

# Peace Mediation Essentials



# Decentralization, Special Territorial Autonomy, and Peace Negotiations

## Key Messages

- **“Decentralization” and “special territorial autonomy”** (as used in this document) provide for a certain degree of self-rule of territorial units within a unitary state.
- **Power-sharing can be a key to peace:** A lack of self-rule at the regional or local levels can be among the root causes of conflict, particularly in deeply divided societies. Future power-sharing arrangements, including decentralization and special territorial autonomy, can become necessary parts of peace negotiations and of developing a vision of the future organization of the state.
- **The process is important:** “Decentralization” and “special territorial autonomy” that are adopted and implemented without an inclusive process or are based on coercion tend to remain controversial and difficult to implement.
- **Demands for territorial autonomy are key challenges:** Mobilized groups typically insist on territorial autonomy within a unified “homeland”. They are often not satisfied with decentralization processes that fragment or partition their historic area of settlement: so decentralization per se and the definition of territorial units is never neutral; it can empower and disempower certain groups.
- **Political will is decisive for successful decentralization:** The willingness to share resources is a good criterion for whether actors are serious about decentralization and special territorial autonomy. Political powers without resources are futile.
- **Options of entrenchment and dispute settlement must be considered:** Decentralized systems are hierarchical, unitary systems of state organization with the centre maintaining the main authority. Thus, in principle, the centre can grant, withdraw, and supersede the powers of lower levels of government. However, unilateral revocation of autonomy can spark new conflict. Specific entrenchment of decentralization and autonomy to protect against unilateral changes as well as special dispute resolution mechanisms can help to prevent conflict.
- **Institutions and governance processes are decisive:** Besides creating the necessary institutions and transferring powers and resources, governance processes as such, e.g., budget processes, control mechanisms, or cooperation with the center and its agencies, are decisive for effective decentralization.
- **Lack of implementation can lead to new conflicts:** In a substantial number of cases, decentralization and special territorial autonomy were perceived as unsuccessful, though they were in fact never fully implemented. In many cases, the lack of implementation triggered more far-reaching demands, e.g., for federalism or secession. The definition of mechanisms to promote the timely and smooth implementation of decentralization and of special territorial autonomy should form part and parcel of the peace agreement.
- **Inclusive political institutions are needed:** Decentralization and special autonomy will often not be enough for transforming a conflict in a sustainable way and for restraining centrifugal tendencies. In addition, the introduction of other forms of power sharing, such as inclusive political institutions at the center and local level, might be necessary. A comprehensive, context-sensitive approach is necessary.

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## Background

### What "decentralization" and "special territorial 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 organization (especially federalism)<sup>1</sup>.

Transfer of political power

■ **In the following, "decentralization" is used to** denote the transfer of political, administrative, and financial powers to territorial units at the middle and/or lower level of state (sometimes also called devolution). In a decentralized state, sub-units possess elected political institutions and administrative bodies of their own and are imbued with own decisionmaking powers (self-rule). In order to be effective, such decisionmaking powers need to be paired with adequate finances. Decentralized systems of state organization may be, but need not be entrenched in the constitution. Normally, they are established by statutory law.

Negative definition

■ **In other contexts, the term "decentralization" is also used** in the sense of a transfer of power to local branches of central institutions or agents of central government (deconcentration) or to the private sector (deregulation), and sometimes even federal arrangements are referred to as "decentralized" structures. For the purpose of clarity, however, "decentralization" will henceforth only be used in relation to the transfer of political, administrative, and financial powers to lower levels of government in a unitary state, irrespective of the degree of transfer of powers.

Symmetric or asymmetric

■ **Decentralization can be symmetric or asymmetric.** In most cases, decentralized states accord self-rule to the entire state territory, and generally all decentralized units are attributed with the same amount of powers. Most states apply symmetric decentralization, although some differentiate, generally only slightly, between urban and rural decentralized units. However, asymmetric decentralization is possible.<sup>2</sup>

Special territorial autonomy

■ **In the following, the term "special territorial autonomy" is used to describe a specific form of decentralized government.** In the case of special territorial autonomy arrangements, one or more regions are endowed with special powers not granted to other regions of the state. This is the case, for instance, with Åland in relation to Finland. In this use of term, special territorial autonomy arrangements can be described as strongly asymmetric forms of decentralized state organization. As for decentralized arrangements in general, special autonomy arrangements do not require constitutional entrenchment.

