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# Fiscal Federalism: A Framework for Enhancing Transparency and Accountability in South Sudan

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## Abbreviations

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|---|---|
| **AGSA:** | **Advisory Group For Sub-Saharan Africa** |
| **ARCISS:** | **Agreement on Resolution of Conflict In South Sudan** |
| **ECSS:** | **Ebony Center For Strategic Studies** |
| **FG:** | **Federal Government** |
| **FGF:** | **Future Generation Fund** |
| **FGTFF:** | **First Generation Theory of Fiscal Federalism** |
| **GFS:** | **Government Finance Statistics** |
| **GOSS:** | **Government of Southern Sudan** |
| **GRSS:** | **Government of Republic of Southern Sudan** |
| **IGT:** | **Intergovernmental Fiscal Transfer** |
| **IMF:** | **International Monetary Fund** |
| **LGS:** | **Local Governments** |
| **NG:** | **National Government** |
| **OECD:** | **Organization For Economic Cooperation and Development** |
| **SGs:** | **States Governments** |
| **SGTFF:** | **Second Generation Theory Of Fiscal Federalism** |
| **TCSS:** | **Transitional Constitution of South Sudan** |
| **TFF:** | **Theory of Fiscal Federalism** |
| **TOF:** | **Triangle of Fragility** |
| **USA:** | **United States of America** |
| **WBG:** | **Wereda Block Grant** |

## Abstract

South Sudan is classified as one of the fragile states whose fragility is driven by three key drivers: **injustice; inequality; and ethnic tensions**. In this regard, the central premise of this paper is that inter-governmental fiscal relations, if well designed, would be the foundation for efficient, effective, and equitable allocation of resources, which would in turn tackle the three drivers of fragility. This premised is underpinned on the one hand by theory and practice of institutional economics, and on the other by theory and practice of public finance. That is, by robust institutional arrangements that constitute the key pillars of an effective federal system of governance. The paper sees the recently signed Agreement on Resolution of Conflict in South Sudan (ARCISS) as having provided a golden opportunity for initiating a process of constituting a system of fiscal federalism. Hence, the paper sees the urgency for designing the most appropriate system of fiscal federalism for South Sudan.

## I. Introduction[2]

South Sudan is essentially a federal system, though it is more of a political and administrative decentralization without corresponding inter-governmental fiscal relations. Moreover, President Kiir has issued on 2 October 2015 a Presidential Establishment Order number 36/2015 dividing South Sudan into 28 states mainly on the basis of 23 districts of the colonial era[3]. The Presidential order comes at the time when the country is classified as a fragile state that is trapped since 2005 in a vicious cycle of fragility. **But what is a fragile state?** The International Monetary Fund (IMF) has defined, in a recent study, fragile states, as "states in which the government is unable to reliably deliver basic public services to the population – face severe and entrenched obstacles to economic and human development." The study farther explains that: "While definition of fragility and country circumstances differ, fragile states generally have a combination of weak and noninclusive institutions, poor governance, and constraints in pursuing a common national interest.[4]"

The common national interest in the case of South Sudan is sustainable peace, economic growth, and poverty eradication. The ARCISS provides the basis for achieving sustainable peace that would in turn lay the foundation for a system of fiscal federalism, which ensures efficient, effective, and equitable **(3Es)** allocation of resources for economic growth and poverty eradication.

The key characteristics of a fragile state can be divided into two categories as by way of enhancing our understanding of fragility. The first category is what I would call "drivers of conflict-induced fragility." The Organization for Economic Cooperation and Development (OECD) has identified four drivers of conflict in a fragile state[5]. Three of these drivers – **injustice**, **inequality**, and **ethnic tensions** – are more relevant to the situation of South Sudan. The first category would be understood if we conceptualize the drivers of conflict-induced fragility as a triangle of fragility (ToF). The ToF is depicted in Figure One below.

[2] Most of this section is taken from: What Can Countries Do to Exit from Fragility. Opening remarks by Lual A. Deng at a meeting of the Advisory Group for Sub-Saharan Africa (AGSA) of the IMF, April 20 -21, 2015, Washington, DC (USA).
[3] President Kiir appointed 28 governors on 24 December 2015.
[4] Quoted from Building Resilience in Fragile States in Sub-Saharan Africa, chapter 2 of Regional Economic Outlook for Sub-Saharan Africa, African Department, International Monetary Fund, October 2014.
[5] States of Fragility 2015: Meeting Post-2015 Ambitions, OECD Publishing, Paris, France

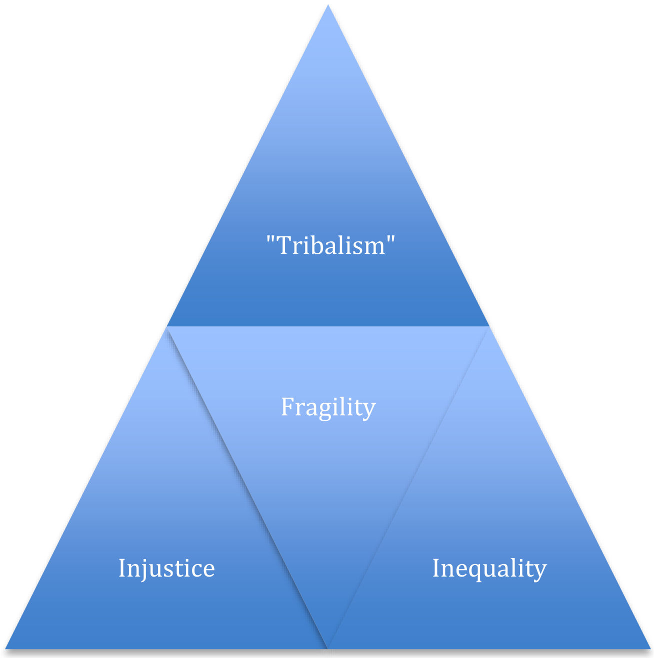


Figure One: Triangle of Fragility (ToF)

Ethnic-based injustice is likely to create unequal opportunities (inequality) between the various ethnic groups (nationalities/tribes) comprising a given country. That is, when one ethnic group is perceived to dominate access to resources and wealth creation opportunities, the excluded groups would resist by all means available to them, the resultant injustice and associated inequality. In this regard, these drivers, in turn, deepen the fragility of the state, creating a vicious circle of fragility that is difficult to break, especially where there is a knowledge gap on how the drivers and dimensions of fragility interact and reinforce each other.

The second category constitutes what the same OECD report identifies as dimensions of fragility:

a) Violence dimension;
b) Justice for all dimension;
c) Institutions dimension;
d) Economic foundations dimension; and
e) Capacity to adapt to shocks and natural disasters dimension.

The above OECD's dimensions are essentially symptoms/indicators of fragility, which are manifested in violent conflict on the one hand, and weaknesses in system of justice, institutions, economic foundations, and capacity on the other. Hence, the central premise of the paper is that inter-governmental fiscal relations (i.e. **fiscal federalism**), if well designed, would be the foundation for efficient, effective, and equitable allocation of resources, which would in turn tackle the three drivers and five dimensions of fragility in South Sudan.

The rest of the paper is organized around three sections. A brief analysis of the Ethiopian model of fiscal federalism is given in section two. Section three proposes the most appropriate model of fiscal federalism that would be: a) consistent with objective social, political, and economic conditions of South Sudan; and b) institutionally viable in tackling the underlying drivers of fragility in the country. Section four concludes the paper.

# II. A Brief Analysis of The Ethiopian Model of Fiscal Federalism

The main purpose of this chapter is to understand two important aspects of fiscal federalism (FF). The first aspect concerns the assignment of functions and expenditure responsibilities between various levels of government in a federal/decentralized system. This aspect is typically divided into three general categories: a) macroeconomic stabilization; b) income redistribution; and c) resource allocation functions. The second aspect of FF is about the means of financing such expenditure responsibilities. That is, we would like to know from these aspects the commonalities of expenditure decentralization, revenue decentralization, and associated intergovernmental fiscal transfers across countries that have adopted decentralized system of governance. But, it is important to first understand **the conceptual underpinning of fiscal federalism**.

## 2.1 Understanding Fiscal Federalism

A brief look at the literature of fiscal federalism would tend to show that it has evolved from being underpinned by a single theory based on economic principles to a broad-based theory, which combines several disciplines. The single theory-based FF is known in the literature as the First Generation Theory of Fiscal Federalism (FGTFF). The broad-based approach is, on the other hand, known as the Second Generation Theory of Fiscal Federalism (SGTFF).

