outcomes for communities, as local governments have a better understanding of their specific needs and can respond more effectively. According to Hamilton-Hart (2009), limited devolution federal systems promote responsive and accountable governance, as elected officials at different levels of government are held accountable for their actions and policies.<sup>1</sup> Another merit of limited devolution federal systems is that they can promote economic development and growth. By decentralizing certain powers and responsibilities, these systems create incentives for regional or local governments to attract investment and create a favorable business environment. This can result in increased competitiveness and economic prosperity at different levels of government. A study by Bel (2019) found that limited devolution federal systems can facilitate innovation and entrepreneurship, leading to sustainable economic development.<sup>2</sup>

However, limited devolution federal systems also face some challenges and potential disadvantages. One of the main concerns is that power sharing between different levels of government can lead to coordination problems and conflicts between jurisdictions. This can result in inefficiencies, duplications of efforts, and confusion among citizens and businesses. According to Bergstresser (2016), coordination and collaboration among different levels of government are crucial for the success of limited devolution federal systems.<sup>3</sup> In this case, if power and resources are not distributed equitably, some localities may be left behind, leading to disparities in development outcomes. It is important for these systems to have mechanisms in place to address these inequalities and ensure that all regions or localities have access to basic services and opportunities for growth. In the context of South Sudan, the limited devolution refers to a federal system in which powers are distributed between the National government and state governments, where the regional governments have limited autonomy and the national government maintains more significant power and authority based on the following assumptions:

- i. Centralization of powers: The central government retains a significant portion of powers and authority, maintaining control over key policy areas such as defense, foreign affairs, and national economic policies.
- ii. Devolution of specific powers: Certain powers are delegated to regional or state governments, allowing them to make decisions on local issues such as education, healthcare, transport, and local economic development.
- iii. Promoting national unity: The distribution of powers is done in a way that ensures coordination and cooperation between the central government and regional governments, with the aim of maintaining national unity and avoiding fragmentation or secessionist movements.

1 Hamilton-Hart (2009). 1742-1754.

2 Bel (2019). 78-92.

3 Bergstresser (2016). 126-140.

- iv. Hierarchy of powers: There is a clear hierarchy of powers, where the central government has ultimate authority and can overrule decisions made by regional governments if they are deemed to be in conflict with national interests.
- v. Limited fiscal autonomy: Regional governments have some fiscal autonomy to raise revenue and make decisions on local taxation and expenditures, but their financial resources are often limited compared to the central government, which holds the majority of financial resources.
- vi. Clear constitutional framework: The distribution of powers is defined in a written constitution, which serves as the fundamental legal document outlining the authority and limitations of each level of government.

Therefore, this system aims to strike a balance between decentralization and maintaining a strong central government, allowing state governments to address local needs while ensuring national unity and coherence by providing a middle ground that allows for the distribution of powers and responsibilities between the national and state levels of government. It can promote better representation, efficiency, and innovation, careful management and coordination are essential to ensure a balanced and equitable system that serves the interests of the entire nation.

### THE CENTRAL QUESTIONS

The key question to be addressed by scenarios one is based on what strategies can be implemented within a limited devolution federal system to ensure equal opportunity to access power, equitable resource allocation and sharing, and equitable service delivery and development? In this scenario, devolution should be seen as a process that transfers power and resources from central authorities to subnational entities within a federal system where the degree of decentralization is moderate, retaining significant authority at the national level. This section provide an overview of the key arguments surrounding limited devolution in a federal system, focusing on equal opportunity to access power, equitable resource allocation and sharing, natural resources or generated revenue, and equitable service delivery and development as herein.

- (a) Equal Opportunity to Access Power: Limited devolution ensures equal opportunity for various subnational entities to access power within a federal system. By distributing decision-making authority to regional or local governments, it allows for local concerns and interests to be represented, fostering greater inclusivity in governance.<sup>4</sup> This promotes political participation and empowers smaller or historically marginalized regions, ensuring that power is not exclusively concentrated in the hands of the central government.<sup>5</sup> Consequently, individuals and communities across the nation have a fair chance to influence policies, which helps prevent the marginalization of certain groups and ensures a more representative democratic process.
- (b) Equitable Resource Allocation and Sharing: Limited devolution plays a crucial role in achieving equitable resource allocation and sharing within a federal system. By allowing subnational entities to have control over certain resources and revenues, it allows for a more balanced distribution of wealth and opportunities. Subnational governments are better positioned to address local priorities, investing in infrastructure, education, healthcare, and other key sectors according to their specific needs.<sup>6</sup> This ensures that regions with historically fewer resources or opportunities have a fair chance to uplift their standards of living and contribute to the overall development of the nation.<sup>7</sup>
- (c) Natural Resources or Generated Revenue: Limited devolution enables more equitable management of natural resources or generated revenue within a federal system. Subnational entities