Mixed systems

■ **Decentralization can be combined with special territorial autonomy.** The introduction of a special territorial autonomy arrangement for one region of the country can be combined with symmetric or quasi-symmetric countrywide decentralization. For instance, the UK pursues decentralization in England while according more extensive autonomy to Scotland and Wales.<sup>3</sup>

Not federalism

■ **Decentralization and special autonomy are not federalism.** Federalism is constitutionally guaranteed self-rule and shared rule. In a federation (similarly as in a decentralized state), certain areas of decisionmaking are within the sphere of the federal sub-units (self-rule principle). In contrast to a decentralized state, however, as part of the shared rule principle, the federal sub-units are actively involved in decisionmaking at the national level, normally through representation in a second

<sup>1</sup> A separate Peace Mediation Essentials paper is available on the topic of federalism. See: State Concepts. Federalism and Peace Mediation. Peace Mediation Essentials, MSP, January 2009. <http://www.swisspeace.ch/mediation>.

<sup>2</sup> For instance, in Kosovo, some municipalities were selected as pilot municipalities for testing the system of decentralization.

<sup>3</sup> The degrees of autonomy differ in Scotland and Wales.

Not federacy

chamber of parliament. As a further distinctive feature, in a federation, the design of self-rule and shared rule must be entrenched in the constitution, and federal sub-units are supposed to be involved in amending the constitution. The distinction between federalism and decentralization is not always clear-cut, for instance, if decentralized systems are constitutionally entrenched.

- **A special territorial autonomy arrangement is not a federacy.** Federacies are a specific form of asymmetrical federalism. In a federacy, similarly as in a special autonomy arrangement, one or several regions of the state enjoy a special right to self-rule that other areas of the state do not have. However, in contrast to special autonomous units, the unit of a federacy enjoys special representation in central institutions, and its status needs to be constitutionally entrenched (e.g., Zanzibar with respect to Tanzania).

### Key principles

#### The Conflict Resolution Potential of Decentralization and Special Autonomy

Important tool

- **Decentralization and special autonomy can be useful means of conflict transformation.** Decentralization can be an important tool for conflict transformation, especially in conflicts with an ethno-political component or conflicts involving territorially concentrated non-majority groups. Decentralization can provide the basis for establishing legitimate actors at the local and regional level. Based on the self-rule principle, issues that are important for group identity and potentially divisive, in particular, can be left to the democratic decisionmaking of lower levels of government or to the autonomous area. The more homogeneous group can decide on sensitive issues and can adopt solutions it considers adequate. Additionally, through this devolution, the risk of categorical conflicts creating winners and losers at higher levels of government can be diminished. Financial decentralization

#### Examples of Decentralization and Autonomy

##### Arrangements of decentralization:

##### Macedonia (Former Yugoslav Republic of Macedonia)

Based on the Ohrid Framework Agreement (Peace Agreement of 2001), Macedonia introduced symmetric decentralization combined with participation rights for the major ethnic communities. The decision for decentralization was taken in response to demands for self-determination from ethnic Albanians. Decentralization 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 decentralization:** 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.

## Can be useful

- can reduce financial dependencies and conflicts over resources.<sup>4</sup> The decentralized level of the state can provide a counterweight to the center 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.
- **Special autonomy might be especially useful** whenever there is strong mobilization 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 country. Special autonomy arrangements can be useful for transforming bipolar conflicts.

## Self-rule

- **Decentralization and special autonomy can answer key demands.** For many non-majority groups, the priority is genuine self-governance over “their” territory, including control over a certain amount of “own” financial resources. For the majority community, the priority might be to keep a certain amount of control at the center and to maintain the unitary and unified character of the state. Decentralization and special autonomy can fulfill both these demands by providing for self-rule within a unitary state.

## Limitations

- **Decentralization can be limited to the local level.** Normally, governments regard the devolution of powers to the local level as less risky than devolution to regions. Local units 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. In addition, decentralization to the local level can avoid the tricky task of determining regional boundaries. However, territorially concentrated groups may not always be satisfied with self-determination “only” at the local level and might see it as a means to divide them.

