

# Peace Mediation Essentials

## Federalism and Peace Mediation



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This document was written by State Concepts, in collaboration with the Mediation Support Project (swisspeace / ETH Zurich CSS) and in consultation with the Mediation Support Unit (UN Department of Political Affairs). It was initiated and funded by the Swiss Federal Department of Foreign Affairs (Political Division IV).

January 2009

### Key Messages

- This "Peace Mediation Essential" can only give an **introduction to federalism**. Mediators will have to consult additional resources for further details.
- In order to reach a peace agreement, it may be necessary to **develop a vision of the future state organisation**. In many conflicts, especially conflicts with an ethno-political component, a lack of power-sharing is among the root causes of conflict. Thus, future power-sharing arrangements, including federalism, can become a part of the agenda for peace.
- Federalism should **not be regarded as an end in and of itself** or as a blueprint for appeasing conflicts.
- The mediator should expect that **the use of the word federalism** will inevitably provoke both positive and negative emotions. Thus, its use will require the careful explanation of concepts as well as expectation management. Sometimes, the mediator may find it better not to use the term at all.
- Mediators should look at federalism within a **broader context of the state organisation**. Federalism alone may not be enough to address root causes and create a vision for future peace. Other power-sharing mechanisms or policies of inclusion may be more useful and/or more appropriate.
- Federalism is a **flexible form of state organisation** which needs to be adapted to specific circumstances. There are as many variations of federal state design as there are federal countries. The form of federal state organisation adopted is as significant as whether federalism is introduced.
- Given that federal systems are constitutional systems, the **development of a supportive political culture** based on respect for the rule of law is crucial.
- The issues of delimiting federal units as well as of distributions of powers, wealth, and income can be **back-breakers** in peace negotiations.
- The various elements of federalism as well as other aspects of state organisation are **interrelated**. The isolation or sealing off of any of these facets could limit the possibility for necessary cross-topic adjustments or trade-offs. Therefore, coordination is necessary and the approach 'nothing is decided until everything is decided' tends to be favourable.

- Federalism can **change the power balance and can create new vulnerable groups**. If any group can permanently dominate or block the political process at any government level, this is an indicator of a flaw in the federal design.
- **Implementation issues** should be considered early in the process, as implementation will be a major factor for the sustainability of the peace process.

## Background

### What federalism is, what it isn't, and what it can be

Definitions can be a tool for the mediator to clarify concepts and avoid misunderstandings.<sup>1</sup> Of importance are the legitimacy and adequacy of the prospective design of the state system rather than the label 'federal', 'quasi-federal', 'confederal', or 'special autonomous' system. Using labels at an early stage can narrow the optic and limit the options.

Self-ruled and shared rule

- **Federalism is constitutionally guaranteed self-rule and shared rule**. In a federation, there are at least two levels of government (federal or national level and level of federal units) each attributed with substantive decision-making in certain areas (self-rule). In order to be effective, decision-making powers need be paired with adequate financial means. Additionally, the federal units are involved in the decision-making at the federal level as well, normally through representation in a second chamber of parliament (shared rule). The design and major principles of self-rule and shared rule are guaranteed in the Constitution.

Symmetric or asymmetric

- **Federalism can be symmetric or asymmetric**. In symmetric federal arrangements, all federal units have the same powers and the same number of representatives in a second chamber of parliament; in asymmetric federations, they do not.<sup>2</sup> **Federacies** are states with a specific form of asymmetric federalism. In federacies, there is only one unit with a special right to self-rule and this unit enjoys special representation in central institutions.

Territorial and/or ethnic

- **Federalism can be territorial federalism and/or ethnic federalism**. The classic federation is composed of territorial entities. Boundaries of territorial entities can be drawn either to create – to the extent possible – territorial entities with ethnically, culturally, religiously or linguistically homogeneous populations (normally called ethnic federalism) or they can give precedence to other criteria like geography, demography and financial capacity (normally called territorial federalism). There can also be mixed approaches.<sup>3</sup>

Aggregation or devolution

- **Federal states can be created by aggregation or by devolution**. In the first case, independent states come together and aggregate into one federal state. In the second case, a unitary state introduces federalism by determining federal units and by introducing self-rule and shared rule. In peace negotiations, the Mediator will in most cases be confronted with the potential creation of a federation by devolution (e.g. Ethiopia, Sudan, Nepal, Sri Lanka).