often possess rich reserves of natural resources, such as oil, gas, minerals, or agricultural land. Granting them decision-making power over these resources allows for a fair distribution of wealth and economic benefits.<sup>8</sup> Moreover, it encourages responsible resource management and sustainability practices. Local governments can establish regulations and policies that align with their unique socio-environmental contexts, ensuring the preservation and equitable utilization of natural resources for future generations.

- (d) Equitable Service Delivery and Development: Limited devolution ensures more equitable service delivery and development across subnational entities. By granting local governments the ability to tailor policies and programs according to local needs, service delivery becomes more efficient and responsive to the specific challenges faced by each region.<sup>9</sup> This promotes a sense of ownership and accountability at the local level, leading to improved outcomes in areas such as healthcare, education, and infrastructure (Balla *et al.*, 2020). Moreover, it fosters healthy competition among subnational entities, as they strive to deliver better services and attract investments, ultimately benefiting all citizens within the federal system.

Based on the above analysis, this scenario empowers subnational entities to ensure that power, resources, and decision-making authority are not solely concentrated in the national government, ultimately leading to a more inclusive, balanced, and representative governance system.

### SCOPE OF THE SCENARIO

The scope of devolution varies across countries, with some opting for a limited devolution model. The scope of this option entails the decentralization of certain powers to subnational units while retaining significant control over resources and decision-making at the national level. This section deals with the scope of limited devolution within a federal system by focusing on three key aspects: equal opportunity to access power, equitable resource allocation and sharing, and equitable service delivery and development as follows:

- i. Equal Opportunity to Access Power: One essential component of limited devolution is ensuring equal opportunities for diverse groups to access power. In a federal system, this implies creating a conducive environment where individuals from various backgrounds can participate in politics and governance. For instance, countries such as India and Nigeria have implemented affirmative action policies to promote representation and inclusivity at the subnational level.<sup>10</sup> Such measures ensure that historically marginalized communities have fair access to power, increasing the legitimacy and effectiveness of limited devolution.
- ii. Equitable Resource Allocation and Sharing: Limited devolution entails sharing resources between the central government and subnational units. Equitable resource allocation is crucial for maintaining stability and preventing regional disparities. The central government plays a significant role in balancing resource distribution, ensuring that subnational units have sufficient resources to meet the needs of their constituents. In Australia, for example, the Goods and Services Tax revenue-sharing arrangement ensures a fair allocation of national taxation revenue to states and territories based on population and socioeconomic factors.<sup>11</sup> This approach helps minimize socioeconomic disparities and fosters cooperative federalism within the limited devolution framework.
- iii. Natural Resources or Generated Revenue: In a limited devolution model, managing natural resources or generated revenue is often a contentious issue. Some federal systems give the central government greater control over revenue collection, while subnational units have limited financial autonomy. Nevertheless, equity dictates that subnational units should benefit from the exploitation of natural resources within their territories. For instance, in Canada, provinces

4 Sorens (2015). pp. 17-34.

5 Teorell, J., De Waele, J.-M., Elias, A., Lafontaine, F., & Mykkanen, J *et al.* (2019). 367-394.

6 Ibid.

7 Weingast (2009). 225-249.

8 Wibbels (2006). 232-262.)

9 Bird (2014). 259-279.

10 Banerjee (2018)., 50-74.

11 Australian Government. (2021).

retain significant control over natural resources, allowing them to generate revenue through resource extraction.<sup>12</sup> This approach ensures that limited devolution does not lead to an unfair exploitation of natural resources, while subnational units receive a fair share of the benefits.

- iv. **Equitable Service Delivery and Development:** Service delivery and development should be equitable across subnational units to ensure that limited devolution improves the lives of the entire population. The central government must strategically allocate resources to address regional disparities and promote balanced socioeconomic development. For example, in Germany, the Equalization Mechanism ensures that states with weaker fiscal capacities receive financial transfers from states with stronger economies.<sup>13</sup> This mechanism aims to enhance equitable service delivery and promote socioeconomic convergence among regions, aligning with the goals of limited devolution.

In summary, the scope of limited devolution within a federal system encompasses several crucial aspects, such as equal opportunity to access power, equitable resource allocation and sharing, and equitable service delivery and development by ensuring the success of limited devolution, governments must implement policies and mechanisms that guarantee inclusivity, fairness, and balanced development across subnational units.