The FGTFF is grounded in the theory of public finance that provides a framework for the assignment, mainly on economic criteria, of functions and expenditure responsibilities between the various levels of government in a decentralized system[6]. The FGTFF assigns macroeconomic stabilization and income redistribution functions to the federal/national government[7]. While allocation of resources function is shared between the various levels of government.

The SGTFF builds on the theory of public finance (or on FGTFF) by incorporating the following five (5) theories, to which I would add institutional economics so that they become six (6):

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[6] Tiebout (1956), Musgrave (1959), Olson (1969), and Oates (1972) are considered to be the founding fathers of FGTFF.

[7] Ghebrehiwet Tesfai Baraki (2014): The Practice of Fiscal Federalism in Ethiopia: A Critical Assessment of 1991 - 2012 An Institutional Approach, Doctoral Thesis Presented to the Faculty of Economics and Social Science at the University of Fribourg (Switzerland)

a) Economics of information, which treats information as a valuable resource underpinning knowledge that is power for ensuring transparency and accountability in the management of scarce resources in a decentralized system of government[8];

b) Theory of political choices, this helps framers of fiscal federalism to build into their models the basic fact that "the actions of the government are function of the way it expects voters to vote and of the strategies of its opposition"[9];

c) Theory of contracts, which ensures that fiscal federalism is enshrined in the constitution of a decentralized system, i.e. it provides the legal foundation for the assignment of functions and expenditure responsibilities between the various levels of government;

d) Organization theory, which guides how the various levels of government operate in a decentralized system of government;

e) Theory of agency, which provides a valuable analytical tool for ensuring a win-win outcome of the principal-agent (States government - federal government in this case, but it could also apply to voters and politicians [principal - agent]) relationship; and

f) Institutional economics, which lays the basis for institutional arrangements for fiscal federalism inherent in the "working rules of collective action in restraint, expansion, and liberation of individual action (s)"[10]

A critical look at the above six (6) theories would undoubtedly raise questions about the rationale of the FGTFF for assigning, to the federal/central government only, macroeconomic stabilization and income redistribution functions. Dafflon (1977; 2006: 277), Gramlich (1997:398-401), Shah (1997:10) and Boadway and Shah

[8] George J. Stigler of the University of Chicago articulates this point in his article: The Economics of Information. Published by The Journal of Political Economy, Vol. LXIX, June 1961, number 3.
[9] Anthony Downs (1957), in his paper: An Economic Theory of Political Action in a Democracy, defines ideologies as "verbal images of the good society and of the chief policies to be used in creating it" (i.e. good society. This definition is consistent with the quest of the framers of decentralization for a coherent package of political ideals that is consistent with the initial conditions of a country seeking to adopt a federal system.
[10] This is how John R. Commons defines institutions in his seminal book (1990 edition): **Institutional Economics: Its Place in Political Economy**. Moreover, the Nobel Laureate Douglas North defines institutions as: "The rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction" Douglas C. North (1990).

(2009) are credited to be among the first who raised such questions[11]. They have questioned, in their respective work, “the conventional wisdom of an exclusive central government responsibility over macroeconomic stabilization policy[12].”

The concern in the preceding paragraph has led Dafflon to distinguish “between the concepts of macroeconomic management and macroeconomic stabilization policies. The former has long-term objectives (economic growth, creation of new jobs, stable exchange rate and price); while the latter aims at curbing the consequences of short term economic ups and downs. Distinguishing these issues is important since one may have State governments joining macro policy but not able to or not in a position to have stabilization policies.[13]”

There is an agreement, however, between the two generations of TFF with respect to monetary policy component of macroeconomic stabilization function remaining exclusively as a function and responsibility of the federal/national government. This is on the ground that “sub national governments do not have monetary policy instruments to monitor macroeconomic management[14].” However, for subnational governments to participate in a macroeconomic stabilization policy, they must have sufficient revenue-raising capacities. Such capacities would in turn enable them to participate in the stabilization efforts through manipulation of fiscal policy instruments.

But, as articulated by Baraki (2014:98), “The shared responsibility calls for vertical and horizontal policy co-ordination, although coordinating all states and LGs for a common objective is really a challenging task. Because all stakeholders might not have equal interest in the outcome of the policy coordination or each state/local government might have other specific local agenda (s) that they would like to give priority[15].” In this regard, I would state that the theory of fiscal federalism (TFF) is essentially erected on seven (7) pillars. These are: public finance; the five theories advanced by SGTFF; and institutional economics that I have just added. Moreover, the essence of the above stated seven (7) pillars of fiscal federalism is farther articulated by Abu Girma Moges in the following paragraph:

***Fiscal federalism derives its nature and characteristics from constitutional provisions as well as the state of economic development, the pattern of income and resource distribution, and the institutional capacity of the system. The constitutional provisions define the framework within which decision-making would be exercised and establishes the vertical and horizontal structures that find meaning within the prevailing socio-economic environment of the system. The vertical structure defines the assignment of fiscal decision-making power between the federal and lower tiers of government. The horizontal structure outlines the***

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[11] Cited from Ghebrehiwet Tesfai Baraki (2014): **The Practice of Fiscal Federalism in Ethiopia: A Critical Assessment of 1991 - 2012 An Institutional Approach**, Doctoral Thesis Presented to the Faculty of Economics and Social Science at the University of Fribourg (Switzerland).

[12] Ditto (2014: 98).

[13] Ditto

[14] Ditto

[15] Ditto

***nature of interaction across cross sections of government levels[16].***

As for the second important aspect of fiscal federalism, we find that Robin Boadway and Anwar Shah (2007) emphasize the financing aspect through revenue decentralization and equalizing transfers (i.e. intergovernmental fiscal transfers). In this regard, it is important to note that intergovernmental fiscal transfers occurs when the revenue-raising powers do not enable subnational governments to meet their expenditure responsibilities. The shortfalls between revenues and expenditures are known as vertical fiscal gaps[17]. That is, the federal/central government finances the fiscal gap through a system of intergovernmental transfers (or equalizing transfers). Naim Kapucu farther articulates this as follows: "Fiscal federalism operates through the various federal taxes, grants, and transfers that occur in addition to states and localities. The federal government regulates, subsidizes, taxes, provides goods and services, and redistributes income. In federal systems like that of the United States, fiscal policies have also sought to empower the states through deregulation[18]."

I would say, in the light of the above theoretical background that fiscal federalism is complementary to political/administrative federalism. In this regard, intergovernmental fiscal transfers are a binding constraint of a decentralized system of government. It has three key objectives: a) to finance vertical fiscal gaps within the overall macroeconomic policy framework, which is typically the responsibility of the federal/national government (according to FGTFF); b) to provide equalizing transfers (i.e. income redistribution function) for compensating/offsetting differences in subnational fiscal capacities; and c) to allow the federal/national government to influence (i.e. concerns with efficient and equitable allocation of resources at lower levels of government) the design of programs by subnational governments[19].

It is obvious from the brief literature review that "assignments of responsibilities between different levels of decentralized governments are not uniform. They vary by country due to historical and political realities, social diversities, economic determinants and geographical size, fiscal capacity, and principle of subsidiarity, etc.[20]" This statement notwithstanding, Robin Boadway and Anwar Shah (2007) have identified, through empirical evidence, four commonalities of fiscal federalism among different federal systems. They are briefly given below:

[16] Quoted from An Economic Analysis of Fiscal Federalism in Ethiopia, by Abu Girma Moges (2005:3).

[17] **Intergovernmental Fiscal Transfers – Principles and Practice**, edited by Robin Broadway and Anwar Shah (2007), The World Bank, Washington, D.C.

[18] http://www.britannica.com/topic/fiscal-federalism

[19] **Intergovernmental Fiscal Transfers – Principles and Practice**, edited by Robin Boadway and Anwar Shah (2007), The World Bank, Washington, D.C.