Not decentralisation

- **Federalism is not decentralisation**. In a decentralised country, sub-units at the local or regional level possess political, administrative and/or financial powers (self-rule), but unlike a federal system, they are

Special autonomy arrangements

Not confederation

Many hybrid forms

Box.1: Different forms of state organisation

usually not represented in the central institutions. Decentralised systems can, but need not be entrenched in the Constitution.<sup>4</sup>

- **Special autonomy arrangements** (e.g. Finland/Åland, Philippines/Mindanao, Indonesia/Aceh) can be regarded as strongly asymmetric forms of decentralisation. In such special autonomy arrangements, powers are transferred to one specific area (self-rule). In contrast to federacies, such autonomous regions do not enjoy special representation at the centre and their status need not be entrenched in the constitution.
- **A federal state is not a confederation.** Confederations are unions of states. The member states transfer some of their powers to one or several common institutions. Typically, changes to the organisation and sometimes even decision-making in the common institution(s) require unanimity, rendering this form of organisation rigid and inflexible. The sovereign member states are the direct addressees of international law.
- **There are many hybrid forms of state organisation.** Many countries are not clearly unitary, federal or confederal but show elements of several forms of state organisation.

	Separate States (Secession)	Confederation <sup>5</sup>	Federation <sup>6</sup> , Federacies <sup>7</sup>	Unitary State <sup>8</sup> (decentralisation, special autonomy <sup>9</sup> )	Unitary State <sup>10</sup> (Deconcentration)
Self-rule	Separate political systems	Yes, states forming the confederation remain sovereign states	Yes, federal units have genuine decision-making powers, own political institutions, administration, and resources.	Yes, decentralised units have genuine decision-making powers, own political institutions, administration, and resources	No genuine decision making power, deconcentrated institutions are agents of central government
Shared rule		Yes	Yes, federal units are represented in central institutions, e.g. second chamber of parliament	No, no special representation required	No
Legal Basis		Treaty based, high level of entrenchment	Constitution, i.e. high level of entrenchment	Statute or higher, i.e. low to high level of entrenchment	Regulation or higher, i.e. low level of entrenchment

### The Potential of Federalism for Conflict Resolution

- **Federalism can be a useful means of conflict resolution** in that it can provide a viable power balance between majority and non-majorities, groups and individual citizens.
  - Based on the **self-rule principle**, policy areas which are important for the identity of an ethnic group (or minority) and which are potentially divisive (e.g. culture, police, religion) can be left to lower levels of government. This can promote self-determination and can indirectly help avoid conflicts at higher levels of government.
  - **Shared rule** promotes decision-making which respects the interests of the federal units. Furthermore, the federal units legitimate the state through their participation in the political process (upper chamber of parliament). Additionally, the bicameral parliament assures that the interests of citizens as such (through the lower house) are also taken into account.

Means of conflict resolution

Controversial character

- Finally, the **entrenchment in the constitution** can reassure all political actors that changes to the system will only take place on the basis of a constitutional consensus. The requirements for amending the constitution are normally the same as for the adoption of the constitution.

Can be successful

- **Federalism is controversial.** A debate on federalism can provoke high (sometimes unrealistic) expectations as well as substantial (sometimes unjustified) fears. Representatives of ethnic minorities in particular, tend to hope that federalism will give them a more equitable position in the state with better access to political power, resources, and development. In contrast, others might have the perception (justified or unjustified) that proponents of federalism aim at something close to independence and complete control over 'their' territory, want veto-powers at the central level, and perhaps even aim at preparing the ground for secession at a later point. They fear that (especially ethnic) federalism entrenches fragmentation along ethnic lines, introduces new dominance structures, and provides incentives to ethno-political mobilisation.
- **Federalism can be successful.** There are successful examples of federal states, but also a number of failed federations.<sup>11</sup> However, empirical research suggests that despite its potential deficiencies, federal states tend to be more apt in accommodating diversity and lessening secessionist tendencies than unitary states. In fact, nearly half of the world's population live under a federal government and in general, it can be said that federal solutions can strengthen the feeling of non-majorities to be part of the state and thus contribute to more stability. Thus, while federalism may not solve all conflicts, it can provide peaceful mechanisms for conflict management.