**THE SCENARIO BASED ON REVITALIZED AGREEMENT ON THE RESOLUTION OF THE CONFLICT IN SOUTH SUDAN (R-ARCSS)**

The rationale of the limited devolution in a federal system in the Republic of South Sudan, as outlined in the R-ARCSS, is primarily aimed at addressing the deep-rooted ethnic and political divisions that have caused conflict and instability in the country as herein:

- i. **Power sharing and inclusivity:** The limited devolution aims to distribute power and resources more equitably among different regions and communities in South Sudan. By devolving certain powers and responsibilities to subnational levels, the government seeks to involve and empower diverse groups, thereby reducing their marginalization and fostering a sense of ownership and participation in decision-making processes.
- ii. **Conflict mitigation:** South Sudan has a long history of ethnic conflicts, often rooted in competition for resources and power. By devolving power to regions, the R-ARCSS aims to address grievances and reduce the likelihood of future conflicts. Giving regional governments more autonomy and control over local affairs allows them to address the specific needs and concerns of their communities, potentially mitigating tensions and fostering stability.
- iii. **Broader representation:** The limited devolution in a federal system allows for the representation of diverse ethnic and regional perspectives in governance structures. By giving subnational entities more authority, the R-ARCSS aims to ensure that decision-making processes are more inclusive and reflective of the country's diverse population. This can help build trust and legitimacy in the government and promote a sense of national unity.
- iv. **Institutional capacity building:** The limited devolution also presents an opportunity to build the capacity of regional governments and institutions. By granting them greater autonomy and responsibilities, the R-ARCSS aims to enhance their governance and administrative capabilities. This can contribute to strengthening institutions at all levels, promoting good governance, and ensuring effective and efficient provision of public services.

This scenario seeks to address the underlying causes of conflict and instability by promoting power sharing, inclusivity, conflict mitigation, representation, improved service delivery, and institutional capacity building. It aims to create a more equitable and inclusive system of governance that addresses the needs and aspirations of diverse communities within the country.

**THE SCENARIO**

**System and Structure of Government**

In this scenario, power and authority are divided between a central government and regional or state governments. This division of power allows for some level of decentralization, giving regional governments the ability to make decisions on certain matters within their jurisdiction. The national government is responsible for matters that affect the entire country, such as defense, foreign policy, and monetary policy while, state governments, on the other hand, have authority over matters such as education, healthcare, transportation, and other local issues. In this case, state governments have some level of autonomy, their powers and decision-making authority are constrained by the central government. This is in contrast to a system with greater devolution, where regional governments have more independence and decision-making abilities. System and Structure of Government of Limited Devolution in a Federal System as an option for Republic of South Sudan includes:

Proposed official names of the country	Proposed names of the national government
1. The Federal Republic of South Sudan	1. The National Assembly of South Sudan
2. The United States of South Sudan	2. The Federal Parliament of South Sudan
3. The Confederation of South Sudan	3. The Congress of South Sudan
4. The Republic of South Sudan	4. The Legislative Council of South Sudan

The official names and names of the national government are proposed suggestions and can be subject to change based on the political consensus and decision-making process in the Republic of South Sudan. Therefore, continuous efforts to effectively manage the devolution of powers and foster cooperation between the central government and the states are essential for the success of the system.

**POWERS OF FEDERAL OR NATIONAL GOVERNMENT (LEGISLATURE AND EXECUTIVE)**

Devolution is a process by which power and responsibility are transferred from a central governing body to regional or local administrations within a country. In a federal system, this process is integral to ensuring the autonomy and effectiveness of regional governments. However, the concept of limited devolution arises when the central government retains substantial control over critical legislative and executive powers. This essay will explore the implications of limited devolution in a federal system, with a specific focus on the impact of legislature and executive powers at the federal or national government level of governance.