[20] Ditto

### 2.1.1 Patterns of expenditure decentralization

There is a general agreement, according to Boadway and Shah (2007), that "the assignment of expenditure functions across levels of government is broadly similar across nations[21]." This assignment has two important considerations – efficiency and equity in the delivery of public goods and services. For instance, three levels of government are normally given the following assignment of expenditure functions:

a) **Federal government:** is assigned the expenditure responsibilities (i.e. **macroeconomic stabilization function**) on the one hand of public goods (e.g. defense, foreign affairs, money & banking, national infrastructure), and on the other some elements of social insurance (e.g. pension, unemployment insurance, etc.). Here macroeconomic stability is an overriding function of the federal government. However, the Second Generation Theory of Fiscal Federalism (SGTFF) has added, as stated earlier in this chapter, an innovation to this by distinguishing macroeconomic management from macroeconomic stabilization policies. In this regard, fiscal policy instruments of a macroeconomic policy framework would be shared among the various levels of government.

b) **Subnational/states:** are assigned the expenditure responsibilities of the provision of public services, such as health, education, and welfare in addition to state/subnational public goods (e.g. roads and police protection). The typical argument here is that preferences are heterogeneous across jurisdictions to the extent that provision of local public goods and services to local people at this level would improve both efficiency and equity by responding to the preferences of the local population. Moreover, both elected officials and civil servants would be accountable to the local people. And as stated under point (a) above subnational governments could also have a role in macroeconomic stabilization function, especially those who have revenue-raising capacities.

c) **Local governments (LGs):** Do also take part in the assignment of expenditure responsibilities (i.e. **resource allocations function**) of providing local public goods and services (e.g. local roads, water & sanitation, recreational facilities, etc.). This is on the argument that local governments are nearer to the people and are therefore able to identify their choices and preferences. There is a strong argument for this approach, especially in countries where some regions have a sense (perception or real) of being marginalized. Hence, empowering local communities to determine their own priorities through their LGs is considered to be one of the positive features of fiscal federalism.

[21] Ditto

### 2.1.2 Types of revenue decentralization

Assignment of the expenditure responsibilities calls for corresponding revenue-raising powers. In this regard, there are two types of revenue decentralization – full access to broad-based taxes, such as income, sales, payroll taxes, and so forth and a system in which subnational governments have limited discretionary access to broad-based taxes. Moreover, subnational levels of government are allowed to borrow based on their own creditworthiness as by way of enhancing their revenue-raising opportunities. Canada, India, Switzerland, and United States of America (USA) are considered to be examples of a full access to broad-based-taxes model of fiscal federalism. These countries also allow subnational levels of government to borrow from the banking sector. Australia and Germany are, on the other hand, examples of limited access to broad-based taxes[22].

### 2.1.3 Equalizing transfers

This is a system (**redistribution of income function**) in which the national/federal government makes higher per capita transfers to those subnational levels with lower revenue-raising opportunities and capabilities. Subnational/State governments are similarly envisaged to undertake equalizing transfers to LGs within their respective jurisdictions.

### 2.1.4 Federal/national influence on subnational/state decisions

The federal/national government would influence decisions at the lower levels of government through either more intrusive or less intrusive methods. An example of a more intrusive influence is the ability of the federal government to "strike down state legislation and ability to mandate state actions[23]."

In the light of the preceding paragraphs, this chapter provides a brief analysis of fiscal federalism in Ethiopia, which would in turn provide the basis of fiscal federalism from which South Sudan could benefit.

## 2.2 Ethiopian Model of Fiscal Federalism

The case of Ethiopia is an interesting one for it is based on ethnic-federalism. According to Ghebrehiwet Tesfai Baraki (2014), "The federal Constitution, which was adopted in December 1994 and came into force in August 1995, is built on the principle of 'the sovereignty of nations, nationalities and peoples' as a guiding principle of accommodating diversity and the distribution of powers and responsibilities between the central and regional governments[24]." Our interest here, however, is to look at the assignment of expenditure responsibilities and corresponding revenue-generating powers between the various levels of government

[22] Ditto
[23] Ditto
[24] Ghebrehiwet Tesfai Baraki (2014): **The Practice of Fiscal Federalism in Ethiopia: A Critical Assessment of 1991 - 2012 An Institutional Approach**, Doctoral Thesis Presented to the Faculty of Economics and Social Science at the University of Fribourg (Switzerland).

within the Ethiopian federation. But, it should be stated here that I did not undertake a field research on how fiscal federalism operates in Ethiopia.

The approach is to use the four commonalities of FF identified by Boadway and Shah (2007) and fit against Ethiopian model. I would, in doing this, rely on two assessments of the Ethiopian experience by Ghebrehiwet Tesfai Baraki (2014) and Abu Girma Moges (2005)[25]. The research work of Baraki (2014) is quite comprehensive, which has used Bernard Dafflon's (de-) centralization matrix in presenting the assignment of functions and expenditure responsibilities between the various levels of government in Ethiopia. This is a valuable framework that would guide this paper in examining the Ethiopian model of fiscal federalism.

Ethiopia has five (5) levels of government: a) federal; b) state; c) zone/special *Wereda*; d) *Wered*a; and e) *Kebele* (commune), which is the lowest administrative unit[26]. The last three levels (i.e. c, d, & e) constitute Local Governments (LGs), which are creation of their respective States. There are nine (9) states and two City governments (Addis Ababa and Dire Dawa). It should be pointed out here that all states do not have a uniform LG tiers. The assignment of functions and expenditure responsibilities would, however, seem to be between three levels of government – federal, state, and LGs. The three tiers of government in Ethiopia have, at least in theory, legislative, executive, and judicial functions. But, Table 5.1: Assignment of Responsibilities between Different Levels of Government in Ethiopia given by Baraki (2014:121) gives justice and law function exclusively to the federal government, which is contradicted by the following:

***Next to the Zone or special Wereda government unit, a Wereda (district) comes as a third government tier. Wereda Government can be rural or urban. Wereda Governments are recognized in the States' Constitutions. They have Council (legislative), executive and judiciary bodies. Kebele (commune) is the lowest administration unit and closest to the people. Both rural and urban kebeles have Council, executive and social court (judiciary) organs[27].***

The powers and functions of the federal government and states are enshrined in the 1995 constitution (articles 51 and 52). Moreover, the constitution gives residual powers to the states. The tax assignment is stipulated in articles 96 and 97 respectively for federal and states government, while article 98 is for concurrent powers. However, import-export duties are exclusively for the federal government. It is now obvious that the legal foundation of fiscal federalism is, in my view, sufficiently embedded in the 1995 constitution. We can now look at the practice of fiscal federalism through the assignment of expenditure responsibilities associated with powers and functions between the various levels of government. We do this by following Boadway and Shah (2007) methodology.

[25] Abu Girma Moges (2005): An Economic Analysis of Fiscal Federalism in Ethiopia, by Abu Girma Moges.
[26] Ghebrehiwet Tesfai Baraki (2014): The Practice of Fiscal Federalism in Ethiopia: A Critical Assessment of 1991 - 2012 An Institutional Approach, Doctoral Thesis Presented to the Faculty of Economics and Social Science at the University of Fribourg (Switzerland).
[27] Ditto (2014: 53).

### 2.2.1 Expenditure decentralization in Ethiopia

I have deduced the likely picture of expenditure decentralization from **Table 5.1: Assignment of Responsibilities between Different Levels of Government in Ethiopia** from Baraki (2014:121). This is on the argument that expenditure decentralization corresponds to the assignment of responsibilities (i.e. powers and functions) between various levels of government in a federal system. In this regard, I provide in Table 2.1 below what I have found to be the assignment of expenditure responsibilities in Ethiopia.

**Table 2.1: Expenditure Decentralization in Ethiopia deduced from Baraki (2014)**

| **Expenditure Responsibility** | **Level of Government** | | |
|---|---|---|---|
| | **Federal Government (FG)** | **States Government (SGs)** | **Local Governments (LGs)** |
| 1. General Public Service | Yes | Yes | Yes |
| 2. National Defense & Security | Yes | No | No |
| 3. Police & Security | Yes | Yes | Yes |
| 4. Fire Protection | No | Yes | Yes |
| 5. Justice & Law | Yes | No | No |
| 6. Inter-state commerce | Yes | No | No |
| 7. Economic & social policy | Yes | Yes | Yes |
| 8. Land & natural resources | Yes | Yes | Yes |
| 9. Agriculture | Yes | Yes | Yes |
| 10. Mining | Yes | Yes | Yes |
| 11. Transport, Postal services and Communications | Yes | No | No |
| 12. Roads | Yes | Yes | Yes |
| 13. Monetary & financial policies | Yes | No | No |
| 14. International relations | Yes | No | No |
| 15. Revenue collection and Budgeting | Yes | Yes | Yes |
| 16. Environmental protection | Yes | Yes | Yes |
| 17. Housing development | Yes | Yes | Yes |
| 18. Water supply | No | Yes | Yes |
| 19. Street light | No | No | Yes |
| 20. Recreation & culture | Yes | Yes | Yes |
| 21. Preservation of culture and historical legacies | Yes | Yes | No |

| | | | |
|---|---|---|---|
| 22. Science and technology | Yes | Yes | No |
| 23. Health service | Yes | Yes | Yes |
| 24. Education | Yes | Yes | Yes |
| 25. Social protection | Yes | Yes | Yes |

**Source**: Constructed by the author from Baraki (2014), Table 5.1 pp. 121 - 135.

The Yes in Table 2.1 indicates that the level of government has expenditure responsibilities corresponding to its assigned powers and functions. While the No indicates that the level of government has no assigned expenditure responsibilities. In this regard, there are 25 assigned expenditure responsibilities of which the federal government (FG) has six (6) exclusive expenditure responsibilities with respect to the following:

a) National defense and security;
b) Justice and law;
c) Inter-state commerce;
d) Transport, postal services, and communications;
e) Monetary and financial policies; and
f) International relations.