A topic in peace negotiations

### Key Principles: Federalism and Peace Negotiations

- **Federalism can be a topic in peace negotiations.** More than half of internal conflicts since 1989 have concerned disputes about controlling part of the state's territory. In such conflicts, future power-sharing arrangements, including federalism, can become a necessary part of the agenda for peace.
- **Federalism presupposes ...**
  - **the will of political actors** to accord effective powers to federal units so that each unit can to some extent define its own destiny,
  - **the will to accept that federal units participate in central decision-making** so that they can to some extent also define the common destiny of the state,
  - **the will of all to support and give legitimacy to the common state.** Federalism requires trust and tolerance towards each other as well as a certain level of loyalty to the state, and
  - **finally, the will to respect the rule of law.**
- **Federalism is often introduced when the pre-requisites are not (yet) fulfilled.** It is hoped that the conflict management potential of federalism will help to build the pre-requisites.
- **Federalism seems a particularly valid option...**
  - if people want it,

Preconditions

Valid option

## Complexity

- if there are **several (territorially based) groups** (more than three) or several regions who want a share in governance and if there is a basic agreement to delimitate a **minimum of four federal units** of which none encompasses the majority of the overall population,
- if there is the wish to maintain diversity and if there are **certain shared interests and the willingness to compromise**,
- if the **(potential) capacities** of the central state and the regions are sufficient to make effective use of their respective powers and deliver services either on their own or in cooperation with others; or in the case of generally low capacities, if the capacities of the regions are not fundamentally lower than those of the centre.
- if **inequalities between regions and groups** such as with respect to financial capacities are small or if solidarity between regions and groups is good enough and mechanisms can be devised to balance some of the inequalities.
- if there are **(financial) resources and expertise for building new federal institutions** as well as for capacity building. Running a federal system is not necessarily more expensive than a unitary system.
- The **size** of the country plays a subordinate role.

■ **Federalism is complex, in some contexts overly complex.** It will bring a change in inter-ethnic relations, institutions, and procedures and it will change the access to political power, with sometimes difficult to predict repercussions for the power balance. The introduction of federalism will have multiple (side-) effects: for example, the creation of new minorities in the newly created federal units. This tends to render negotiations difficult. Some argue that such complex reforms have a limited chance of success and should be avoided whenever less complex approaches can produce similar results.

## Broad agreements

■ **In the ideal case, mediation is continued until broad agreement is reached.** Limited support of conflict parties and society at large of the federal arrangement tend to have drastic consequences for the legitimacy of the future state and the implementation process. Due to the complexity of the change, the implementation of federal solutions will provide ample opportunities for spoiler behaviour.

## Time and timing

■ **The drafting and implementation of a federal design requires time and timing.** A peace agreement or an interim constitution need not spell out all aspects of a future federal system, but it should provide a vision, define major principles, and offer clear milestones for implementation. Likewise, the introduction of federalism can likely not be realised all at once; therefore, a careful phasing of the reform is needed.

## Vision

■ **How to create a vision of a federal state:** There are many different forms of federal state organisation. Every federal state shapes its own institutions according to its needs and context. The following key options shall provide some ideas, examples, and lessons learned to facilitate the process of developing a vision for a federal state organisation. In the end, what matters most is whether the selected options have the support of the population and thus can be incorporated into a new social contract.

## Key Options for Introducing Federalism

### Flexibility

**Federalism is a flexible form of state organisation.** Federalism 'only' requires the introduction of constitutionally guaranteed self-rule and shared rule, but does not, for instance, limit the choices in respect to the governmental or electoral system. The introduction of federalism requires decisions on (1) the federal units, (2) shared rule mechanisms (second chamber of parliament), (3) the distribution of powers, (4) the distribution of wealth and income, (5) coordination, cooperation, and dispute resolution mechanisms as well as (6) on constitutional entrenchment.

### Options for creating federal units

The definition of federal units will determine who receives the right to self-rule and shared rule.

Sometimes the definition of federal units will be uncontested. In most cases, however, boundaries will have to be negotiated. This can turn out to be one of the major challenges in the peace negotiation and the debate on the criteria and process for boundary delimitation can easily end in deadlock.

### Minimum size and number

- There is no general rule about a **minimum size** for federal units, however, there is an important rule about the **minimum number** of federal units. Experience shows that federations with only two or even three units tend to be unstable, e.g. Czechoslovakia and Pakistan. Additionally, there are strong tendencies for instability in federations where one unit contains more than half of the total population. No federal unit should be able to dominate all others, whether because of special rights, size, or financial capacities.