## International law

- **Decentralization and special 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 predominantly interpreted as a people’s or peoples’ right to local self-governance or autonomy.<sup>5</sup> Thus, international documents to some extent provide normative arguments that can be used in peace negotiations. Several international documents establish rules and recommendations for local self-government.<sup>6</sup>

### The Risks of Decentralization and Special Autonomy

## Power sharing

- **Decentralization and special autonomy provide for separate rule, but not for improvement of shared rule.** Both majority and non-majority groups might be reluctant to share power at the center: The majority will want to maintain control, while the non-majority will not want to give extra legitimacy to central institutions through their participation. This, however, points to a weakness of the decentralized system and of special autonomy arrangements. Decentralization and special territorial autonomy can help to limit direct confrontations, and in doing so, lessen centrifugal tendencies, but they do not necessarily create a centripetal process that could create cooperation, common visions, and common political action. Decentralized units do normally not benefit from direct representation at the center and therefore have only limited possibilities to influence central decision-making.

<sup>4</sup> However, conflicts might increase if fiscal decentralization is not complemented with some sort of financial equalization because otherwise gaps between poorer and richer regions can further increase or newly develop. However, demands for fiscal decentralization or federalism are often signs of a limited feeling of solidarity towards poorer regions of the state.

<sup>5</sup> See Charter of the United Nations of 1945, esp. Art. 1 [2.] UN 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. One challenge concerns the definition of the term “people”. Does it refer to a nation, a population, a people as ethnos or as demos?

<sup>6</sup> 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.

## New frustrations

- **Decentralization and special autonomy can lead to new frustrations**, especially if powers are not matched with resources, if decentralization and special autonomy are not well entrenched, if implementation legislation is prepared by the center without or with minimal consultation of the concerned decentralized or special autonomous units, or if implementation is delayed. In the case of special autonomy, special rights for one region might cause frustration in other regions and might trigger demands for similar rights (what is called in Spain: "café para todos").

## Risks

- **Decentralization and special autonomy contain risks.** Decentralized government or special autonomy government is not automatically a better or more righteous level of government. For instance, decentralization can lead to the emergence of a new level of corruption, it can empower local warlords, and it can be used to establish new dominance structures and to suppress minorities at the local level. However, decentralized forms of government are not automatically less righteous, either. As is true for any form of government, safeguards are required, e.g., for preserving minority rights or preventing corruption.

## Sustainable peace

- **Decentralization and special autonomy alone may not be sufficient to provide for sustainable peace.** Additional power-sharing mechanisms, collective rights, or special minority protection might be required to supplement decentralization and special autonomy in order to address root causes of conflict and prevent new conflicts.<sup>7</sup> In appropriate settings, decentralization has not only contributed to prevent conflict, but in fact has helped to manage quests for secession (Åland and Finland; Hong Kong and China; Aceh and Indonesia).

## Elements of negotiations

- Negotiations involving decentralization may address specific elements, including the following:
  - **On the territorial units:** a) number, names, and boundaries of decentralized units as well as the criteria to be used for defining such units; b) provisions of amending boundaries or merging units; c) explicit recognition of territorial units in the constitution;
  - **On the powers:** powers of the different levels of government: a) residual power, exclusive, concurrent powers; b) mechanisms for delegation; c) emergency powers (including limits); d) institutional mechanisms for joint policymaking (e.g., in the case of concurrent powers); e) symmetry/asymmetry;
  - **On resources:** a) fiscal decentralization including sources of income, e.g., through taxation, natural resources, fees, transfers from the center, financial equalization; decisionmaking procedures, management of natural resources; b) infrastructure, capacities, human resources;
  - **On judicial dispute resolution** e.g., through a Constitutional Court, administrative courts, or other judicial bodies/courts: a) role of territorial units in the selection/election/appointment of judges; b) jurisdiction of the courts; c) standing of territorial units to bring issues to court;
  - **On non-judicial mechanisms for dispute-resolution:** a) nature of such mechanisms, their composition, their powers, and the procedures used; dispute resolution potential can also have b) direct democratic instruments, e.g., the right to initiative; c) special decisionmaking mechanisms, e.g., alarm bell procedures; d) coordination and cooperation mechanisms;
  - **On representation:** e.g., Upper (territorial) legislative chamber – such a feature is normally more typical of a federation than of a decentralized system: a) regional representation (symmetry/asymmetry); b) role of upper chamber vis-à-vis lower chamber;

<sup>7</sup> See also the United Nations Declaration on the Rights of Indigenous Peoples of 13 September 2007.