There are fourteen (14) expenditure responsibilities shared by the three levels of government (i.e. FG, SGs, and LGs). While FG and SGs share two – science & technology and preservation of culture and historical legacies – expenditure responsibilities. SGs and LGs share two – water supply and fire protection – expenditure responsibilities. Finally, the LGs have the exclusive expenditure responsibilities over the streetlights.

### 2.2.2 Revenue decentralization in Ethiopia

The assignment of expenditure responsibilities for revenue collection and budgeting (i.e. expenditure responsibility number 15) in Table 2.1 above would tend to indicate that constitutionally, the Ethiopian model of fiscal federalism is based on a full access to broad-based taxes. A point, which is articulated by Baraki (2014) as follows: “The states have also access to a range of tax bases, except the custom duties related taxes. They have power to determine tax base, tax rate and administer. They have legislative power to levy and administer jointly over concurrent taxes. The Constitution also guarantees borrowing right of the states. The devolutions of all these powers to the States are political preferences of these ethnic-based political forces for having strong states[28].” I would, once more, make use of the work of Baraki in constructing a matrix of revenue decentralization in Ethiopia presented in Table 2.2 below.

**Table 2.2: Tax Revenue Decentralization in Ethiopia**

| **Sources of Revenue** | **Level of Government** | | |
|---|---|---|---|
| | **Federal Government (FG)** | **States Government (SGs)** | **Local Governments (LGs)** |

[28] Ditto (2014: ).

| | | | |
|---|---|---|---|
| 1. Personal Income Tax (PIT) | 1. FG employees (96.2)<br>2. Employees of international organizations<br>3. Enterprises owned by FG (96.3)<br>4. Income & winnings of national lotteries and other games of chance (96.4)<br>5. Jointly with subnational governments PIT derived from large scale mining, oil & gas operations (96.3) | 1. On employee of the state (97.1)<br>2. Employees of domestic NGOs<br>3. Private enterprises (97.1)<br>4. Private farmers & farmers incorporated cooperative associations (97.3)<br>5. Employees of state owned enterprises (97.7)<br>6. Income derived from entertainer, musician or sportsman/wo men from his/her personal activities<br>7. Gain on transfer of certain investment properties/capi tal transfer gain tax<br>8. Interest tax on bank deposits | 1. On all employees within the LG jurisdiction except on employees of Federal and State enterprises (42.1)<br>2. Employees of private entity within LG<br>3. Employees of development enterprises owned by LG<br>4. Income derived from entertainer, musician or sportsman/wo men from his/her personal activities<br>5. Income derived from gain on transfer of certain investment properties |
| 2. Rental Income tax | On income of houses owned by FG (96.6) | "Shall levy and collect taxes on income delivered from private houses (97.6)" | "Shall determine and collect rental income tax on housing and other assets within the LG (46.6)" |
| 3. Agriculture income tax | None | Yes | Yes |
| 4. Business Profit Tax | Yes | Yes | Yes |
| 5. Sales tax (VAT, & excise tax) | Yes | Yes | Yes, but only excise tax on individual traders within LG |
| 6. Urban/rural land use | None | Yes:<br>"Shall determine and collect urban land use | Yes: 1. "Shall determine and collect urban land use fees (42.2); Urban land |

| | | | |
|---|---|---|---|
| | | fees (42.2); Urban land rent and house tax" (42.5); | rent and house tax" (42.5);<br><br>2. "Shall collect land use fee, except land use fee allotted for investment: (39.3) |
| 7. Fees & Charges | Yes: "Shall determine fees and charges relating to licenses issued and services rendered by the Organs of the FG (96.7)." | Yes: "Shall determine fees and charges relating to licenses issued and services rendered by the State Organs (97.7)." | Yes: "shall determine and collect fees on: permission, and renewal services provided by urban Administration (42.12); Intra-urban road use (42.9); shall levy and collect municipal taxes, duties as well as fix and collect user charges hereof" (42.13). |
| 8. Import & Export Duties | Yes: "shall levy and collect custom duties, taxes and other charges on imports and exports" (96.1) | None | None |
| 9. Monopoly Taxes | Yes: "Shall levy and collect taxes on monopolies (96.8)" | None | None |
| 10. Stamp Duties | Yes: "Shall levy and collect federal stamp duties (96.9)" | Yes: "Shall levy and collect state stamp duties on contracts and agreements, as well as title duties registration executed in the State." | Yes: "Shall determine and collect stamp duties on contracts, agreements, title duties, and registration executed in the State (42.7)" |
| 11. Royalty and rent on natural resources | Yes: from Concurrent powers: "Shall Jointly levy and collect royalties on large scale mining and all petroleum and gas operations (98.3)" | Yes: 1. "Shall Jointly levy and collect royalties on large scale mining and all petroleum and gas operations (98.3)"<br><br>2. "Shall fix and collect royalty for use of forest resources 97/10)" | Yes: "Shall determine and collect royalties, land rental fees and revenue tax on small scale mining operations (42.11)" |

**Source**: Constructed by the author from Table 7.1: Ethiopia's Fiscal Construction, Baraki (2014: 216)

There are eleven (11) sources of revenue in Ethiopia on which revenue decentralization is based as shown in Table 2.2 above. Once more, "Yes" means the level of government has power to levy and collect taxes, while "None" means it does not have. In this regard, Ethiopian model of fiscal federalism can be classified as having a full access to broad-based taxes, such as income, sales, payroll taxes, and so forth. For instance, out of 11 sources of tax revenue, the Federal Government has exclusive power on only two: monopoly taxes and import/export duties. Seven (7) are shared between the three levels of government and the remaining two (2) – agricultural income tax and urban/rural land use charges are shared between States and LGs.

### 2.2.3 Equalizing transfers in Ethiopia

According to Baraki:

***Federal Government controlled, on average, 80 percent of the total national revenues (see Appendix 5.1). Wide horizontal fiscal disparities are also visible. Asymmetric distribution of economic bases and wide cost differential for providing public services among the states are among the major reasons. Since the states cannot finance simultaneously their backlog development and the emerging expenditure needs from their own revenue sources, and minimum national standard of public services delivery are fixed at the national level, federal transfers are major revenue sources of the states. Without the IGT system, the State/LGs cannot properly carryout their assignment responsibilities. Nevertheless, designing of the Federal transfers and their distribution across the States are among the central policy issues and are public debates in Ethiopia and will continue to be so in the future as long as the States remain heavily dependent on the Federal transfers.***[29]

The vertical fiscal gaps would undoubtedly be high if the Federal Government controls 80% of the total national revenue. Hence, the need for equalizing transfers through a system of Intergovernmental fiscal transfer (IGT). The IGT consists of the following four categories:

a) **Federal subsidy**, which is a formula-based "unconditional" grant. It consists of resources from the FG treasury (contributing 75% of the total federal subsidy); external loans and external assistance (comprising of the remaining 25% of the total federal subsidy).

b) **Conditional (i.e. specific purpose) grants**, which are channeled through the line ministries.

c) **The road fund**, which is derived from various sources. A Board drawn from public and private sectors, accountable to the Ministry of Works and Urban Development manages it. Five and four appointed members represent the Federal and the States respectively, while the Private transport sector has four representatives elected by the Association. "Currently the distribution of the Road fund takes place in the proportion of 70 percent to the Federal Road Authority, 20 percent to the States and 10 percent to eligible ULG[30]."

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[29] Ditto (2014: 280)

[30] Ditto (2014: 304)

d) ***Wereda* Block Grant (WBG),** which is a transfer from the States to respective *Weredas* (urban and rural).

I now turn to the fourth and final category of Boadway and Shah (2007) commonalities of FF and to see how it is being applied in Ethiopia.