### Ethno-political diversity

- If federalism shall be introduced to accommodate ethno-political diversity**, there can be strong quests to define federal units based on ethnic criteria. This pursuit of a 'homeland' by some groups might in turn mobilise other ethnic groups within the same area who fear being turned into a minority and being dominated by the new empowered majority.

### Combination of different criteria

- In negotiated settlements, the likely outcome is a **combination of different criteria**, including some kind of ethnic dimension.<sup>12</sup> Safeguards against the possible negative consequences of 'ethnic' boundaries need be designed. For instance, guarantees for inclusive democracy and power-sharing at the level of federal units as well as individual and collective rights can help to reduce the risk of new domination. The introduction of a third (and fourth) level of government with guaranteed powers can further help to improve the power-balance.

### Legitimacy of boundaries and boundary changes

- Negotiated boundaries tend to **lack democratic legitimacy**. Democratic procedures, such as referenda can be used to approve the new territorial organisation.<sup>13</sup> However, if boundaries that were agreed upon in peace negotiations are later rejected (e.g. in a referendum), violence might start anew. Some countries also provide democratic procedures in their constitution for the adjustment of boundaries including the creation of new federal units of the merger of existing ones.<sup>14</sup>

### Delimitation of federal units

- In negotiating federalism, the delimitation of federal units seems to be the logical first step. However, the issue tends to be so contentious that **it might be preferable to first explore other aspects of the federal state design**, such as representation within the political institutions of the federal unit, possibilities for cooperation between federal units, the

role of local government, or procedures for readjusting boundaries in cases of strong discontent. Agreement in principle on such aspects can decrease the importance of the delimitation of federal units.

### Options for introducing shared rule at the central institutions

Shared rule is normally achieved through a second chamber of parliament (upper house).

- Upper House
  - The upper house can either be **composed** entirely of representatives from the federal units or by representatives from the federal units and others.<sup>15</sup>
- Representatives
  - Representatives can be **members or agents of the governments or parliaments of the federal units or representatives of the people of the federal units** based on direct elections. It is also possible to provide for the direct election of some members and the appointment of others.<sup>16</sup>
- Right to instruct
  - Federal units can have the right to **instruct** their representatives in the second chamber on how to vote, or the representatives from one federal unit can be obliged to cast a block vote. In some federations however, the instruction of representatives is forbidden.<sup>17</sup>
- Number of representatives
  - There are also various options concerning the **number of representatives per federal unit**. In some federations, all federal units have the same number of representatives,<sup>18</sup> while in others, representation is weighted.<sup>19</sup>
- Powers of the upper house
  - **Powers of the upper house** can be symmetric with powers of the lower house of parliament or they can be asymmetric. Symmetric powers for instance, imply that all laws have to be passed by both Houses.<sup>20</sup> Whereas asymmetric arrangements can foresee limited powers<sup>21</sup> or additional powers for the Upper House.<sup>22</sup>

### Options for introducing self-rule

In respect to self-rule, there are huge variations between federations, both concerning technical issues of self-rule as well as concerning the quantity and quality of federal and sub-national powers.

- Right to self-organisation
  - Older federations often have federal units with the **right to self-organisation**, i.e. they can decide on their own about their political organisation and they have the right to their own constitutions, whether or not they realize this right. However, the national constitution can also establish the political organisation of federal units, provide guidelines, or establish common principles.<sup>23</sup>
- Distribution of powers
  - The distribution of powers (which level of government is in charge of what) is **regulated in the constitution**.
- Residual power
  - However, it is virtually impossible to enumerate all possible powers and to foresee all possible fields of future state action. Therefore, it is normally defined which level of state is in charge if the constitution is mute (**residual power**). If the residual power is with the federal units, the federal unit is always in charge unless powers are transferred to other levels of government. It is also possible to attribute residual powers in certain policy fields to the national level and in others to the federal units.

Methods for the distribution of powers

- There are **different methods for the distribution of powers**. A system of exclusive powers provides a clear separation between the different levels of government, as each power is attributed to one level of state only. In contrast, concurrent powers can be used by both the central and the unit level of government. Thus, they require a higher degree of consultation and cooperation. Some countries separate legislative from executive power. In this case, the central level has the power to legislate, while the federal units retain the power to execute, taking into account local circumstances.<sup>24</sup>

Rules of precedence

- In particular if the Constitution provides for concurrent powers, it will have to regulate **which rules prevail** if both levels of government – based on their powers - legislate in a specific area. In most countries, the legislation from the higher level of government will prevail based on the hierarchy of norms. It would however be possible that at least in specific areas, the law of the lower unit prevails.<sup>25</sup> Such a rule could be used for a smooth, gradual transfer of powers, i.e. the central law prevails until the lower level assumes the power.