- **On entrenchment:** a) requirements for institutional amendment, non-amendable constitutional provisions; b) special majorities for passing and amending relevant legislation; c) consultation procedures;
- **On the identity of the state:** a) constitutional references to the decentralized nature of the state; b) reference to national and sub-national identity and symbols.

### When and Why Should Decentralization and Special Autonomy Arrangements be Considered in Peace Negotiations?

Root causes	<ul style="list-style-type: none"> <li>■ <b>To address root causes:</b> Decentralization and special autonomy might be useful measures within a peace process where over-centralization and a lack of self-rule, regional inequalities, and an imbalance of state power are among the causes of conflict.</li> </ul>
Common vision	<ul style="list-style-type: none"> <li>■ <b>To create a common vision:</b> Decentralization and special autonomy can provide a vision of state organization that offers possibilities for the self-determination of groups on a territorial basis, while at the same time not questioning the unitary character of the state.</li> </ul>
Requirements	<ul style="list-style-type: none"> <li>■ <b>Decentralization and special autonomy require:</b> <ul style="list-style-type: none"> <li>• The willingness to establish genuine self-rule of decentralized or autonomous units, including the sharing of resources;</li> <li>• The willingness to live in a common state;</li> <li>• A minimum level of willingness to cooperate on matters of common concern;</li> <li>• Appropriate protections of human rights and minority rights at each level of government;</li> <li>• A minimum level of democratization and respect for the rule of law.</li> </ul> </li> </ul>
Neutral reasons	<ul style="list-style-type: none"> <li>■ <b>There are many 'neutral' reasons why to decentralize powers,</b> such as fostering economic development, efficiency, and effectiveness as well as democratization. International organizations promote decentralization, especially because of potentially positive effects on development and democracy. Even if decentralization is introduced primarily to end confrontation and conflict, it can be argued that decentralization benefits all citizens and is part of a general reform strategy.<sup>8</sup></li> </ul>
Difficult to agree to	<ul style="list-style-type: none"> <li>■ <b>Special autonomy in this sense can be more difficult to agree to</b> because it provides a special form of government for a specific region of the state and therefore also acknowledges the specificity of the group and of the region.</li> </ul>
Complexity	<ul style="list-style-type: none"> <li>■ <b>Decentralization and the introduction of special autonomy are complex,</b> but not as complex as the introduction of certain other forms of state organization, e.g., federalism. Therefore, it can be useful to consider decentralization before exploring more complex forms of state organization.</li> </ul>

<sup>8</sup> For example, public opinion polls in Macedonia show that the population no longer directly associates decentralization with the peace agreement, but has accepted it as part of democratisation and development.



## Key Options for Introducing Decentralization and Special Autonomy

There is no standard model of decentralization or special territorial autonomy. The following highlights some of the options.

### Options for creating decentralized and special autonomous units:

#### Defining boundaries

- **Defining units in peace agreements:** Not all peace agreements directly define the boundaries of decentralized units (they may, however, provide for criteria and processes), but they normally do define the territory of special autonomous territorial units.

#### Right to self-rule

- **Who shall receive the right to self-rule?** The definition of decentralized or special autonomous units will determine who receives the right to self-rule and who will have (limited) control over territory. In a decentralized system of state organization, powers can be devolved to the local and/or the regional levels. The smaller the unit, the more limited capacity tends to be. Larger regions may 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 devolved to traditional forms of local government, and there can be distinctions between urban and rural units. Quite a number of states have different types of units, which sometimes even overlap in terms of territory.

#### Negotiating boundaries

- **Negotiating boundaries:** In most cases, the number of state levels and the boundaries of decentralized and special autonomous areas will have to be negotiated either during peace negotiations or afterwards. The definition of decentralized or special autonomous territorial units can become make-and-break issues in the negotiations.

#### Ethnic criteria

- **Ethnic criteria:** If decentralization and special autonomy are introduced to accommodate ethno-political diversity, there can be strong demands to define decentralized and especially autonomous units based on ethnic criteria. This quest may, in turn, mobilize other smaller ethnic groups within that area who fear they may become a minority and be dominated by the newly empowered majority. In addition, the dominant group at the central level may fear that the use of ethnic criteria will jeopardize unity and entrench differences.