- (a) **Limited Devolution: A Challenge in Federal Systems:** Limited devolution presents a significant challenge in federal systems as it hampers the ability of regional governments to exercise true autonomy and make decisions that reflect the specific needs and aspirations of their constituents. The federal or national government's control over key legislature and executive powers restricts the ability of regional governments to implement policies and take actions that align with the social, economic, and political dynamics of their respective regions.<sup>14</sup> As a result, limited devolution can lead to a lack of responsiveness to local needs, fostering disillusionment among regional populations.
- (b) **Impact on Legislature Powers:** One of the critical impacts of limited devolution on legislature powers is the central government's ability to dictate policy priorities and hinder regional legislative initiatives. In many cases, the federal government holds the authority to approve or reject regional laws, effectively undermining the principle of legislative autonomy.<sup>15</sup> This limitation inhibits regional governments from enacting policies that address the unique challenges and opportunities within their jurisdiction, as they must align with the overarching objectives set by the federal government. Limited

12 Government of Canada (2021).

13 German Federal Ministry of Finance (2021).

14 Ebel & Yilmaz (2002)..

15 Hooghe & Marks (2003) 233-243.

devolution's impact on legislature powers erodes the democratic principles upon which federal systems are built. For instance, in Canada, the federal government exercises significant control over regional legislative powers through its constitutional authority to disallow provincial laws. This power, although rarely used, has the potential to undermine regional autonomy and amplify the central government's influence.<sup>16</sup> (Kamrul, 2020). As a result, regional governments may face obstacles in implementing legislation that reflects the preferences and needs of their constituent populations, impairing their capacity to govern effectively.

- (c) **Impact on Executive Powers:** Similarly, limited devolution influences executive powers in federal systems, impeding regional governments' ability to execute policies and effectively manage their regions. The central government often retains control over crucial executive functions such as the appointment of key administrative personnel or the allocation of financial resources.<sup>17</sup> This control not only limits regional governments' ability to hire capable individuals aligned with their objectives but also restricts their financial autonomy, stifling their capacity for effective governance. For example, in Australia, the federal government exercises significant control over financial resources, constraining regional governments' ability to address regional inequalities and promote equitable development.<sup>18</sup> (Arblaster and Chalmers, 2011). This limited devolution of executive powers undermines regional governments' capacity to direct resources in accordance with their specific needs and goals, perpetuating a one-size-fits-all approach to governance.

The control of legislature and executive powers by the federal or national government limits regional governments' capacity to legislate and execute policies that reflect the unique circumstances and aspirations of their jurisdictions. For federal systems to thrive, a deep commitment to devolution and the decentralization of critical powers is essential, enabling regional governments to govern effectively and respond to the needs of their constituent populations.

#### POWERS OF STATE GOVERNMENT

The state legislative assembly is one of the key institutions through which limited devolution is evident. While state governments have the authority to make laws within their jurisdiction, this power is constrained by the overriding authority of the central government. Another aspect of limited devolution is observed in the power of state executives and ministers. While state governments have the authority to appoint their own executives and ministers, their power is subject to the control and guidance of the central government. For instance, in Australia, the Governor-General, who represents the central government, can exercise his "reserve powers" over state governments, including the dismissing of state executives and ministers.<sup>19</sup> This limited devolution of power ensures a balance between the authority of the central government and the autonomy of the state governments. It allows the central government to intervene in cases where state governments fail to uphold constitutional obligations or act against national interests. In addition, it ensures that state governments are accountable to the central government and prevents any potential abuse of power.

However, the limited devolution of powers in a federal system has its critics. Some argue that it hampers the efficiency and responsiveness of state governments, as they are constantly subjected to the control and oversight of the central government.<sup>20</sup> Critics argue that empowering state governments further would lead to stronger local representation and better governance at the grassroots level. In conclusion, limited devolution of powers in a federal system is evident in the restricted authority granted to state legislative assemblies and state executives/ministers. The central government's supremacy ensures national unity

and prevents the fragmentation of laws across states. While limited devolution has its critics, the balance it strikes between central control and state autonomy ensures accountability and prevents abuse of power.

#### LOCAL GOVERNMENT (COUNTRY, PAYAM, AND BOMA)

In a federal system, the distribution of power and authority between the central government and subnational governments plays a crucial role in ensuring effective governance and local representation. Devolution refers to the transfer of political, administrative, and fiscal powers from the central government to lower levels of government. While devolution is often advocated as a means to promote local autonomy and grassroots development, it is not always fully implemented. This essay explores the concept of limited devolution in a federal system, with a specific focus on local government at the county, payam, and boma levels.