How to distribute powers

- Guidelines on **how to distribute powers include:**

Powers of the centre

- Typical (minimum) **powers of the centre** generally consist of certain aspects of foreign affairs, currency, coinage, and customs.<sup>26</sup> If the centre is designed too weak, the state as a whole will suffer.

Subsidiarity

- According to the **subsidiarity** principle, higher levels of government shall only assume those powers that cannot be effectively managed by lower levels of government. Based on this principle, local infrastructure, basic health care, and parts of education are normally attributed to lower levels of government.

Importance for identity

- As a further general rule, areas of decision-making which are of **importance for identity** (e.g. culture, education), should be left exclusively or concurrently to lower levels of government so as to facilitate decision-making by those who are directly concerned and to avoid conflict at higher levels of government. Divided societies in particular tend to face demands to provide for powers in the area of police and cooperation with neighbouring or kin-states. These powers can be paired with protective mechanisms to avoid misuse.<sup>27</sup>

Phased approach

- An advantageous approach to the transfer of powers is the **phased approach**. This is where federal units acquire greater power at predefined intervals such as when certain conditions are fulfilled or when a specific commission decides to commence the next phase.

Asymmetric distribution of powers

- With an **asymmetric distribution of powers, specific conditions** such as the capacity of federal units and/or their potential for political mobilisation can be taken into account.<sup>28</sup> In many cases, such asymmetric arrangements might trigger demands by other federal units to receive the same amount of power. Asymmetric arrangement can be combined with a phased approach allowing a step-by-step transfer of power at different speeds.

## Options for wealth sharing

Wealth sharing formulas need be designed in correlation with the financial potential of federal units and with consideration to the distribution of powers. Every level of government needs resources in order to effectively assume its powers. This means having a system that allows for the generation of income, such as the right to tax, collect fees, solicit donations, borrow money, or raise revenue from the exploitation of natural resources. A system of financial equalisation can help to balance financial inequalities between regions.

### Taxation

- **In terms of generating their own income**, federal units can be provided with the right to establish taxes, to define their own tax scales, tax rates, and admissible tax deductions, and/or to collect taxes.<sup>29</sup> They can receive a specified share of taxes or the total share of certain taxes. Generally speaking, the ability to determine or adjust tax rates tends to provide federal units with a sufficient level of taxation flexibility. At the local level in particular, service fees can also comprise an important source of income.

### Natural resources

- **Natural resources** can form an important part of state income and the ways of managing and sharing income from natural resources can be the root cause of a conflict (e.g. Nigeria, Sudan, and Indonesia). In some cases, federalism is introduced to give communities better access to resources in their region. Natural resources can be considered the property of the federal units or as national property. However, property rights as such do not readily determine who decides on the exploitation of resources in terms of who sets the royalty rates, who collects the royalties, who can grant exemptions from royalty payment, who bears the costs of exploitation or collection, or who receives what share of collected royalties or royalties due. In fact, all these factors can determine which level of government has in fact access to resources as well as to their revenues.

### Financial equalisation

- In most cases, a **system of financial equalisation** between federal units or regions and the centre will also be required to balance differences in capacity and potential and provide all federal units with enough finances to provide at least a minimum level of services. Financial equalisation formulas should be reviewed periodically. Generally speaking, the extent of financial equalisation will depend on the degree of solidarity between regions as well as of the notion of the state. If federalism shall contribute to competition between federal units, certain differences in the amount and quality of services need be accepted (as is the case in the United States of America and Switzerland).

## Options for cooperation, control, and internal dispute resolution

The introduction of several levels of government creates the need for cooperation and raises the issue of control and dispute resolution mechanisms.

### Minimum cooperation

- Without a minimum degree of **cooperation**, a federation will be inefficient, even if exclusive competencies for each level of government are well-defined. Concurrent powers demand an even higher degree of cooperation, which can take place between different levels of government as well as among federal units.<sup>30</sup> For smaller federal units or units with limited capacities, cooperation can be a way of providing better quality services. However, intensive forms of cooperation, including the creation of joint institutions with their own delegated powers, can sometimes

## How much control

gain a life of their own. Though effective, they may trigger concerns regarding democratic control. Overall, (institutionalised) cooperation between the centre and the federal units can contribute to improving the responsiveness of the central government to the concerns of federal units and to avoiding disputes.