#### Combining criteria

- **Combining criteria:** In negotiated settlements, in the case of decentralization, the outcome is likely to be a combination of different criteria, including some ethnic dimension as well, such as economic viability, infrastructure, geography, history, and population size.

#### Data

- **Lack of reliable data:** In many cases, in particular after conflicts, no reliable data is available. Therefore, sometimes peace agreements provide for conducting a census before establishing the final territorial organization. The conduction of a census can, however, also turn into a source of conflict. Here, participatory processes are essential. A number of computer programs have been developed to help visualize boundaries and clarify the impact of certain choices, e.g., the resource potential or population composition of decentralized (or federal) units.

#### Legitimacy

- **Increasing legitimacy:** Negotiated boundaries tend to lack democratic legitimacy. Democratic procedures, e.g., referenda, can be used to approve the new territorial organization.<sup>9</sup> However, if boundaries that were negotiated in a peace

<sup>9</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.

## Limited self-organization

process are later rejected (e.g., in a referendum), violence may re-emerge. Some countries provide for democratic procedures for the adjustment of boundaries. Such procedures can facilitate the peaceful and democratic re-adjustment of boundaries at a later point.

**Options for the distribution of powers:**

■ **Limited self-organization:** Decentralized and special autonomous units normally have no right, or only a limited right, to self-organization. Central legislation can, for instance:

- define the design of decentralized and special autonomous institutions;
- determine different designs depending on the size or capacity of decentralized or special autonomous units;
- provide a choice between alternative forms of organization, give the right to adapt a proposed set of institutions;
- provide for guidelines on how to establish institutions; or
- leave it completely to the decentralized and special autonomous units to define their institutions.

No matter how they are established, decentralized and special autonomous political institutions need be more than agents of central institutions. They need to be composed based on some form of democratic representation and have some genuine powers.

## Deconcentration

■ **Decentralization combined with deconcentration:** Both decentralized and deconcentrated institutions at the regional and the local level are quite common. The deconcentrated institutions implement the powers of the center in different regions. The decentralized institutions primarily make and implement decisions in the fields of decentralized powers and in the fields delegated by the center. Coordination is required here.

## Distribution of powers

■ **Distribution of powers:** The actual distribution of powers – for instance, the allocation of jurisdiction over police, army, education, finances, or foreign affairs to various levels of government – will most likely be a matter of negotiation.<sup>10</sup> Powers can be less extensive, as extensive as, or even more extensive than in a federal arrangement. In many cases, the center can withdraw powers unilaterally or supersede powers of the decentralized unit. There should be agreement on whether, or to which extent, the center can legislate on decentralized matters.

- **Exclusive and concurrent powers, residual powers:** In general, a distinction is made between exclusive powers (only one state level is allowed to decide and act) and concurrent powers (multiple state levels are allowed to decide and act). The residual power defines which level of government is in charge if the constitution or the legislation is mute on the matter.
- **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, at least local infrastructure, basic health care, and parts of education are normally attributed to lower levels of government. Foreign affairs (with certain exceptions), defense, monetary policy, and customs normally remain with the central state. Though the principle of subsidiarity can give some guidance, it remains vague.

<sup>10</sup> A list of powers can be requested at [nt@ximpulse.ch](mailto:nt@ximpulse.ch)



