

OPERATIONAL GUIDANCE NOTE (DRAFT)

Decentralisation and Autonomy in Mediation Processes

1. Key messages

- ▶ In order to reach a peace agreement it may be necessary to already **develop a vision of the future organisation of state**. A lack of self-rule at regional or local levels is among the root causes of many conflicts, particularly those of an ethno-political nature. Future power-sharing arrangements, including decentralisation and autonomy, can become a necessary part of the agenda for peace.
- ▶ It is desirable to **agree on the fundamental principles** of state organisation **within the peace process**. It tends to be more difficult to agree on such matters once the sense of urgency abates.
- ▶ Decentralisation and autonomy, especially when introduced to bring conflict to an end, should be **sufficiently entrenched** to ensure that they cannot later be unilaterally revoked by the centre.
- ▶ Decentralisation and autonomy will **often not be enough for transforming conflict** in a sustainable way. The introduction of other forms of power sharing should additionally be considered.
- ▶ Decentralisation and autonomy that are adopted and implemented **without an inclusive process** tend to remain **controversial**.
- ▶ Provide mechanisms that promote the **timely and smooth implementation** of decentralisation and autonomy and that facilitate the cooperation of the central government with decentralised and autonomous institutions.

2. Background

2.1 Definitions: What decentralisations and autonomy are (and what not)

Definitions can be a tool for the mediator to clarify concepts. The definitions in this section shall also draw the attention to other options of state organisation (especially federalism)¹. A note of caution: labelling the aimed at future system of state organisation at an early stage, for instance by determining that the future state organisation shall be unitary, can narrow the range of view and limit the options.

- ▶ **Decentralisation is self-rule.** Decentralisation is used here to denominate the transfer of political, administrative and financial powers to units at the middle and/or lower level of state (also called devolution). In a decentralised state, sub-national units possess own political and administrative bodies and are attributed with own decision-making powers (self-rule). In order to be effective, such decision-making powers need be paired with adequate finances. Decentralised systems of state organisation can be but need not be entrenched in the Constitution.
- ▶ **Decentralization is used here in a narrow, comprehensive sense. The term decentralization can encompass the meaning of** transferring competencies to local branches

¹ On federalism a separate guidance note is available.

of central institutions or agents of central government (*deconcentration*), to the private sector (*deregulation*) or para-state organizations (*delegation*) and sometimes even federal arrangements are termed decentralised. For the purpose of clarity, however, in the following, decentralisation will only be used in the above mentioned narrow sense of devolution.

- ▶ **Decentralisation can be symmetric or asymmetric.** In most cases, decentralised states in most cases accord self-rule to the entire state territory and generally all decentralised units are attributed with the same amount of powers. Most states apply symmetric decentralisation, although some differentiate, generally only slightly, between urban and rural decentralised units. However, asymmetric decentralisation is possible, for example by according more powers to some of the units². In some countries, decentralised units have the right to return powers to the centre or the centre can assume powers if the decentralised unit is not fulfilling its obligations. Such changes in power which concern only one or some decentralised units will also lead to asymmetric designs.
- ▶ **Autonomy is a specific form of decentralised government.** Autonomy arrangements can be described as strongly asymmetric forms of decentralised state organisation. In the case of autonomy arrangements one or more areas of the state are attributed with special powers not granted to other areas of the state. As with the general rule for decentralised arrangements, autonomy does not require constitutional entrenchment. Autonomy can turn into symmetric decentralisation if all other areas get and use the option to opt in and receive the same amount of powers. Because the motivation for introducing autonomy normally differs from the motivation for introducing symmetric or quasi-symmetric decentralisation, autonomy is mentioned separately from decentralisation.
- ▶ **Decentralisation can be combined with autonomy.** The introduction of a special autonomy arrangement for one area of the state can be combined with symmetric or quasi-symmetric countrywide decentralisation. For instance Great Britain pursues decentralisation in England while according broader autonomy to Scotland as well as to Wales³.
- ▶ **Decentralised states and states with autonomy arrangements are unitary states.** Decentralised and autonomous units form lower levels of government, do not have state-building character and do not participate as decentralised or autonomous units in national decision-making. The focus is on self-government.
- ▶ **Decentralisation and autonomy are not federalism.** Federalism is constitutionally guaranteed self-rule and shared rule. In a federal state, similarly as in a decentralised state, certain areas of decision-making are within the sphere of the federal sub-units (self-rule principle). Based on the shared rule principle, the federal sub-units are actively involved in the decision-making at the national level, normally through the representation in a second chamber of parliament. This specific shared rule element is lacking in decentralised states. Additionally, in a federal state, the design of self-rule and shared rule must be entrenched in the Constitution.
- ▶ **An autonomy arrangement is not a federacy.** Federacies are a specific form of asymmetrical federalism. In a federacy, similarly as in an autonomy arrangement, one or several areas of the state are attributed with a special right to self-rule that other areas of the state do not have. However in contrast to autonomous units, the unit of a federacy enjoys special representation in central institutions and need be constitutionally entrenched (e.g. Zanzibar in respect to Tanzania).