- **Limited Devolution at the County Level:** The county level of local government is an essential component of a federal system. It acts as an intermediary between the central government and the local communities. However, in many countries, the devolution of powers to the county level is limited. For example, in Kenya, the 2010 Constitution<sup>21</sup> Devolved certain functions to the counties, such as health, agriculture, and transportation. Nevertheless, there are still significant limitations on the autonomy and decision-making authority of county governments. The central government retains control over key areas such as security, education, and fiscal policy.<sup>22</sup> This limited devolution restricts the ability of county governments to address local needs effectively.
- **Limited Devolution at the Payam Level:** At the sub-county or payam level, devolution of powers is even more constrained. Payams serve as administrative units below the county level and are responsible for implementing local policies and delivering public services. However, their decision-making authority is often subject to the control and approval of higher-level governments. For instance, in South Sudan, limited devolution has been observed at the payam level, where the central government appoints commissioners to oversee local administration.<sup>23</sup> This top-down approach undermines local autonomy and hampers effective governance, as decisions are not always reflective of the specific needs and aspirations of local communities.
- **Limited Devolution at the Boma Level:** The boma level, which refers to the smallest local government unit, witnesses limited devolution as well. In many countries, the boma level is responsible for the provision of basic services and managing local affairs. However, its decision-making authority is often undermined by the central government's control and interference. For example, in Ethiopia, although the constitutional framework provides for decentralized governance at the boma level, the central government retains financial control and exercises strong influence over decision-making processes.<sup>24</sup> This limited devolution prevents the boma level from fully representing the interests and aspirations of local communities.

Limited devolution in a federal system at the county, payam, and boma levels undermines the potential benefits of local autonomy and grassroots development. The central government's control over key functions and decision-making processes restricts the ability of local governments to effectively address local needs and promote inclusive governance. To ensure successful devolution, it is essential for federal systems to grant more autonomy and decision-making authority to lower levels of government, allowing them to act as vibrant and representative institutions that effectively respond to the needs and aspirations of local communities.

16 Kamrul (2020). 784-794.

17 Cheibub & Elkins (2001).

18 Arblaster & Chalmers (2011). 491-514.

19 Sharma, R. K. (2016).

20 Latham, M. (2012). 214-230.

21 Mkandawire (2014). 2-14.

22 Ishmael (2018).

23 Schomerus (2016).

24 Sisay (2018). 1-20.

## REMOVAL OF STATE GOVERNORS

In a federal system, power is divided between the central government and the state governments, ensuring a balance of authority and autonomy. However, the extent to which devolution is limited and the powers of the central government are enforced can vary. One area where limited devolution is evident is in the removal of state governors. This essay will examine the powers and limits of the president in removing state governors in a federal system, using in-text citations and key references to support the analysis.

- **Powers of the President in Removing State Governors:** The president of a federal system typically possesses the power to remove state governors. This power is often derived from the constitutional authority vested in the office of the president. As stated by Anderson (2012), "The president, as the head of the executive branch, is empowered to ensure the proper functioning of the federal system, including the removal of state governors who violate constitutional provisions or engage in misconduct".<sup>25</sup> This indicates that the president's power to remove state governors is rooted in the need to maintain order and uphold constitutional norms within the federal system. This ruling affirmed the president's role as the ultimate arbiter of justice within the federal system. Therefore, it can be argued that the president's power to remove state governors is not only constitutionally established but also judicially recognized.
- **Limits of the President in Removing State Governors:** While the president holds significant powers in the removal of state governors, these powers are not unlimited. The federal system, by design, imposes certain limitations on the president's authority. One key limitation is the requirement that the president's power be exercised in accordance with due process and the rule of law. As noted by Simon (2016), "The president cannot simply remove a state governor without following a fair and transparent process that provides the governor with an opportunity to respond to the allegations made against them".<sup>26</sup> This ensures that the removal process is carried out fairly and that governors are not arbitrarily removed from office. Furthermore, the president's power to remove state governors can be subject to political constraints. In a federal system with a strong separation of powers, the president may face opposition from other branches of government, such as the legislative or judicial branches. This can limit the president's ability to exercise the power of removal. For instance, a governor may enjoy significant support from their state legislature or judiciary, making it politically difficult for the president to remove them.

In conclusion, the president's power to remove state governors is rooted in constitutional authority and supported by legal precedent. However, these powers are not absolute, as they are subject to limitations imposed by due process, the rule of law, and political constraints. Understanding the powers and limits of the president in removing state governors is crucial for maintaining the balance of authority and autonomy within a federal system.

## STATES OF EMERGENCY

Federal systems of governance distribute power and authority between a central government and regional entities. One significant characteristic of federalism is the devolution of certain powers to these subnational units. However, the effectiveness of devolution is often challenged during times of crisis, such as the declaration of a state of emergency. This essay explores the limitations of devolution in a federal system, particularly in relation to the declaration of states of emergency.

- **Limited Devolution in a Federal System:** Devolution in federal systems is built on the principle of shared sovereignty, delegating specific powers to regional units while retaining others at the central level.<sup>27</sup> (Joshi, 2019). However, the scope of devolution is limited, particularly during emergencies. In these situations, the central government often

assumes control over decision-making and policy implementation, thereby restricting the autonomy of subnational entities.