### 2.2.4 Federal/national influence on subnational/state decisions

The method that would seem to have been adopted by the Ethiopian FG is not through intrusive influence, such as striking down state legislation. It is more in the form of providing services to the subnational levels. This is, however, seen differently as articulated by the following paragraph from Baraki (2014:304):

> ***The opposition block accuses the ruling party for using federal subsidy for political agenda. Some may argue that the advantageous financial logrolling by the ruling party in the form of federal transfers to the States contributed to win the national (96.6 percent) and regional (100 percent) elections of the 2010[31].***

Baraki has, however, not found any evidence to support the above allegation:

> ***Examining the design of the federal unconditional subsidy, one may find no association with swinging, appeasing or rewarding of voters, as the distribution of the federal subsidy among the states and Dire Dawa is transparent and there is no room to manipulate for electoral purposes[32].***

The Ethiopian model of fiscal federalism has provided a critical point of departure for all South Sudanese stakeholders and their development partners to embark on a serious discourse in search of the most appropriate model of FF for South Sudan. In this regard, I would propose some elements of South Sudan's model of fiscal federalism, which derives its nature and characteristics from the following foundations[33]:

a) The legal foundation in the form of constitutional provisions provided for in the Transitional Constitution of South Sudan, 2011 (TCSS, 2011);
b) The economic foundation, which is underpinned by the state of our economic development (i.e. by the performance of the public sector during the last ten years);
c) The social foundation as reflected in the pattern of our income and resource distribution; and
d) The institutional foundation, which is demonstrated by the capacity of our national government and newly established 28 states.

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[31] Ditto (2014: 290)
[32] Ditto (2014:290)
[33] I have modified the determinants proposed in: An Economic Analysis of Fiscal Federalism in Ethiopia, by Abu Girma Moges (2005:3).

# III. Proposed Pillars of Fiscal Federalism for South Sudan

This chapter is largely based on the Ethiopian model of fiscal federalism for two important reasons. The first is that the Ethiopian model of FF is the latest in the continent of Africa and which derives its conceptual framework from the best international practices in intergovernmental fiscal relations. The second reason is that there are similarities between the Ethiopian system of federalism, which is ethnic-based and the recently created ethnic-oriented 28 states in South Sudan. I am, therefore, inclined to put our efforts in drawing lessons of experience from one of our neighbors instead of trying to reinvent the wheel.

I would like, before proceeding, to highlight the rationale for fiscal federalism by quoting Abu Girma Moges:

> ***A growing number of countries have adopted fiscal decentralization in an attempt to improve the performance of their public sector. The process broadly entails decisions in identifying some optimal distribution of functions and powers between the federal and sub-national governments. This process of devolution of fiscal authority introduces specialization of functions, better identification of local factors, experimentation of democratic principles and changing the very relationship between the government and the citizen-voters in important ways***[34].

The main challenge we have in South Sudan is that the debate has always been on federalism (i.e. political and administrative) without due attention to fiscal federalism. For instance, Jacob J. Akol of Gurtong Trust in commenting on Douglas Johnson's lecture at the University of Juba, summarized the debate on federalism as follows:

> ***In South Sudan there is no system of governance so popular – yet so little understood – as the federal system. Historically the demand for federation with North Sudan was seen as the way to keep Sudan united, and the absence of such a system was held up as one of the causes of the long wars between North and South. Now federalism is proposed as a panacea for problems of governance in independent South Sudan. But is it? And is the system any better understood now than in the 1950s? Douglas Johnson's paper – first delivered to a packed lecture hall at Juba University – is required reading for those who wish to see orderly discussion on the various federal systems before we rush into something which could lead to an even bigger problem***[35].

There is indeed an urgent need for "orderly discussion of the various systems" of federalism. Jacob Akol is correct in that there is a genuine knowledge gap on how a federal system operates. Hence, our contribution in closing this knowledge gap is in seeking a comprehensive understanding of the intergovernmental fiscal relations in a federal system. But, I would first remind the readers about the thinking of the SPLM

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[34] Quoted from Fiscal Federalism and Its Discontents: Theory and Policy, a paper presented by Abu Girma Moges (2005:2) at the 3rd EAF-EARO/CADPR-WMU International Symposium on Ethiopian Development Studies, June 17 -18, 2005, Addis Ababa, Ethiopia.

[35] Quoted from the back cover of a booklet on: **Federalism in the history of South Sudanese political thought**, by Douglas H. Johnson (2014), Rift Valley Institute Research Paper 1

leadership in 2004; a thinking that is articulated by the following statement: "The proposed fiscal decentralization in the context of the peace process would simultaneously address issues of ethnic, cultural, linguistic and religious cleavages and their consequential disparities[36]." In this regard, I would argue that the SPLM leadership did internalize then the importance of fiscal federalism in addressing the drivers of ethnic-induced fragility of the state.

There is now an opportunity for a genuine discourse on the most appropriate model of fiscal federalism for South Sudan. I would like to initiate this discourse by first looking at the four sources from which South Sudan model of fiscal federalism is likely to derive its **nature and characteristics**. This would then be followed by proposing the key pillars of fiscal federalism for South Sudan drawing heavily from the Ethiopian model of FF.

## 3.1 Foundations of Fiscal Federalism for South Sudan

South Sudan has, like Ethiopia, five (5) levels of government, which are: **national, state, county, Payam, and Boma**. But, the TCSS only gives three tiers: national, state, and local governments. The purpose of this section is, however, to briefly discuss the four foundations on which fiscal federalism for South Sudan would be erected. It is nevertheless important to know the context in which the model of FF would be applied, especially the institutional capacity of our system.

### 3.1.1 The Legal Foundation

Fiscal federalism is stipulated in the TCSS, 2011, specifically in Article 169 on equitable sharing of national wealth; Articles 177 and 178 on sources of revenue for national government; and Article 179 on sources of revenue for SGs. But, it is important to first place fiscal federalism in the wider context of a federal/decentralization system provided for in the Transitional Constitution of the Republic of South Sudan, 2011. We begin with classification of the country into levels of government. In this regard, Article 47 of the TCSS gives three levels of government stating that:

***South Sudan shall have a decentralized system of government with the following levels:***

***(a) the National level which shall exercise authority in respect of the people and the states;***

***(b) the state level of government, which shall exercise authority within a state, and render public services through the level closest to the people; and***

***(c) the local government level within the state, which shall be the closest level to the people[37].***

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[36] From SPLM Strategic Framework for War-to-Peace Transition, (2004:65), published by the SPLM Economic Commission, August 2004

[37] Article 47 (page 15) of the **Transitional Constitution of The Republic of South Sudan**, 2011

The assignment of authority between the three levels of government shows beyond doubt that South Sudan is a ***de facto*** federal system, though the framers of TCSS were determined not to use the term federalism. The powers (58 specific clauses on legislative and executive powers) of the national government (NG/FG) are given in Schedule A of TCSS. The exercise of these powers and associated institutions and structures for their implementation are, for the national government, delineated in Article 50 through Article 161 of TCSS.

The powers (42 legislative and executive powers) of the States (SGs) are given in Schedule B of TCSS. The exercise of these functions of the State Governments (SGs) are stipulated in Article 162 through Article 165, while those of Local Governments (LGs) are found under Articles 166 – 168.

There are thirty-three (33) concurrent powers described in Schedule C. If there is, however, a conflict with respect to concurrent powers, Schedule E of the TCSS unambiguously states that: “If there is a contradiction between the provisions of National law and a state law on the matters that are concurrent, the National law shall prevail to the extent of the contradiction.” Finally, the residual powers are given in Schedule D and the TCSS stipulates that:

> ***Residual powers shall be dealt with according to their nature. If the power pertains to a national matter, requires a national standard, or is a matter which cannot be regulated by a single state, it shall be exercised by the National Government. If the power pertains to a matter that is usually exercised by the state or local government, it shall be exercised by the state or local government[38].***

Article 48 of the TCSS provides the guiding principles for devolution and exercise of the above powers as follows:

***(1) The following principles shall guide the devolution and exercise of powers:***

***(a) affirmation of the need for norms and standards of governance and administration at the state and local government levels that reflect the unity of the people of South Sudan while recognizing their diversity;***

***(b) acknowledgement of the roles of the National Government and the states in the promotion of the welfare of the people and protection of their human rights and fundamental freedoms;***

***(c) recognition of the need for the involvement and participation of all people of South Sudan at all levels of government as an expression of unity; and***

***(d) pursuit of good governance through democracy, separation of powers, transparency, accountability and respect for the rule of law to enhance peace, socio-economic development and political stability.***

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[38] Schedule D (2011:81) of the **Transitional Constitution of The Republic of South Sudan**, 2011