² For instance, in Kosovo some municipalities were selected as pilot municipalities for testing the system of decentralisation.

³ The degrees of autonomy differ in Scotland and Wales.

2.2 The Conflict Resolution Potential of Decentralisation and Autonomy

- ▶ **Autonomy might be especially useful** whenever there is strong mobilisation and special demands for self-determination from one group or a small limited number of groups located in one area or a limited number of areas of the state. Autonomy can be useful to transform bi-polar conflicts.
- ▶ **Decentralisation and autonomy can establish forms of government that are in compliance with international law standards** on minority protection and self-determination. Though there is no uniform application or standard, the right to self-

determination is today predominately interpreted as a people's right to local self-governance or autonomy⁴. Several international documents establish rules and recommendations for local self-government⁵.

- ▶ **Decentralisation and autonomy can be useful means of conflict transformation.** Decentralisation can be an important tool of conflict transformation, especially in so-called ethno-political conflicts or conflicts in which non-majority groups are involved. Based on the self-rule principle, subjects that are important for group identity and potentially divisive, in particular, can be left to the decision-making of lower levels of government or to the autonomous area. The more homogeneous group can decide on sensitive issues and can adopt solutions they consider adequate. Additionally, through this devolution, categorical conflicts, creating winners and losers, on higher levels of government can be avoided. Financial decentralisation can reduce financial dependencies and conflicts about resources⁶.

The decentralised level of state can provide a counterweight to the centre and can contribute to a more adequate balance of power. Satisfaction with the arrangement of self-rule can help improve the satisfaction of the citizen and groups with the state as such.

- ▶ **Decentralisation and autonomy can answer key demands.** For many non-majority groups the priority is to have genuine self-governance including control over a certain

Examples of Decentralisation and Autonomy

Arrangements of decentralisation:

Macedonia (Former Yugoslav Republic of Macedonia)

Based on the Ohrid Framework Agreement (Peace Agreement of 2001) Macedonia introduced symmetric decentralisation combined with participation rights for the major ethnic communities. The decision for decentralisation was taken in response to demands for self-determination from ethnic Albanians. Decentralisation was intended to foster self-determination of ethnic groups and to improve democratic local governance. Federalism and autonomy were rejected as they were perceived to be possible stepping stones for secession.

Further examples of symmetrical or quasi-symmetrical decentralisation: Afghanistan, Cambodia, Guatemala, El Salvador, Angola, Mozambique, Burundi

Autonomy arrangements:

Finland / Åland

Autonomy for Åland was mediated by the League of Nations in 1921 to achieve self-determination for Åland and end the conflict between Finland and Sweden. Finland guaranteed local self-government as well as the protection of Swedish languages and customs. Finland and Sweden made an agreement how guarantees were supposed to be realised, and Åland was demilitarised so that it would not develop into a military threat for Sweden. The arrangement was entrenched in the Autonomy Act, which has been completely revised in 1951 and 1993.

Indonesia / Aceh

Based on the Memorandum of Understanding between the Government of Indonesia and GAM (Free Aceh Movement) of August 2005 the province of Aceh was attributed with special autonomy. The Memorandum of Understanding underlines, that Indonesia will remain a unitary state and guaranteed a certain degree of self-rule to Aceh. For the further implementation, a Law on the Government of Aceh was passed by the Parliament in Jakarta.