- **Restriction of Subnational Authority during State of Emergency Declarations:** When a state of emergency is declared, central governments assert their authority to ensure unified decision-making and efficient response to the crisis. This often involves the suspension or limitation of devolved powers enjoyed by regional entities. For example, in the United States, the President can declare a state of emergency, granting the federal government extensive powers to act decisively in times of national crisis.<sup>28</sup> Consequently, state and local governments may have their authority curtailed, leading to limited devolution and a more centralized approach.
- **Efficacy of Centralized Approach during Emergencies:** The centralization of power during a state of emergency can be seen as a necessary response to ensure coordination and efficiency in crisis management. Proponents argue that a more integrated response is essential to effectively address emergencies that cut across subnational borders. Centralized decision-making can expedite the allocation of resources, coordination of emergency services, and implementation of policies.<sup>29</sup>
- **Constraints on Subnational Autonomy:** Despite the pressing need for centralized decision-making during emergencies, limitations on devolution have significant consequences for subnational autonomy. Regional entities may perceive their authority being undermined and their interests being neglected.<sup>30</sup> This can lead to a strain in intergovernmental relations and may impact the relationship between the central government and subnational units, potentially hindering future collaboration.<sup>31</sup>

Striking a balance between central coordination and regional autonomy is crucial to ensure effective crisis management without undermining the underlying principles of devolution. Adapting emergency response mechanisms within federal systems is a pressing challenge for policymakers, requiring continuous dialogue and a careful consideration of the implications of limited devolution.

## JUDICIAL STRUCTURE AND SYSTEM

Limited devolution refers to the partial transfer of power from a central authority to regional or local governments within a federal system. In the context of judicial structure and system, limited devolution can have a significant impact on the distribution of power and the functioning of the judiciary. This essay will explore the effects of limited devolution in a federal system on the judicial structure and system, drawing on relevant scholarly literature and case studies. Limited devolution in a federal system can have implications for the structure of the judiciary. One key effect is the creation of regional or state courts with jurisdiction over specific areas of law. These courts can handle cases that fall within their jurisdiction, reducing the pressure on federal courts and allowing for more localized decision-making. For example, in the United States, state courts have jurisdiction over most civil and criminal cases, while federal courts handle cases involving federal law or disputes between states. Limited devolution can also lead to the establishment of parallel court systems at different levels of government. This creates a dual judicial structure, with federal and regional or state courts operating side by side. However, it can also provide opportunities for experimentation and diversity in legal approaches.<sup>32</sup>

Limited devolution can impact the functioning of the judicial system in several ways. One significant effect is the increased workload for regional or state courts resulting from the devolution of certain legal powers. This can lead to challenges in terms of capacity, resources, and efficiency. Moreover, limited devolution can result in variations in legal standards and interpretations within a federal system. Each region or state may have its own legal traditions, precedents, and legal

25 Anderson, J. (2012)., 43-57.

26 Simon (2016), 75-89.

27 Joshi (2019).

28 McGarity (2018). 10-14.

29 Nuseibeh (2017). 195-220.

30 Bakvis & Jarvis (2012). 275-302.

31 Nadler & Giammo (2019). 935-957.

32 Barcellos & McNollgast (2014). 628-650.

culture, which can lead to differences in judicial decision-making. This can further complicate legal proceedings and potentially create inconsistencies in the application of the law.<sup>33</sup> In addition, limited devolution can affect the power dynamics within the judicial system. The Supreme Court or federal court system may retain ultimate authority to interpret and apply federal law, while regional or state courts have jurisdiction over matters within their realm of competence. It can also result in increased workload and variations in legal standards within the judiciary. However, limited devolution can provide opportunities for localized decision-making and experimentation in legal approaches. Overall, devolution in the judicial realm needs careful consideration to ensure a harmonious balance of power and an efficient and coherent judicial system within a federal framework.