- Federalism assumes that in some policy areas, lower levels of government are better able to take decisions and deliver services. However, they are also capable of many of the failings associated with central governments. Therefore, it should be decided, **how much** (if any) **control** the central level of government shall maintain over the lower levels of government. Whenever the levels of government are taken as equal or coordinate, the rights of the central level to control or direct other levels of government will be limited.

## Dispute resolution mechanisms

- Disputes between the different levels of the state as well as between different federal units are to be expected. Thus, **dispute resolution mechanisms** are essential.
- If the federation was created in a peace process, such dispute resolution mechanisms are of even greater importance as disputes have the potential to re-develop along old conflict lines. For this reason, dispute resolution mechanisms need the acceptance of all relevant groups. Special mediation committees, judicial review by the courts, intergovernmental councils, or referenda mechanisms can fulfil these demands. In many federal countries, constitutional courts play an important role for dispute resolution. Federal units often have influence on the selection of constitutional court judges.<sup>31</sup>

### Options for introducing constitutional guarantees

## Federal constitutions

- Federal constitutions differ in length and detail. In federalism, self-rule and shared rule are entrenched in a **supreme, written constitution**.

## Major guarantee

- The constitution is the **major guarantee** that the agreed upon system cannot be changed at the whim of one side. Any change to the system requires a constitutional consensus.<sup>32</sup> In federations, the federal units are involved in the procedure of constitutional change. Constitutional amendments require the consent of a significant proportion of federal units.

## Balance between rigidity and flexibility

- When designing the federal system, the issue of future adjustment should be considered so as to find the right **balance between rigidity and flexibility**. Some constitutions protect the key features of the federal system by providing for rigid amendment requirements. Especially when a new state organisation is developed within a short time frame, it might be necessary to provide the possibility to adapt the federal framework over time so as to fine-tune the mechanisms and procedures according to needs and wishes.<sup>33</sup>

## Questions for the Mediator

### Pre-Agreement Phase: Can 'federalism' lead to a vision of peace?

- 1 What is the parties' level of knowledge on power-sharing? What kind of technical input is needed?
- 2 What do the parties to the conflict **understand by federalism**: perceptions, fears, and expectations? What are possible mechanisms for expectation management and trust building?
- 3 What are the major issues that shall be addressed with the state reform? Is federalism a solution in view of the **specific context and the issues at stake**? What forms of power-sharing are/would be adequate in the specific context? What demands can/cannot be addressed with federalism?
- 4 Federalism and/or **something else**? Does it need additional forms of power-sharing? Would decentralisation/autonomy be enough?
- 5 To what extent does the **political culture include** respect for laws and the constitution, respect for minorities, as well as the public acceptance of the need for tolerance and compromise?
- 6 What is the geography, **demography**, and distribution of natural resources?
- 7 Is there the **will to introduce federal power-sharing**—i.e. to give power to the units, while maintaining power at the centre – as it requires both?

### Agreement Phase: Agreeing on matters of federal design

- 8 Who are the legitimate actors and what are the legitimate procedures for reaching agreement on the federal design? In what ways is **civil society** included in the debate on the design of the federal system? How can the information and participation of the public be promoted? Are trust-building activities needed to bring the public on board?
- 9 What are the **capacities**, including financial capacities, in the prospective future federal units and at the centre? What is the willingness and capacity to promote drastic change? Is specific training, special finances, or assistance required? Does the analysis offer any conclusions of a minimum size for the federal units?
- 10 How are **ethnic groups distributed**? How strong is their political self-understanding and their political mobilisation? What are their demands? What are the fears of other groups? What about minorities within minorities?
- 11 What kind of **criteria could be applied to create federal units** that are acceptable to all? Will it be necessary to include ethnic criteria in the definition of federal units? Are specific guarantees needed for new minorities, dispersed groups, or individuals? Can the creation of more than two levels of government contribute to a more efficient and acceptable state organisation?
- 12 Do all groups and all regions of the country share the **wish for self-rule and shared rule** or would an asymmetric federal design better address the existing demands and capacities?