Further examples of autonomy arrangements: Philippines / Mindanao, China / Hong Kong and Macao, Papua New Guinea / Bougainville, United Kingdom / Northern Ireland

⁴ See Charter of the United Nations of 1945, see esp. Art. 1 [2.] UNO-Charter; International Covenant on Civil and Political Rights of 1966, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1) of 1977.

⁵ See e.g. The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note of 1999; European Charter of Local Self-government of October 15, 1985.

⁶ However conflicts might increase if decentralisation is not matched with some sort of equalisation.

amount of own resources. For the majority, the priority might be to keep a certain amount of control at the centre and to maintain the unitary character of the state. Decentralisation and autonomy can fulfil both demands.

- ▶ **Decentralisation can be limited to the level of municipalities.** Normally states expect less risk from devolving powers to municipalities than to regions. Municipalities will most likely be too small to pursue a strategy of secession. Regions on the other hand could use powers and resources to prepare for independence. However, territorially concentrated groups might not always be satisfied with self-determination 'only' at the municipality level.
- ▶ **Decentralisation and autonomy provide for separate rule however not for improved joint rule.** Both majority and non-majority groups might be reluctant to share rule at the centre: the majority because it wants to maintain control, the non-majority because it does not want to give extra legitimacy to central institutions through its participation. This however points to a weakness of the decentralised system and of autonomy arrangements. Decentralisation can help to limit direct confrontations, and with it lessen centrifugal tendencies but it does not necessarily create a centripetal process, which could create cooperation, common visions and common political action.
- ▶ **Decentralisation and autonomy can lead to new frustrations,** especially if decentralisation and autonomy are not well entrenched and can be changed unilaterally by the centre or if implementation legislation is prepared by the centre without or with minimal consultation of the concerned decentralised or autonomous units. In the case of autonomy, special rights for one area might cause frustration in other areas and might trigger demands for similar rights.
- ▶ **Decentralisation and autonomy alone might not be sufficient to provide for sustainable peace.** Additional power-sharing mechanisms might be required to supplement decentralisation and autonomy, providing mechanisms that on the one hand ensure that interests of decentralised and autonomous units are taken into account at the centre and on the other that new minorities and dispersed groups receive adequate protection and inclusions.
- ▶ **Decentralisation and autonomy can be successful.** There are multiple examples where decentralisation and autonomy helped to at least contain conflict. Autonomy could stop Åland's quests for secession from Finland and reunification with Sweden in the beginning of the 20th century. Today Åland is an autonomous, demilitarised Swedish-speaking region of Finland. In order to smooth reunification, China established a system of autonomy for Hong Kong and Macau, even providing for two different economic systems. The agreement on an autonomous status for Aceh helped end the many decades long open conflict in Indonesia. Bougainville had negotiated autonomy from Papua New Guinea in 1976 and after new conflicts, renegotiated autonomy 2005. However, the latest autonomy agreement might pave the way to secession. By 2015 Bougainville can decide on complete independence.

3. Key Principles: Decentralisation/Autonomy and Peace Processes

- ▶ **Decentralisation and autonomy can be useful topics in peace processes.** Decentralisation and autonomy can provide a vision of state organisation that offers possibilities for the self-determination of groups, while at the same time not questioning the unitary character of the state.
- ▶ **Decentralisation and autonomy might be useful** to consider within a peace process whenever a lack of self-rule or an imbalance of state power is among the causes of conflict.
- ▶ **Decentralisation and autonomy require**