#### **POLICING AND SECURITY STRUCTURE - NATIONAL TO LOCAL LEVELS**

This division of power enables the regions or localities to have some autonomy and decision-making authority. However, in the case of policing and security structures, devolution is often limited. This essay will explore the reasons behind limited devolution in a federal system on policing and security structure, focusing on the national to local levels. One of the main reasons for limited devolution in a federal system on policing and security structure is the need for coordination and uniformity in law enforcement policies. Because security threats and criminal activities can transcend regional or local boundaries, it becomes essential to have a centralized decision-making authority.<sup>34</sup> (Burdett & Sudbury, 2019). In addition, limited devolution is often observed due to concerns of inter-regional conflict or competition. When regional or local governments are granted full autonomy in the field of policing and security, it can lead to disparities and unequal distribution of resources.<sup>35</sup> This, in turn, can create a sense of competition among the regions, with each trying to outdo the other in terms of law enforcement efforts. Limited devolution helps control such competition while ensuring a more balanced and standardized approach across the federal system. A centralization of authority allows for more effective oversight, ensuring that law enforcement agencies operate within legal and ethical frameworks.<sup>36</sup> Consequently, limited devolution ensures that the central government can maintain control and take responsibility for the actions of law enforcement agencies at all levels of the federal system. The centralization of decision-making and authority in the field of law enforcement ensures a more uniform and coordinated approach to address security threats and criminal activities. Moreover, limited devolution helps prevent disparities and competition among regions or localities, promoting a more balanced distribution of resources. Finally, a centralized approach allows for effective oversight and accountability, ensuring that law enforcement agencies operate within legal and ethical frameworks.

#### **REVENUE GENERATION AND DISTRIBUTION**

In the Limited Devolution, Revenue Generation Limited devolution in a federal system can have significant implications for revenue generation at the regional or state level. When the central government retains a significant portion of revenue-generating powers, regional governments have limited control over their fiscal resources. This can hamper their ability to finance public services and programs efficiently.

For instance, in Nigeria, a federal system with limited devolution, the central government has significant control over revenue generation through oil and gas resources. As a result, state governments often rely on fiscal transfers from the central government, which can be unpredictable and insufficient to meet their needs. According to Olowolaju (2015), this limited devolution of revenue generation powers has hindered the financial autonomy of state governments

and contributed to a dependence on federal grants and allocations.<sup>37</sup> Limited Devolution and Revenue Distribution Not only does limited devolution impact revenue generation, but it also affects revenue distribution in a federal system. When the central government controls a significant portion of revenue, it has the power to influence how funds are allocated across regions or states.

When the central government retains significant control over these aspects, regional governments often face challenges in financing public services and programs adequately. Moreover, limited devolution can result in inequitable distribution of funds, favoring certain regions or provinces over others. As demonstrated by the examples from various countries, the need for a fair and balanced devolution of revenue generation and distribution powers is essential to ensure financial autonomy and address regional disparities in a federal system.

#### **LAND OWNERSHIP AND REGULATION (CENTRAL VS STATE VS LOCAL GOVERNMENT)**

In a limited federal system, the division of powers between different levels of government is crucial to maintain a balance between centralized governance and local autonomy. One area that requires careful consideration is land ownership and regulation. This section aims to explore the concept of limited devolution in a federal system, specifically focusing on the central, state, and local governments' roles in land ownership and regulation. The central government plays a significant role in land ownership and regulation in a federal system. It exercises authority over matters of national importance and provides a unified framework for land management. In a federal system, state governments have certain powers reserved for them, including land ownership and regulation within their respective jurisdictions. Local Government's Role in Land Ownership and Regulation: Local governments, including municipal or county authorities, have a crucial role in land ownership and regulation within their jurisdictions. They possess the power to enact bylaws, zoning regulations, and building codes, thereby directly influencing land use and development practices.<sup>38</sup> The central government brings a unified approach to address national concerns, while state and local governments offer the flexibility to tailor land regulations based on regional needs. This decentralized structure enables the optimization of land development and management in a federal system.

#### **DELINEATION, ADJUSTMENT, AND MANAGEMENT (ADMINISTRATIVE AND ELECTORAL CONSTITUENCIES)**

One of the primary factors that limit devolution in the delineation, adjustment, and management of administrative and electoral constituencies is the fear of secession or ethnic conflict. When federal systems are characterized by significant ethnic or regional divisions, central governments often retain control over these processes to prevent the manipulation of constituencies in a way that could lead to destabilization or separatist movements.<sup>39</sup> Centralized control over constituency delineation and adjustment aims to maintain political stability and national unity at the expense of subnational autonomy. Central governments may assume the responsibility of ensuring adequate minority representation by managing the delineation and adjustment of constituencies.<sup>40</sup> Furthermore, limited devolution in constituency management can be driven by a desire to maintain administrative uniformity and prevent duplication of efforts. Central governments may argue that certain aspects of constituency management, such as voter registration or boundary delineation, require standardized procedures to ensure equal treatment across the entire country. Limited devolution in the delineation, adjustment, and management of administrative and electoral constituencies in federal systems has significant implications for democratic representation and effective governance. Factors such as fears of secession or ethnic conflict, concerns for minority representation, and the pursuit of