- 13 What is the **current governmental system**? How will it be changed by the introduction of federalism? What additional reforms are planned/necessary?
- 14 More specifically, can the sum of power-sharing mechanisms be misused to **permanently block the political system**? Are power-sharing mechanisms strong enough to safeguard the interests of all concerned, including women or other vulnerable groups? Are there incentives for political mobilisation other than those based on ethno-politics?
- 15 According to the proposed distribution of powers, do **all levels of government have genuine decision-making powers**? Is the centre strong enough? Which issues are particularly sensitive? Are they attributed to lower levels of the state? Are there protective mechanisms against the misuse of power, including human rights protection and anti-corruption measures?
- 16 Do all levels of state have **sufficient resources**? If the issue of natural resources is sensitive, have there been dispute resolution mechanisms foreseen? How much solidarity is there for financial equalisation?
- 17 Are general **dispute resolution mechanisms provided**? What is the role of the courts and are they perceived as neutral and efficient? Are there other mechanisms of dispute resolution, e.g. joint national or international commissions?
- 18 Are **adjustments** to the federal system possible at a later time?
- 19 What **guaranties/reassurance** can be given at the time of the agreement? What changes can be introduced immediately? What needs more time?

### Post Agreement / Implementation Phase

- 20 What is the foreseen **timing** for the introduction of federalism? Who decides on the timing based on what kind of criteria? What kind of resistance can be expected in the implementation phase? Is it possible to reach an understanding of the phases and form of implementation as part of the peace process? Are there mechanisms established to assure a smooth and timely transition?
- 21 What kind of **dispute resolution mechanisms** are foreseen in the implementation phase?
- 22 Is adequate capacity building and support provided, e.g. for the constitution making at the level of federal units?
- 23 How will **civil society** be involved in the implementation phase?

### Additional Sources and Useful Links

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- WATTS RONALD L., *Comparing Federal Systems*, 3<sup>rd</sup> ed., McGill-Queen's University Press, Montreal 2008.
- Website of the Forum of Federations, Canada, offering a wide range of materials, publications and links: <http://www.forumfed.org>.
- Website of the Institute of Federalism, Switzerland, offering a wide range of information on federalism: <http://www.federalism.ch>.

## Endnotes

<sup>1</sup> For the topic of decentralisation and autonomy a separate 'Peace Mediation Essential' is available.

<sup>2</sup> For instance the province of Quebec has some specific rights that other provinces in Canada do not enjoy. In Germany, representation in the second chamber is weighted based on population numbers of the Länder.

<sup>3</sup> In India some federal units are drawn in accordance with settlement patterns of one community and others based on different, e.g. geographic grounds. In addition, some federations give rights of self-rule and shared rule directly to communities (personal or corporate federalism, e.g. Lebanon). Belgium is divided into regions and communities. In Ethiopia territorial sub-units as well as nations, nationalities, and peoples are represented in the Upper House of Parliament.

<sup>4</sup> Normally the competencies of the sub-units are less protected than in a federal state and sometimes can be withdrawn or changed unilaterally by the national level.

<sup>5</sup> Examples of Confederations are: The Union of Serbia and Montenegro (2003-2006), (European Union – a hybrid between confederation and federation) Switzerland (1815-1848), United States of America (1781-1787).

<sup>6</sup> Federations are: Argentina, Australia, Austria, Belau, Belgium, Bosnia and Herzegovina, Brazil, Canada, Comoros, Ethiopia, Germany, India, Malaysia, Mexico, Micronesia, Nigeria, Pakistan, Russia, St. Kitts and Nevis, South Africa, Spain, Switzerland, United Arab Emirates (with some features of a confederation), United States of America, Venezuela, (Spain and South Africa avoid the label federal). *Countries in Transition to Federalism*: Iraq, Somalia, Sudan, Democratic Republic of Congo, Nepal, *Countries Considering a Federal System*: Sri Lanka, Philippines.

<sup>7</sup> Example of a Federacy: Tanzania/Zanzibar.

<sup>8</sup> Examples of Unitary States (devolution) are: Macedonia, Equador, Uganda, Ghana.

<sup>9</sup> Examples of autonomy arrangements are: Finland/Åland, Indonesia/Aceh, Philippines/Mindanao.

<sup>10</sup> Most states rely at least to some extent on deconcentration, e.g. the system of prefectures in the French tradition.

<sup>11</sup> For instance, all multi-ethnic federations in South East Europe broke apart with the fall of communist regimes, while India and Russia have had mixed results with success in some areas, but with continued secessionist movements on the national level and on the level of the federal units.