- The willingness to establish genuine self-rule of decentralised or autonomous units, including the sharing of resources,
 - The willingness to live in a common state,
 - A minimum level of willingness to cooperate on matters of common concern,
 - A minimum level of democratisation.
- ▶ **Decentralisation is relatively easy to agree to.** There are many reasons, in addition to improving self-determination, why to decentralise powers, such as fostering economic development, efficiency and effectiveness or democratization. International organizations promote decentralisation. Even if decentralization is introduced primarily to end confrontation and conflict, it can be argued that decentralisation benefits all citizens and is part of a general reform strategy⁷. **Autonomy in this sense can be more difficult to agree to** because it provides a specific form of government for a specific area of the state and therefore also acknowledges the specificity of the group and of the area.
- ▶ **Decentralisation and autonomy can/need be a compromise** but imprecise wording should not compromise the decentralised or autonomous arrangement. If compromises are based on imprecise wording instead of the choice of solutions and approaches, the need for new negotiations will emerge in the implementation phase.
- ▶ **Decentralisation and the introduction of autonomy are complex** but not as complex as the introduction of other forms of state organisation. For instance, when introducing federalism, local governance has to be established to allow for self-rule and central institutions have to be reformed in order to allow for shared rule. This leads to a drastic change in local *and* central decision-making. Decentralisation and autonomy mainly change local governance. This is also a complex process, requiring the creation of new political and administrative institutions as well as the transfer of powers and resources with repercussions on inter-ethnic relations; however change is less drastic than when introducing federalism. Nevertheless it will be necessary to consider implementation early and develop mechanisms to prevent spoiler behaviour and promote a smooth transfer of powers and resources.
- ▶ **The drafting of decentralisation and autonomy designs need time and timing.** A peace agreement or an interim constitution need not spell out all aspects of a future state organisation but it should provide major principles and give clear instructions for the implementation.

4. Key Options for Introducing Decentralisation and Autonomy

There is no standard model of decentralisation or autonomy. The following, highlights some of the options.

4.1 Options for creating decentralised and autonomous units:

- ▶ The definition of decentralised or autonomous units will determine who receives the right to self-rule and who might gain control over territory. In a decentralised system of state organisation powers can be devolved to the local and/or the regional level. Devolution to the local level can bring democracy close to the people; however, capacities for self-rule may be limited. Regions might be able to assume more powers or more important powers. In addition to the devolution of powers to different levels of state it is also possible to devolve powers to different types of units and institutions, e.g. certain powers can be de-

⁷ Public opinion polls in Macedonia show that the population does not any longer directly associate decentralisation with the peace agreement but accepted it as part of democratisation and development.

volved to traditional forms of local government⁸. Quite a number of states have different types of units on one level that can be territorially overlapping.

- ▶ In the case of an autonomy arrangement, autonomy is given to one or some specific areas of the state, conferring a specific status to these areas. It can be explicitly foreseen or excluded that other areas can also acquire such status (e.g. Spain). In most countries it is left open.
- ▶ In most cases, the **number of state levels and boundaries of decentralised and autonomous areas will have to be negotiated**. Whenever a new definition of boundaries has to take place, criteria and procedures for the delimitation of boundaries have to be established.
- ▶ **If decentralisation and autonomy shall be introduced to accommodate ethno-political diversity**, there can be strong claims to define decentralised and especially autonomous units based on **ethnic criteria**. This quest might in turn mobilise other smaller ethnic groups within that area who fear being turned into a minority and being dominated by the newly empowered majority.
- ▶ In negotiated settlements the outcome is likely to be a **combination of different criteria**, including some ethnic dimension. Safeguards against the possible negative consequences need be designed. For instance, guarantees for integrated democracy and power-sharing at the level of decentralised or autonomous units, minority rights as well as a strong individual rights approach can help to reduce the risk of new domination. The introduction of a third (and forth) level of government can further help to improve the power-balance.
- ▶ Negotiated boundaries tend to **lack democratic legitimacy**. Democratic procedures, e.g. referenda, can be used to approve the new territorial organisation⁹. However, if boundaries that were negotiated in a peace process are later rejected (e.g. in a referendum), the peace process might be jeopardized. Some countries foresee democratic procedures for the adjustment of boundaries. Such procedures facilitate the peaceful and democratic re-adjustment of boundaries at a later point.