## Adequate resources

- **Identity:** As a further general rule, areas of decisionmaking that are of importance for local 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 policing and to include the right of decentralized and special autonomous units to cooperate with neighboring or kin-states. However, these powers should be paired with protective mechanisms to protect old and new minorities. In some cases, powers that are important for identity, in particular in the field of education, are attributed directly to the group, and not to the territory as in the case of decentralization and special autonomy.
- **Special territorial autonomy arrangements:** In the case of special territorial autonomy arrangements, special autonomy is given to one or some specific areas of the state, conferring a specific status and special powers to these areas. The arrangement may explicitly provide for, or exclude, the possibility that other areas can also acquire such status. In most countries, the question is left open.
- **Asymmetric arrangements:** With an asymmetric distribution of competencies, specific conditions, such as capacity or political mobilization, can be taken into account. In many cases, such asymmetric arrangements may trigger demands by other areas wishing to receive the same powers. It is to be expected that other areas will receive additional powers once certain conditions are fulfilled or if so requested. Additional decentralized and autonomous units may receive the right to return powers to the center, for instance if they do not feel capable of delivering the required services.
- **Sequencing:** Powers are normally transferred step by step. Special attention should be paid to the question of by whom and how it will be decided when powers are transferred, as this question can easily turn into a source of conflict. The sequencing of transition can be outlined in a comprehensive peace agreement (or an annex to the same). The transfer can be handled symmetrically (to all territorial units at once) or selectively, depending on capacity or willingness of the territorial unit. Criteria and procedures should be clarified.
- **State of emergency:** There are situations in which the center can withdraw or supersede powers at autonomous levels. In such cases, however, constitutions tend to provide guarantees in order to shield a core set of powers and rights against intervention. Furthermore, a state of emergency usually requires a special majority and periodic confirmation by the legislature.

### Options for providing resources to decentralized/special autonomous units:

- **Adequate resources:** Every level of government needs resources in order to be able to exert its power effectively. In some cases, decentralization and special autonomy may 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 financial capacities and potentials. Sharing of wealth can be required across levels of government, i.e., between the center and decentralized/special autonomous units, but also among the units. A system is therefore required that allows for independent generation of income, e.g., through the rights to levy taxes, to collect fees, to accept donations, to borrow money, or to generate income from exploiting natural resources, as well as a system of financial equalization. It is important that units have discretionary funds of their own and not only transferred designated funds. Budget procedures are also of high relevance. If budget procedures and the treasury are centralized, this has a centralizing effect on decentralization and autonomy regimes.

## Taxation

- **Taxation:** Decentralized and autonomous units can be endowed with the right to establish taxes, define the tax base, set tax rates, and/or collect taxes. They can receive a specified share of taxes, e.g., 50 per cent of the income tax, or certain taxes can be attributed entirely to the unit, e.g., property tax. In order to provide flexibility in taxation, it is usually sufficient to provide territorial units with the right to determine tax rates. The tax base, tax deductions, and tax scales can be defined by the center. Especially for the local level, service fees can form an important part of income.

## Natural resources

- **Natural Resources:** 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. Management of resources 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 obligation to consult with or receive approval from other state levels. If a certain percentage of revenue from natural resources is guaranteed to a specific state level, it should be clearly defined whether costs, (e.g., for the exploitation of natural resources or the collection of the revenues), are deducted before the distribution or have to be covered from the remaining amount.

### Options regulating the relations between center and decentralized units:

## Control and cooperation

- **Control, cooperation, and dispute resolution:** In decentralized systems of state organization, the center normally maintains a comparatively high level of control over decentralized and autonomous units (compared with federations). In the field of devolved power, this control should, however, be limited to a control of legality. In order to avoid and cope with disputes between units, and between the center and units, special cooperation and dispute resolution mechanisms should be established, including consultation, mediation, and judicial intervention.

### Options for entrenchment:

## Entrenchment

- **The benefit of entrenchment:** Decentralization and special autonomy do not require constitutional or special entrenchment; however, for practical reasons and in order to preserve peace, decentralization and special autonomy should be entrenched so that the center cannot revoke them unilaterally. Power-sharing mechanisms may be helpful to assure that the interests of decentralized and special autonomous units are taken into account for each revision of the design of decentralization or special 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 decentralization and special autonomy legislation. Quite a number of countries, however, do not stipulate special legal protections. In some cases, this is due to a strict interpretation of the sovereignty of parliament, especially in countries close to the Westminster tradition.<sup>11</sup> However, even in this legal tradition, broad consultation mechanisms can be envisaged. Deviations from the principles established in the peace agreement, for instance by the legislator of the center, can jeopardize the sustainability of peace, especially if these changes are undertaken against the will of the populations concerned.

<sup>11</sup> For example, the Parliament of the United Kingdom at Westminster can take decisions also in areas that are devolved to the Scottish Parliament.