***(2) The National Government shall:***

***(a) exercise its competences in accordance with this Constitution and the law; and***

***(b) respect the powers devolved to the states and local governments[39].***

A critical reading of the above stated guiding principles for the devolution and exercise of powers by the three levels of government would tend to show the following:

a. Principle **1.a** emphasizes unity in diversity, which is essentially the concept of ethnic-oriented decentralization/federalism embedded in the creation of 28 states;
b. The inscription (**justice, liberty, and prosperity**) in our coat of arms is sufficiently captured by Principle **1.b**;
c. One of the SPLM political ideals – taking towns (i.e. services) to the people in the rural areas – is articulated by Principle **1.c**; and
d. The ideals of democratic governance – rule of law, separation of powers (i.e. between legislature, executive, and judiciary), transparency and accountability, etc. – are clearly stipulated in Principle **1.d.**

And Article 49 spells out intergovernmental linkages as follows:

***(1) In the administration of the decentralized system of governance, the following principles of inter-governmental linkages shall be observed:***

***(a) the linkage between the National Government and the local government shall be through the government of the relevant state;***

***(b) in their relationships with each other or with other government organs, all levels of government shall observe the following:***

***(i) respect each other's powers and competences; and***
***(ii) collaborate in the task of governing and assist each other in fulfilling their respective constitutional obligations;***

***(c) government organs at all levels shall perform their functions and exercise their powers so as:***

***(i) not to encroach on or assume powers or functions conferred upon any other level except as provided for in this Constitution;***
***(ii) to promote co-operation by rendering assistance and support to other levels of government;***
***(iii) to promote communication and coordination between all levels of government;***
***(iv) to adhere to procedures of inter-governmental interaction and comity;***
***(v) to respect the status and institutions of other levels of government; and***
***(vi) to promote amicable settlement of disputes before resorting to litigation;***

[39] Ditto

***(d) the harmonious and collaborative interaction of the different levels of government shall be within the context of national unity and for the achievement of a better quality of life for all.***

***(2) Any two or more states may agree on mechanisms or arrangements to enhance inter-state co-ordination and co-operation[40].***

I have highlighted in the preceding paragraphs the relevant constitutional provisions underpinning the legal foundation of fiscal federalism for South Sudan. I would then turn to the economic foundation of fiscal federalism described as the state of economic development.

### 3.1.2 The Economic Foundation

The economic foundation of fiscal federalism in the case of South Sudan is not clear as the legal foundation. This lack of clarity can lead to confusion and misunderstanding. By way of avoiding such a confusion and misunderstanding, let us first assume that the three tiers of government –NG, SGs, and LGs - in South Sudan are in the business of producing public goods and services. We have seen in the case of Ethiopia that the Federal Government produces public goods and services, such as defense and national security; foreign relations; and inter-state highways, while streetlights are produced by the LGs. This is a division of labor, which is one of the basic principles of economic theory. That is, there is a division of labor between the three tiers of government in the production of public goods and services.

The three schedules (i.e. A, B, C) of the TCSS dealing with the powers of national government, of SGs as well as concurrent ones are underpinned by this economic principle of the division of labor. Moreover, the dismal performance of the national government in the production of public goods and services during the last ten years is a compelling economic argument for the adoption of fiscal federalism in South Sudan. We have also seen in the preceding chapter how the FGTFF relied solely on the theory of public finance, which focuses on equity, efficiency, and effectiveness in the delivery of public goods and services.

### 3.1.3 The Social Foundation

It would be recalled that Article 48 (1.b) stipulates the:

> ***Acknowledgement of the roles of the National Government and the states in the promotion of the welfare of the people and protection of their human rights and fundamental freedoms.***

This particular provision provided for in the TCSS (2011) is the articulation of the principle of social welfare underpinned by Pareto-optimality. It is now established, through empirical evidence, that fiscal federalism enhances socio-economic well-being of citizens within their respective levels of government. For instance, Wallace E. Oates (1972, 1999) has confirmed this in the following passage:

> " . . . ***in the absence of cost-savings from the centralized provision of a [local public]good and of interjurisdictional externalities, the level of welfare will***

[40] Ditto

> ***always be at least as high (and typically higher) if Pareto-efficient levels of consumption are provided in each jurisdiction than if any single, uniform level of consumption is maintained across all jurisdictions***.[41]"

The above citation from Oates is relevant to our situation where a number of ethnicities and clans feel marginalized by their own government, which they see to be too far away from them. Hence, fiscal federalism would at least restore social capital – trust through networks of civic/communal engagement – and social cohesion to many ethnic groups in the country. It would also restore a sense of belonging to one country with a common destiny driven by our quest for unity in diversity as articulated by Article 48 (1.a) of the TCSS (2011).

It is important to mention here that, notwithstanding the controversy over an optimal number of states, there is a solid social foundation for adopting fiscal federalism in South Sudan. The overriding function of any legitimate and responsible government is, as stipulated by Article 48 (1.b) of TCSS, "the promotion of the welfare of the people and protection of their human rights and fundamental freedoms." And according to Lee Kuan Yew: "the ultimate test of the value of a political system is whether it helps that society establish conditions which improve the standard of living for the majority of its people, plus enabling the maximum of personal freedoms compatible with the freedoms of others in society[42]."

### 3.1.4 The Institutional Foundation

The opponents of fiscal federalism would likely use the argument of weak institutions in their opposition to the adoption of such a system in South Sudan. In this regard, this section of the chapter would be longer than my discussion of the other three foundations of fiscal federalism.

I have cited two definitions of institution in chapter II of this paper under footnote number 10. That is, institution is used here to mean the "working rules of collective action in restraint, expansion, and liberation of individual action (s) [43]." This definition is sufficient, in my view, for elaborating the institutional foundation in general terms before giving specific examples from South Sudan[44].

Literature suggests that the central role of institutions in economic performance and growth is now widely acknowledged. This is due largely to the empirical evidence, which have emerged during the last two and half decades showing institutions as one of the key determinants of economic development (North, 1990;

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[41] Oates, Wallace E. 1972 (p. 54). **Fiscal Federalism**. NY: Harcourt Brace Jovanovich.
[42] From Lee Kuan Yew: Lessons for leaders from Asia's 'Grand Master', by Graham Allison, Special to CNN Updated 1817 GMT (0217 HKT) March 28, 2015

[43] This is how John R. Commons defines institutions in his seminal book (1990 edition): **Institutional Economics: Its Place in Political Economy**. Moreover, the Nobel Laureate Douglas North defines institutions as: "The rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction" Douglas C. North (1990).
[44] From my Opening remarks at a meeting of the Advisory Group for Sub-Saharan Africa (AGSA) of the IMF, April 20 -21, 2015, Washington, DC (USA)

Rodrik et al, 2002)[45]. According to Douglas North, institutions may be created (e.g. written constitutions) or may simply evolve over time (e.g. common law). The challenge then is on utilizing existing empirical evidence in the proper design of resilient institutions for South Sudan that would produce effective governance for sustained escape from the fragility trap, which I have mentioned in the introductory chapter of this paper. Thus, this further affirms my emphasis on the significance of an analytical framework for guiding "which institutions" are more likely to accelerate the implementation of the exit strategy from fragility. I am convinced beyond doubt that fiscal federalism is one of these analytical frameworks.

In the context of understanding institutional foundation of fiscal federalism for South Sudan, the four main components of John R. Commons' definition of institutions would be important guides:

- The TCSS (2011) or new constitution that takes into consideration legitimate grievances and aspirations of all the stakeholders/ethnicities/nationalities/"tribes". The constitution is a critical framework for building resilient institutions for effective governance that would in turn ensure justice, equal access to resources and opportunities for wealth creation, and peaceful coexistence in decentralized setting. The working rules of collective action are actually embedded in TCSS (2011) as well as in the constitutions of the states. I have already cited, under the legal foundation section, relevant provisions in this regard. **Here, resilient institutions would be the three conventional branches of government - legislature, executive, and judiciary** at the three levels of government stipulated under Article 47 of TCSS (2011).

- Restraint (e.g. though shall not…type of constraints/commands) entails that all the citizens/nationalities/"tribes" or members of a given organization are aware of the prevailing rule of law (or what I would prefer to call administration of justice), so that nobody takes the law into her/his own hands. It also calls for the observance of prescribed social values, ethics and moral norms. **Here, law enforcement agencies and security sector organizations derive their existence /legitimacy from this tenet and must be established with this tenet inherent in their behavior**. For instant, the elusive war against corruption would be won through a combination of social values and rules of behavior that have traditionally been effective at the lower levels of government in South Sudan.

- Liberation in this context means liberty and freedom of whatever one does, though within the 'working rules of collective action' or the rule of law. This tenet provides institutional frameworks for the establishment of social, political and economic organizations/agencies. **Here, a robust judiciary,**

[45] North, Douglass C. 1990. **Institutions, Institutional Change, and Economic Performance**. New York, NY: Cambridge University Press: Cambridge. Rodrik, Dani. 2004. "**Getting Institutions Right**." A Keynote address delivered at the PREM Week, … The World Bank: Washington, DC.