4.2 Options for the distribution of powers:

- ▶ Decentralised and autonomous units normally do not have or have only in a limited sense a right to self-organisation. Central legislation can for instance define the design of decentralised and autonomous institutions, determine different designs depending on the size or capacity of decentralised or autonomous unit, provide a choice between alternative forms of organisation, give the right to adapt a proposed set of institutions, provide for guidelines how to establish institutions, or leave it completely to the decentralised and autonomous units to define their institutions. No matter how they are established, decentralised and autonomous political institutions need be more than agents of central institutions. They need be composed based on some form of democratic representation.
- ▶ The **actual distribution of powers** will most likely be a matter of negotiation. Powers can be less extensive, as extensive as, or even more extensive than in a federal arrangement.
 - 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, normally, at least local infrastructure, basic health care and

⁸ Although this can create (amongst others) legitimacy questions.

⁹ 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.

parts of education are attributed to lower levels of government. Though this principle can give some guidance, it remains vague.

- As a further general rule, areas of decision-making that are of **importance for identity** (such as culture, for example) should be left exclusively or concurrently to lower levels of government so as to foster self-determination and avoid conflict on higher levels of government. Especially in divided societies, it might also be advisable to provide for powers in the area of police and to foresee the right of decentralised and autonomous units to cooperate with neighbouring or kin-states. However these powers should be paired with protective mechanisms to protect old and new minorities.
- With an **asymmetric distribution of competencies, specific conditions**, such as capacity or political mobilisation, can be taken into account. In many cases such asymmetric arrangements might trigger demands of other areas to receive the same amount of powers. It can be foreseen that other areas will receive additional powers once certain conditions are fulfilled or if so requested. Additional decentralised and autonomous units might receive the right to give powers back to the centre.

4.3 Options for providing resources to decentralised/autonomous units:

Every level of government needs resources in order to be able to effectively assume its powers. In some cases, decentralisation and autonomy might also be introduced to give communities better access to and control over resources in their area of settlement, but some solidarity between poorer and richer regions might be necessary to correct imbalances of capacities and potentials. Sharing of wealth can be required across levels of government, i.e. between centre and decentralised/autonomous unit but also among the units. It therefore needs a system that allows for own generation of income, e.g. through rights to tax¹⁰, to collect fees, to accept donations, to borrow money or to share the income from exploiting natural resources¹¹, as well as a system of financial equalisation. It is important that units have own funds not only transferred funds.

4.4 Options regulating the relations between centre and decentralised units:

In decentralised systems of state organisation, the centre normally maintains a certain level of control over decentralised and autonomous units. In the field of devolved power this control however should be limited. In order to cope with disputes between units, and between the centre and units, special conflict resolution mechanisms should be foreseen, including consultation, mediation, and judicial intervention. Trust in conflict resolution mechanisms are decisive for how precise provisions on the state organisation need to be.

4.5 Options for entrenchment:

Decentralisation and autonomy do not require constitutional or special entrenchment; however, for practical and peace reasons, decentralisation and autonomy should be entrenched so that the centre cannot revoke them unilaterally. Power-sharing mechanisms might be helpful to assure that the interests of decentralised and autonomous units are taken into ac-

¹⁰ Decentralised and autonomous units can be attributed with the right to establish taxes, define the tax rates and/or collect taxes. They can receive a specified share of taxes, e.g. 50% of the income tax, or certain taxes can be attributed entirely to the unit, e.g. property tax.

¹¹ The ways of managing and sharing the income of natural resources can be root causes of conflict. There are multiple options for sharing natural resources. The income from natural resources may go entirely to the central state or to the sub-units or it can be shared between them. The management can be attributed to one state level or be assumed jointly. National resources can be managed by a joint committee or by one level of government with the requirement of consultation or approval from other state levels. If a certain percentage of revenue from natural resources is guaranteed to a specific state level it should be e.g. clearly defined whether costs, e.g. for the exploitation of natural resources are deducted before the distribution or have to be covered from the remaining amount.

count for each revision of the design of decentralisation or autonomy, for the drafting and adoption of implementing acts, as well as for international agreements in the areas of devolved powers. This can be achieved through constitutional guarantees and/or the provision of special procedures for the amendment of decentralisation and autonomy designs and adoption of implementation acts. Quite a number of states, however, do not foresee special legal protections, in some cases, especially in the Westminster tradition, because of a strict understanding of the sovereignty of Parliament¹². However even in this legal tradition, broad consultation mechanisms can be foreseen. Unilateral changes, which are undertaken against the will of concerned populations, to the design of decentralisation or autonomy or deviations from the principles established in the peace agreement or in the implementation process can jeopardise the sustainability of peace.