<sup>12</sup> Other criteria that should or could be taken into account for defining federal units include geography, infrastructure, size of population, financial and other resources, as well as development potential. Particularly when there is a limited capacity or will to cooperate, federal units should be big enough and have enough financial potential to be able to effectively assume their own powers.

<sup>13</sup> The European Charter of Local Self-government proposes that „[c]hanges in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of referendum where this is permitted by statute.“ European Charter of Local Self-government of October 15, 1985, Art. 5.

<sup>14</sup> For instance, the Swiss constitution provides for a cascade of referenda through which the concerned populations can determine how the boundary shall be drawn. In Nigeria, a request for a revision of boundaries has to be supported by 2/3 of the representatives from the concerned area. In Ethiopia, every nation, nationality and people has the right to create its own state if it can achieve enough support for this undertaking within its political institutions as well as the community.

<sup>15</sup> For example, in Ethiopia additionally the nations, nationalities and peoples are represented. In Belgium, the different regions and communities are represented.

<sup>16</sup> India for instance, foresees the appointment of 12 members by the president and the remaining members through election by the state legislatures. In Ethiopia, the regional states determine whether to select their representatives in direct or indirect elections. In Pakistan, representatives from provinces are elected indirectly, while those of federally administered tribal areas are directly elected.

<sup>17</sup> In Germany, representatives of one Land have to cast a block vote. In Switzerland, each representative is supposed to vote according to his conscience without instruction.

<sup>18</sup> E.g. United States of America

<sup>19</sup> For instance, in Belgium of the 21 representatives drawn from community councils, 10 are from both the Flemish and French communities and one is from the German community. In Germany, the number of representatives ranges from 3-6 depending on the population size of the federal units.

<sup>20</sup> In Bosnia and Herzegovina and in Switzerland both chambers have equal powers.

<sup>21</sup> In Germany, two categories of laws are distinguished: laws which require the consent of the upper house and laws for which the upper house has only a suspensive veto.

<sup>22</sup> In Brazil, similar to the situation in the United States, both chambers have symmetric powers concerning legislation. However, the upper house has exclusive power to approve presidential nominations and authorize debt margins for the states and municipalities.

<sup>23</sup> For instance, in Switzerland, cantons have the right to self-organisation and their own constitutions. However, the national constitution establishes that cantons need to be organised democratically. The constitution of Bosnia and Herzegovina for instance, prescribes that one of the federal units is itself organised as a federation. The constitutions of India and Nigeria directly define the organisation of federal units. In the case of India, federal units nevertheless have the right to adapt their political organisation

<sup>24</sup> E.g. Germany and South Africa as well as Switzerland, Austria and Malaysia.

<sup>25</sup> E.g. concerning old age pensions in Canada.

<sup>26</sup> For instance, in the United States of America, the central level of government has the following powers: foreign affairs, international trade, defence, citizenship and naturalisation, the regulation of commerce, taxation, coinage, higher levels of justice, provision of welfare and medical services.

<sup>27</sup> For instance, if a federal unit is attributed with the power to regulate the relations between religion and the state, the central level can retain the competence to protect the freedom of religion and to take measures for promoting the peace between religious communities.

<sup>28</sup> E.g. Quebec in Canada, Kashmir in India, and Catalonia in Spain are attributed with some additional powers.

<sup>29</sup> The federal unit might simply be better equipped than the central level to collect taxes from small enterprises or crafts.

<sup>30</sup> Cooperation can take the form e.g. of consultations, know how exchange and assistance, co-ordination of policies as well as the joint delivery of services.

<sup>31</sup> Influence is provided either by leaving the nomination or approval of (part of the) judges to the federal units or to the second chamber of parliament.

<sup>32</sup> Germany even foresees in its Basic Law that federalism as such cannot be abolished, not even by constitutional procedures.

<sup>33</sup> Too much rigidity can be dangerous. Most confederations dissolve because an adaptation to the system was impossible or could only be achieved at a high cost.

The Mediation Support Project (MSP) aims to enhance peace mediation capacities by focusing on research, training, process support, and networking. The main partner of MSP is the Swiss Federal Department of Foreign Affairs. MSP was founded in 2005 as a joint venture between the Swiss Peace Foundation (swisspeace) and the Center for Security Studies (CSS) at the ETH Zurich.

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Layout: Cyril Amberg

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