**effective civil society, vibrant private sector, strong press, and active research and academic institutions would act as guarantors for liberty and freedom that lay the basis for effective governance at all levels.**

- Expansion is the third tenet, which provides the dynamic aspect of institution in that it allows change (i.e. technical and organizational change) to occur over space and time in order to obtain growth and development. Agencies and organizations that focus on innovation and social change would derive their strategic visions from the expansion aspect of the 'working rules of collective action.' That is, the working rules of collective action allow expansion to occur in space and over time. **Here, the role of the universities and research centers - critical thinking and innovation – is the driving force of this tenet**.

Returning to specific examples from South Sudan, I would only cite two examples on text collection and road building during the colonial era. One of the criteria for an administrative locality to become a district or rural council was the ability to generate revenues to finance its functions. Pol tax (i.e. head count of adult male of 18 years and above) was the main source of revenue for a district and was collected through chiefs and sub-chiefs. The chiefs and other local government employees were paid out of revenues collected through pol tax and court fees, which in turn ensured efficiency and effectiveness of the tax collection system at the community level. Hence, traditional authority is a critical institution through which LGs would have sufficient revenue-generating capacities and opportunities.

Roads were built through direct labor contribution from the communities. I am, for instance, familiar with Bor-Kongor road of 75 miles, which was built and maintained through the director labor of the various clans of Dinka people along it. Each segment (I am not sure how many miles) of the road was assigned to a particular clan (*wu*t) who will in turn divide the responsibility within it according to the number of sub-clans (*dhian/zian*). The sub-clan, in turn, shared the responsibility according to the number of families constituting it. The maintenance of the road was a year-round (7/24/365) duty.

The two examples I have just given are, in my view, an illustration of the institutional ability of LGs to efficiently produce and effectively distribute public goods and services. Just imagine what would have been the impact if the LGs were given US$1.3 billion reported by the World Bank to have been spent on roads by the Government of South Sudan (GoSS/GRSS) during the period 2006 – 2012[46]. A robust system of fiscal federalism would have ensured on the one hand transparency in the allocation of that huge amount of money, and on the other the accountability of how the funds have been used.

[46] Presentation of the World Bank South Sudan Country Team at their Annual Retreat, March 2014, Windsor Golf Hotel, Nairobi, Kenya

## 3.2 Proposed Elements of Fiscal Federalism Model for South Sudan

I have stated earlier in this paper that my brief review of the literature of fiscal federalism has convinced me beyond doubt that South Sudan would be better off if it were to modify the Ethiopian model of FF and adapt it to her own objective conditions. The four foundations I have presented in the preceding section would form a solid base from which to erect the pillars of the most appropriate fiscal federalism for South Sudan. I would follow the same methodology of fitting the four commonalities of fiscal federalism among different federal systems. But, before that I would like us to keep, **Dafflon's Principles for the re-assignment of functions between the federal and cantonal layers of Switzerland**, at the back of our minds when considering the most suitable system for South Sudan[47].

**Table 3.1: Recommended Principles for Assignment of Functions Between Three Tiers of Government in South Sudan**

| | |
|---|---|
| **1. Subsidiarity** | The National Government only undertakes tasks that the States are unable to perform or which require uniform regulation nationwide |
| **2. Equivalence Principle** | The jurisdiction that benefits from a public service bears the costs thereof |
| **3. Autonomy of Choice** | The jurisdiction that bears the costs of a public service may decide on the nature of that service (and inversely) |
| **4. No Discrimination in Delivery** | Within jurisdictions, provided services must be available to every person in a comparable manner |
| **5. Asymmetry is Accepted** | State tasks must be fulfilled economically and in accordance with demand, which may differentiate from one state to another |
| **6. No Free Rider** | At the request of interested States, the National Government may declare inter-state agreements to be generally binding or require States to participate in inter-state agreements |

**Source**: Modified from Table 4.1: Principles for the re-assignment of functions between the federal and cantonal layers (art. 43a and 48a Cst [2004])

### 3.2.1 Proposed Expenditure Decentralization for South Sudan

I have mentioned in the preceding chapter that Schedules A, B, and C of the TCSS (2011) gives respectively 58 functions to the national government, 42 to states government, and 33 concurrent functions. For the purposes of the expenditure decentralization, I would follow the Ethiopian model of classification of functions, which is based on the IMF classification[48]. In this regard, I would focus the discussion on only 25 expenditure responsibilities presented in Table 3.2 below. But, more detailed classification of expenditure by functions of government and expenditure decentralization by levels of government is given in Table 3.3. This would allow South Sudanese policy analysts to guide policymakers in making

[47] From **Swiss Fiscal Federalism: new roads after the reforms of the Constitution**, by Prof. Bernard Dafflon.

[48] See **Government Finance Statistics (GFS) Manual 2014** by the International Monetary Fund (IMF).

informed decision with respect to the system that best fits the objective conditions of the country.

**Table 3.2: Proposed Expenditure Decentralization for South Sudan**

| Expenditure Responsibility | Level of Government | | |
|---|---|---|---|
| | **Federal Government (FG)** | **States Government (SGs)** | **Local Governments (LGs)** |
| 1. General Public Service | Yes | Yes | Yes |
| 2. National Defense & Security | Yes | No | No |
| 3. Police & Security | Yes | Yes | Yes |
| 4. Fire Protection | No | Yes | Yes |
| 5. Justice & Law | Yes | Yes | Yes |
| 6. Inter-state commerce | Yes | No | No |
| 7. Economic & social policy | Yes | Yes | Yes |
| 8. Land & natural resources | Yes | Yes | Yes |
| 9. Agriculture | Yes | Yes | Yes |
| 10. Mining | Yes | Yes | Yes |
| 11. Transport, Postal services and Communications | Yes | No | No |
| 12. Roads | Yes | Yes | Yes |
| 13. Monetary & financial policies | Yes | No | No |
| 14. International relations | Yes | No | No |
| 15. Revenue collection and Budgeting | Yes | Yes | Yes |
| 16. Environmental protection | Yes | Yes | Yes |
| 17. Housing development | Yes | Yes | Yes |
| 18. Water supply | No | Yes | Yes |
| 19. Street light | No | No | Yes |
| 20. Recreation & culture | Yes | Yes | Yes |
| 21. Preservation of culture and historical legacies | Yes | Yes | No |
| 22. Science and technology | Yes | Yes | No |
| 23. Health service | Yes | Yes | Yes |
| 24. Education | Yes | Yes | Yes |

| | | | |
|---|---|---|---|
| 25. Social protection | Yes | Yes | Yes |

**Source**: Constructed by the author from Baraki (2014), Table 5.1 pp. 121 - 135.

I have tried to simplify, in Table 3.2 above, the presentation of expenditure decentralization, so as to allow farther debate within the South Sudanese policy community. For instance, the "Yes" is used in Table 3.2 to denote that the given tier of government has expenditure responsibility corresponding to its assigned functions and powers, while "No" indicates the tier does not have. In this regard, there are 25 assigned expenditure responsibilities of which I am proposing, consistent with Schedule A of TCSS (2011), the national government (NG) is to have five (5) exclusive expenditure responsibilities with respect to the following:

a) National defense and security;
b) Inter-state commerce;
c) Transport[49], postal services, and communications;
d) Monetary and financial services; and
e) International relations.

Moreover, I am recommending that the three levels of government (i.e. NG, SGs, and LGs) share fifteen (15) expenditure responsibilities. While NG and SGs are to share two – science & technology and preservation of culture and historical legacies – expenditure responsibilities. SGs and LGs share two – water supply and fire protection – expenditure responsibilities. Finally, the LGs, just like the case of Ethiopia, have the exclusive expenditure responsibilities over the streetlights.

A more detailed expenditure decentralization, which is based on the GFS Manual full classification of expenditure by functions, is presented in Table 3.3. The rationale here is to provide an option for South Sudanese analysts to develop their own model in case they would not want to follow the Ethiopian model of 25 categories. But, let us first have a common understanding of what the GFS Manual says about government entities. It says:

> ***Government units are unique kinds of legal entities established by political processes that have legislative, judicial, or executive authority over other institutional units within a given area. The principal economic functions of government units are to***:

- ***assume responsibility for the provision of goods and services to the community or individual households primarily on a nonmarket basis;***
- ***redistribute income and wealth by means of transfers;***
- ***engage primarily in nonmarket production; and***
- ***finance their activities primarily out of taxation or other compulsory transfers***.