5. Questions for the Mediator

Pre-Agreement Phase: Can 'decentralisation and autonomy' lead to a vision?

1. What are the major reasons that decentralisation or autonomy is advocated, and what are the major reasons voiced against?
2. Can decentralisation and autonomy address the root causes of conflict? What causes remain unaddressed?
3. Is there the general willingness to introduce genuine local self-rule and share resources? Is there the general will to live in one common state?
4. Will non-majority groups be satisfied with devolved self-rule alone?

Agreement Phase: Agreeing on matters of decentralised or autonomous design

5. Shall there be one or several levels of decentralised government?
6. Will the creation of decentralised units and autonomous regions create new minorities? Are there mechanisms in place to protect new minorities and other (vulnerable) groups?
7. In the case of autonomy, what reactions of other regions can be expected? Can it be expected that other regions will demand equal or similar rights? Shall they be able to opt in? What could be procedures to extend autonomy to other regions?
8. What kind of powers shall decentralised and autonomous areas have? Are sensitive areas of decision-making left to lower levels of government? Do decentralised and autonomous units have the right to hand powers back, or can the centre interfere in matters of devolved powers if decentralised or autonomous units do not fulfil their tasks? What control and coordination mechanisms are left to the central level?
9. In how far shall decentralised and autonomous units be able to decide on their own organisation? Do local specificities have to be / can they be taken into account? Will local institutions be able to fulfil tasks? What kind of capacity building does it need?
10. How is the financial potential of units? What kind of resources do decentralised and autonomous units have? What kind of infrastructure/property will be transferred to decentralised and autonomous units? Are registries up to date? Will resources be sufficient to fulfil tasks? Is there a system of financial equalisation in place?

¹² For example, in Great Britain, the British Parliament can take decisions also in areas that are devolved to the Scottish Parliament.

11. Are there mechanisms in place to assure conflict resolution between units and between the centre and units? Will courts be able to handle the additional case load? Would special courts be required, e.g. administrative courts?
12. What are the guarantees that self-rule will not be unilaterally revoked or changed? Are decentralised and autonomous units involved in the process of drafting major implementing legislation?

Post Agreement / Implementation Phase

13. What timing is foreseen for the implementation process? Are phases or criteria for the hand-over of competencies and resources defined?
14. Are mechanisms in place to facilitate implementation? Who will have main responsibility, who will coordinate, who will monitor? Shall there be international monitoring?

6. Additional sources and useful links

- ▶ Braathen Einar & Bjerkreim Hellevik Siri, *The Role of Decentralisation on Peace Making and Conflict*, A literature review, NIBR; Working Paper 125, 2006
- ▶ Charter of the United Nations of 1945.
- ▶ CSCE Document of the Copenhagen Meeting on the Human Dimension of 1990
- ▶ European Charter of Local Self-government of October 15, 1985.
- ▶ First Protocol to the Geneva Convention of 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts
- ▶ GTZ (2006): *Decentralization and conflict. A guideline*. Division 42, Governance and Democracy.
- ▶ Harris Peter & Ben Reilly (eds.), *Democracy and Deep-rooted Conflict: Options for Negotiators*. International IDEA Handbook, 1998.
- ▶ Haug Marit & Schou Arild, *Conflict and decentralisation*. NIBR report, 2005.
- ▶ International Covenant on Civil and Political Rights of 1966.
- ▶ Blaser Jeremias, Besdziek Dirk & Byrne Sarah, *Lessons Learned on Decentralisation, a literature review*, Written for the Swiss Agency for Development and Cooperation, Institute of Federalism, Fribourg 2003.
- ▶ The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note of 1999
- ▶ www.oecd.org, providing information on OECD policy and useful policy documents (sigma papers)
- ▶ www.undp.org/governance/sl-dlgud.htm providing information on decentralisation and local governance.
- ▶ <http://go.worldbank.org/LHUS44F4J0>, and <http://www1.worldbank.org/publicsector/decentralization/what.htm> providing information on Worldbank projects and policy recommendations in the area of decentralisation.

Date of issue: **October 2007**