## Questions for the Mediator

### **Pre-Agreement Phase: Can decentralization and special autonomy lead to a vision?**

1. What are the major reasons why decentralization or special autonomy is advocated, and what are the major arguments against doing so? What interests and fears are involved?
2. Can decentralization and special autonomy address the root causes of conflict? What causes remain unaddressed?
3. Is there a general willingness to introduce genuine local self-rule and share resources? Is there a general desire to live in one common state?
4. Will non-majority groups be satisfied with devolved self-rule alone?
5. Can decentralization contribute to common nation- and trust-building?

### **Agreement Phase: Agreeing on matters of decentralized or special autonomous design**

6. Who are legitimate actors, what can be a legitimate procedure?
7. Shall there be one or several levels of decentralized government? Who has the legitimacy to decide on the decentralized units, based on what procedures, what criteria?
8. Will the creation of decentralized units and special autonomous regions create new minorities? Are there mechanisms in place, e.g., human rights protection by the center and participation at local level to protect new minorities and other (vulnerable) groups?
9. In the case of special autonomy, what reactions of other regions can be expected? Is it to be expected that other regions will demand equal or similar rights? Shall they be able to opt in? What procedures could be envisaged to extend special autonomy to other regions?
10. What kind of powers shall decentralized and special autonomous areas have? Are sensitive areas of decisionmaking left to lower levels of government? Do decentralized and special autonomous units have the right to hand powers back, or can the center interfere in matters of devolved powers if decentralized or special autonomous units fail to fulfill their tasks? What control and coordination mechanisms are left to the central level?
11. In how far shall decentralized and special autonomous units be able to decide on their own organization? Must, or may, local specificities be taken into account? Will local institutions be able to fulfill tasks and deliver services? What kind of capacity-building is required?
12. What financial resources do units have at their disposal, now and potentially in the future? What resources do decentralized and special autonomous units have? What kind of infrastructure/property will be transferred to decentralized and special autonomous units? Are registries up to date? Will resources be sufficient to fulfill tasks? Is there a system of financial equalization in place?
13. Are there mechanisms in place to assure dispute resolution between units and between the center and units? Will courts be able to handle the additional case load? Would special courts, e.g., administrative courts be required?

14. What guarantees are in place to ensure that self-rule will not be unilaterally revoked or changed? Are decentralized and special autonomous units involved in the process of drafting major implementing legislation?

### Post-Agreement/Implementation Phase

15. What timing is foreseen for the implementation process? Are phases or criteria defined for the handover of powers and resources?
16. Are mechanisms in place to facilitate implementation? Who will do what when with what kind of financial means? Who will coordinate, who will monitor? Capacity-building? Shall there be international monitoring?

### Additional Sources and Useful Links

#### Literature

BLASER JEREMIAS, BESDZIED DIRK & BYRNE SARAH, Lessons Learned on Decentralization, A literature review. Written for the Swiss Agency for Development and Cooperation, Institute of Federalism, Fribourg 2003.

BRAATHEN EINAR & BJERKREIM HELLEVIG SIRI, The Role of Decentralization on Peace Making and Conflict, A literature review. NIBR Working Paper 125, 2006.

DEUTSCHE GESELLSCHAFT FÜR TECHNISCHE ZUSAMMENARBEIT (GTZ), Decentralization and Conflicts. A guideline. Division 42, Governance and Democracy, 2006.

HARRIS PETER & BEN REILLY (EDS.), Democracy and Deep-rooted Conflict: Options for Negotiators. International IDEA Handbook, 1998.

HAUG MARIT & SCHOU ARLID, Conflict and Decentralization. NIBR report, 2005.

#### Web Resources

[www.oecd.org](http://www.oecd.org), providing information on OECD policy and useful policy documents (sigma papers).

[www.undp.org/governance/sl-dlgud.htm](http://www.undp.org/governance/sl-dlgud.htm), providing information on decentralization 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 decentralization.

#### International Treaties / Documents

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.

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), 8 June 1977.

The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note of 1999.

United Nations Declaration on the Rights of Indigenous Peoples of 2007.

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.

Text: Dr Nicole Töpferwien  
(State Concepts)  
Layout: Lukas Fiechter  
Publisher: Mediation Support Project  
Sonnenbergstrasse 17  
CH - 3000 Bern 7  
Tel: +41 (0)31 330 12 12  
[www.swisspeace.ch/mediation](http://www.swisspeace.ch/mediation)  
[msp@swisspeace.ch](mailto:msp@swisspeace.ch)