Moreover, a government unit may borrow from domestic and/or external sources to finance some or a portion of its activities during a given period of time. In addition, resource-rich countries can earn revenues through the rent of such resources without necessarily resorting to compulsory transfers.

[49] Regulatory function

**Table 3.3 Worksheet to facilitate Expenditure Decentralization by Functions & Levels of Government for South Sudan based on GFS Manual**

| **7 Total expenditure by Function of Government** | **Level of Government** | | |
|---|---|---|---|
| **701 General public services** | **NG** | **SGs** | **LGs** |
| 7011 Executive and legislative organs, financial and fiscal affairs, external affairs | ALL | All with the exception of foreign affairs | All with the exception of foreign affairs |
| 7012 Foreign economic aid | | | |
| 7013 General services | | | |
| 7014 Basic research | | | |
| 7015 R & D General public services | | | |
| 7016 General public services n.e.c. | | | |
| 7017 Public debt transactions | | | |
| 7018 Transfers of a general character between different levels of government | | | |
| | | | |
| **702 Defense** | | | |
| 7021 Military defense | | | |
| 7022 Civil defense | | | |
| 7023 Foreign military aid | | | |
| 7024 R & D Defense | | | |
| 7025 Defense n.e.c. | | | |
| | | | |
| **703 Public order and safety** | | | |
| 7031 Police services | | | |
| 7032 Fire protection services | | | |
| 7033 Law courts | | | |
| 7034 Prisons | | | |
| 7035 R & D Public order and safety | | | |
| 7036 Public order and safety n.e.c. | | | |
| | | | |
| **704 Economic affairs** | | | |
| 7041 General economic, commercial, and labor affairs | | | |
| 7042 Agriculture, forestry, fishing, and hunting | | | |
| 7043 Fuel and energy | | | |
| 7044 Mining, manufacturing, and construction | | | |
| 7045 Transport | | | |
| 7046 Communication | | | |
| 7047 Other industries | | | |
| 7048 R & D Economic affairs | | | |
| 7049 Economic affairs n.e.c. | | | |
| | | | |
| **705 Environmental protection** | | | |
| 7051 Waste management | | | |
| 7052 Waste water management | | | |
| 7053 Pollution abatement | | | |
| 7054 Protection of biodiversity and landscape | | | |
| 7055 R & D Environmental protection | | | |
| 7056 Environmental protection n.e.c. | | | |
| | | | |
| **706 Housing and community amenities** | | | |
| 7061 Housing development | | | |
| 7062 Community development | | | |

| | | | |
|---|---|---|---|
| 7063 Water supply | | | |
| 7064 Street lighting | | | |
| 7065 R & D Housing and community amenities | | | |
| 7066 Housing and community amenities n.e.c. | | | |
| | | | |
| **707 Health** | | | |
| 7071 Medical products, appliances, and equipment | | | |
| 7072 Outpatient services | | | |
| 7073 Hospital services | | | |
| 7074 Public health services | | | |
| 7075 R & D Health | | | |
| | | | |
| **708 Recreation, culture and religion** | | | |
| 7081 Recreational and sporting services | | | |
| 7082 Cultural services | | | |
| 7083 Broadcasting and publishing services | | | |
| 7084 Religious and other community services | | | |
| 7085 R & D Recreation, culture, and religion | | | |
| 7086 Recreation, culture, and religion n.e.c. | | | |
| | | | |
| **709 Education** | | | |
| 7091 Pre-primary and primary education | | | |
| 7092 Secondary education | | | |
| 7093 Postsecondary no-tertiary education | | | |
| 7094 Tertiary education | | | |
| 7095 Education not definable by level | | | |
| 7096 Subsidiary services to education | | | |
| 7097 R & D Education | | | |
| 7098 Education n.e.c. | | | |
| | | | |
| **710 Social protection** | | | |
| 7101 Sickness and disability | | | |
| 7102 Old age | | | |
| 7103 Survivors | | | |
| 7104 Family and children | | | |
| 7105 Unemployment | | | |
| 7106 Housing | | | |
| 7107 Social exclusion n.e.c. | | | |
| 7108 R & D Social protection | | | |
| 7109 Social protection n.e.c. | | | |

**Source**: **Adapted by the author from GFS Manual, Table 6.12. Classification of Expenditure by Functions of Government according to Divisions and Groups**

### 3.2.2 Proposed Revenue Decentralization for South Sudan

I have stated earlier that there are sufficient constitutional provisions in the TCSS (2011) for a South Sudanese model of fiscal federalism. It is also important to distinguish between management of resources and sharing of revenues/wealth. In this regard, I would revisit the relevant Articles in the TCSS (2011) as by way of ensuring a common understanding when discussing the most appropriate system of revenue decentralization for South Sudan.

I start with Article169, which stipulates 10 guiding principles for equitable sharing of national wealth. The issues of land ownership and tenure system are addressed under Articles 170, 171, and 172. In addition, the guiding principles for petroleum and gas development and management are contained in four Articles: 173, 174, 175, and 176. But, revenue decentralization in South Sudan derives its legality from three Articles 177, 178, and 179.

Article 177 (2) states that "The National Government shall legislate for raising revenue or collecting taxes from the following sources:

***(a) petroleum, Gas/oil, mineral, and other natural resources;***
***(b) national personal income tax;***
***c) corporate and business profit tax;***
***(d) customs duties and import taxes;***
***(e) airports, rail, road, and river transport revenue;***
***(f) service charges, fees and fines;***
***(g) national government enterprises and projects;***
***(h) value added tax or general sales tax on goods and services;***
***(i) excise duties;***
***(j) loans and borrowing from the Bank of South Sudan and the public;***
***(k) grants-in-aid and foreign financial assistance;***
***(l) fees from nationality, passports, immigration and visas;***
***(m) royalties; and***
***(n) any other tax or revenue as may be determined by law*."**

In addition to the above fourteen (14) sources of revenue for the National Government (NG), Article 178 stipulates the formula for sharing of oil revenue. This sharing is only between NG and oil producing states and communities. It also stipulates establishment of Future Generation Fund (FGF) from the share of NG.

There are fourteen (14) sources of revenue for SGs and LGs stipulated in Article 179. This Article states that: "The states shall legislate for raising revenue or collecting taxes from the following sources:

(**a) state land and property tax and royalties;**
**(b) service charges for state services;**
**(c) licenses issued by the state;**
**(d) state personal income tax;**
**(e) levies on tourism;**
**(f) at least two percent of net oil and other mineral revenues for each producing state;**
**(g) state government projects;**
**(h) stamp duties;**
**(i) agricultural production taxes;**
**(j) grants-in-aid and foreign aid;**
**(k) excise duties;**
**(l) other state taxes, which are not within the exclusive jurisdiction of the National Government;**
**(m) loans and borrowing in accordance with Article 184 (2) and (3) of this Constitution; and**
**(n) any other tax as may be determined by law.**"

The above constitutionally provided provisions for South Sudan FF system would, if operationalized, be classified as having a full access to broad-based taxes, such as income, sales, payroll taxes, and so forth. The NG has, however, four (4) exclusive sources of revenue: custom duties and import taxes; airports, rail, road, and river transport revenue; value added tax; and nationality, passports, immigration and visa. The SGs have three (3) exclusive sources of revenue: tourism; stamp duties; and agricultural tax.

### 3.2.3 Proposed Equalizing transfers System for South Sudan

I would recommend the Ethiopian system of equalizing transfers to be adopted initially in South Sudan. In fact, South Sudan has some elements of equalizing transfers, such as conditional grants through the line ministries, Constituency Development Fund, and County Block Grant.  Two elements – **conditional grants and road fund** -from the Ethiopian system could be added to what we already have in South Sudan.

### 3.2.4 Federal/national influence on subnational levels

I am inclined to recommend that the NG should keep off from influencing how SGs and LGs address their principal economic functions.  My preference would be to use persuasion tactics to influence and pressure, but not force, subnational levels of government into adhering to desired policy outcome (s). Such tactics should be closed-door meetings with community leaders and other stakeholders combined with appeals to community spirit and vague threats.

## IV. Conclusion

The implicit objective of this paper is to trigger sustained discourse in search of the most appropriate fiscal federalism for South Sudan. The search for fiscal federalism is driven by the conviction that it would enhance transparency and accountability through robust legal and institutional frameworks, which have been missing in this fragile state. A brief comparative analysis of the legal foundation of Ethiopian model of fiscal federalism has revealed that there are sufficient constitutional provisions in the TCSS (2011) for designing a system of intergovernmental fiscal relations in South Sudan, which is economically, socially, and institutionally viable. The envisaged viability is premised on the inherent transparency and accountability underpinning fiscal federalism.