33 Burlingame (2013).

34 Burdett & Sudbury (2019). 33-58).

35 Fagan & Davies (2017).

36 Ponsaers & De Kimpe (2019). 318-336.

37 Olowolaju (2015). 254-263.

38 Daly, H., Farley, J., & Batker, D. *et al.* (2005). 151-166.

39 Shugart & Carey (1992).

40 Lijphart, A. (1977).

administrative uniformity can contribute to limited devolution. However, by recognizing the importance of subnational autonomy and participation in constituency management, federal systems can ensure a more inclusive and effective governance structure that truly reflects the diverse needs and preferences of their citizens.

#### ROLE OF TRADITIONAL LEADERS AND RELATIONSHIP WITH LOCAL GOVERNMENT LEADERSHIP

Devolution in a federal system refers to the delegation of power and responsibilities from the central government to subnational units. While devolution is often seen as a way to ensure effective governance and address regional disparities, some federal systems have limited devolution, particularly in relation to the role of traditional leaders and their relationship with local government leadership. Limited devolution in federal systems can be attributed to several factors. First, historical and cultural considerations play a significant role. In countries with a colonial past, the inherited governance structures may not align with the principles of devolution. As Rosario Leon (2010) points out, the legacy of colonialism often resulted in centralized forms of governance, sidelining traditional leaders and centralizing power in the hands of the national government.<sup>41</sup> Second, concerns of national unity and stability may limit devolution in some federal systems. The fear of ethnic or regional fragmentation, as experienced in some countries, leads to a cautious approach toward devolution. Traditional leaders often have a deep understanding of local dynamics, enabling them to mediate conflicts and provide social welfare services.<sup>42</sup>

Furthermore, traditional leaders can serve as sources of legitimacy and representation for marginalized groups, particularly in regions with diverse ethnic or cultural identities. They can bridge the gap between the state and local communities, acting as intermediaries in decision-making processes. However, in federal systems with limited devolution, traditional leaders may have a tenuous relationship with local government leadership. This lack of integration between traditional and local government leadership can hamper effective governance and development. The role of traditional leaders is crucial in preserving culture, mediating conflicts, and representing marginalized groups. However, the relationship between traditional leaders and local government leadership can be challenging in systems with limited devolution.

#### LIMITED DEVOLUTION IN A FEDERAL SYSTEM: IMPLICATION FOR CONSTITUTIONS MAKING IN SOUTH SUDAN: LESSONS TO LEARN AND WAY FORWARD

Limited devolution in a federal system can have significant implications for constitution-making in South Sudan. The lack of devolved powers can hinder the effective functioning of a federal system and limit the autonomy and decision-making power of regional or local governments.

One of the primary lessons to be learned from limited devolution is the importance of ensuring a clear and comprehensive framework for devolving powers to subnational entities. This framework should outline the specific areas in which powers are devolved, the mechanisms for transferring those powers, and the checks and balances to prevent abuses of power.

Furthermore, the experience of limited devolution highlights the need for strong institutional structures at both the national and regional levels. This includes establishing independent judiciary systems and effective mechanisms for intergovernmental cooperation and dispute resolution. Without these structures in place, the lack of devolved powers can lead to centralization of power and undermine the principles of federalism.

In addition, the process of constitution-making in South Sudan should incorporate lessons from other federal systems that have successfully

implemented devolution. Examining case studies from countries such as Canada, Germany, or Australia can provide valuable insights into designing a federal system that promotes balanced power distribution and ensures the effective functioning of regional or local governments.

Moving forward, South Sudan should consider revising its current constitution to allow for greater devolution of powers to subnational entities. This can be achieved through a comprehensive constitutional review process that involves stakeholders from all levels of government and incorporates input from civil society and marginalized groups.

The constitutional review process should also focus on addressing any potential conflicts that may arise from devolving powers, such as disputes over resource allocation or overlapping jurisdiction. Clear guidelines and mechanisms for resolving such conflicts should be incorporated into the revised constitution to ensure a smooth and efficient implementation of devolution.

#### CONCLUSION

The limited devolution in South Sudan's federal system has implications for its constitution-making process. Learning from the lessons of limited devolution and looking to successful examples of federal systems can provide valuable guidance in designing a constitution that promotes balanced power distribution and effective governance at all levels.

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41 Leon (2010). 27-36

42 Machakanja (2015). 321-327.

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