

Summary – Presentation “South Africa and Kenya

STEYTLER Nico, University of the Western Cape

Johanne Jean-Petit-Matile

This presentation compares the two countries South Africa and Kenya regarding Federalism and Conflict resolution. These two countries had been chosen because they are the most successful of in total four federal countries in Africa. In addition, their structure is similar, as Kenya's constitution was inspired by South Africa's. The presentation started with a short historical overview explaining where the federal idea came from. It then went on to examine where the federal idea as a conflict management tool came from, what practical arrangements have given effect to the federal idea as a conflict resolution tool and finally how successful these arrangements have been.

The federal idea was given rise in South Africa with the Union of South Africa 1910. During the Apartheid decades, the federal idea was abused to protect the supremacy of the white minority. Later, Federalism was still looked at from a minority protection perspective but finally constituted a compromise and a comfort zone. In this sense, e.g. the provinces of South Africa – except one – do not have ethnic names and allow in that way ethnical accommodation without calling it that. South Africa is nevertheless a weak federation as the provinces were an unwelcome compromise and there has been a strong borrowing of ideas from 'centralized' Germany. Federalism had been successfully implemented in South Africa with strong courts and was able to solve conflicts as well as provide access to the resources. A future challenge for Federalism in South Africa is as a non-territorial issue the centralization of economic power in white hands.

Regarding Kenya, the federal idea was developed by European settlers out of fear of African domination in the 1940s-1950s. They promoted exclusivity and supremacy, orientated to the Swiss cantonal model. In 1963, as Kenya got independent, federalism was a tool to countering the fear by African ethnical minority elites of a Kikuyu-Luyo domination. In 2000-2010 Kenya faced the distress of an imperial presidency and an ethnic conflict, which finally resulted in an ethnic federation. The Federal arrangements in Kenya led to weak counties where the devolution was more of an unwelcome compromise, as the 47 counties were splitting ethnic regions and still are today. Kenya was borrowing from South Africa in the sense that they limited powers with small counties only, limited taxing power and created a potentially strong second House of Parliament.

The implementation of Federalism in Kenya is underdeveloped but has the assistance of a judiciary. Other challenges are the imperial presidency, which has not been significantly curbed, the equitable sharing of resources and devolution of corruption. The constitution of Kenya has not always been successful as evidenced by the 2017 elections. In 2017 Odinga was sworn in as the 'People's President' which caused secessionist calls from coastal counties and the west. Nevertheless, Kenya didn't fall ethnically apart because they are working on creating a national integration and at the same time allowing a devolution of the counties.

In both cases – South Africa and Kenya – the federal idea is used as a pragmatic tool to address an actual or perceived conflict. There is not a normative commitment by any party involved. However, the exigencies of time, place and power have changed and so did the adherents to the federal idea as a tool. It becomes, with those two examples, apparent that the federal idea can be used to ensure racial exclusivity and supremacy or ethnic accommodation or even limiting imperial presidency.

The liberally borrowing federal arrangements from all over the world resulted in 'fragile' federal arrangements with weak subnational governmental powers, even weaker fiscal power with an equalisation system and shared ruling, which is not really used in practice though.

Regarding to how successful these federal arrangements have been in addressing conflicts the presentation concluded that peace is still divided, uneven, as only an accommodation of ethnic groups other than ruling Kikuyu and Kalenjin alliance prevented an ethnic conflagration in Kenya after the 2017 rigged elections. For this only relative success, there are casual factors like: A lacking political will or necessity as well as constitutionalism and functioning independent judicial system, the subnational governments, which taste actual power sharing and gain access to significant resources. Also, there are attempts at de-emphasizing ethnic divisions.

For the future the main question is if there is enough salience of the federal idea to address the existing challenges as the territorially based governance structures do not deal with deep-seated cleavages among groups. In South Africa the key issue is the centralisation of economic powers in white hands as in Kenya it is the centralisation of power (including power over economic resources) in the hands of a Kikuyu minority in alliance with any of the other groups.