

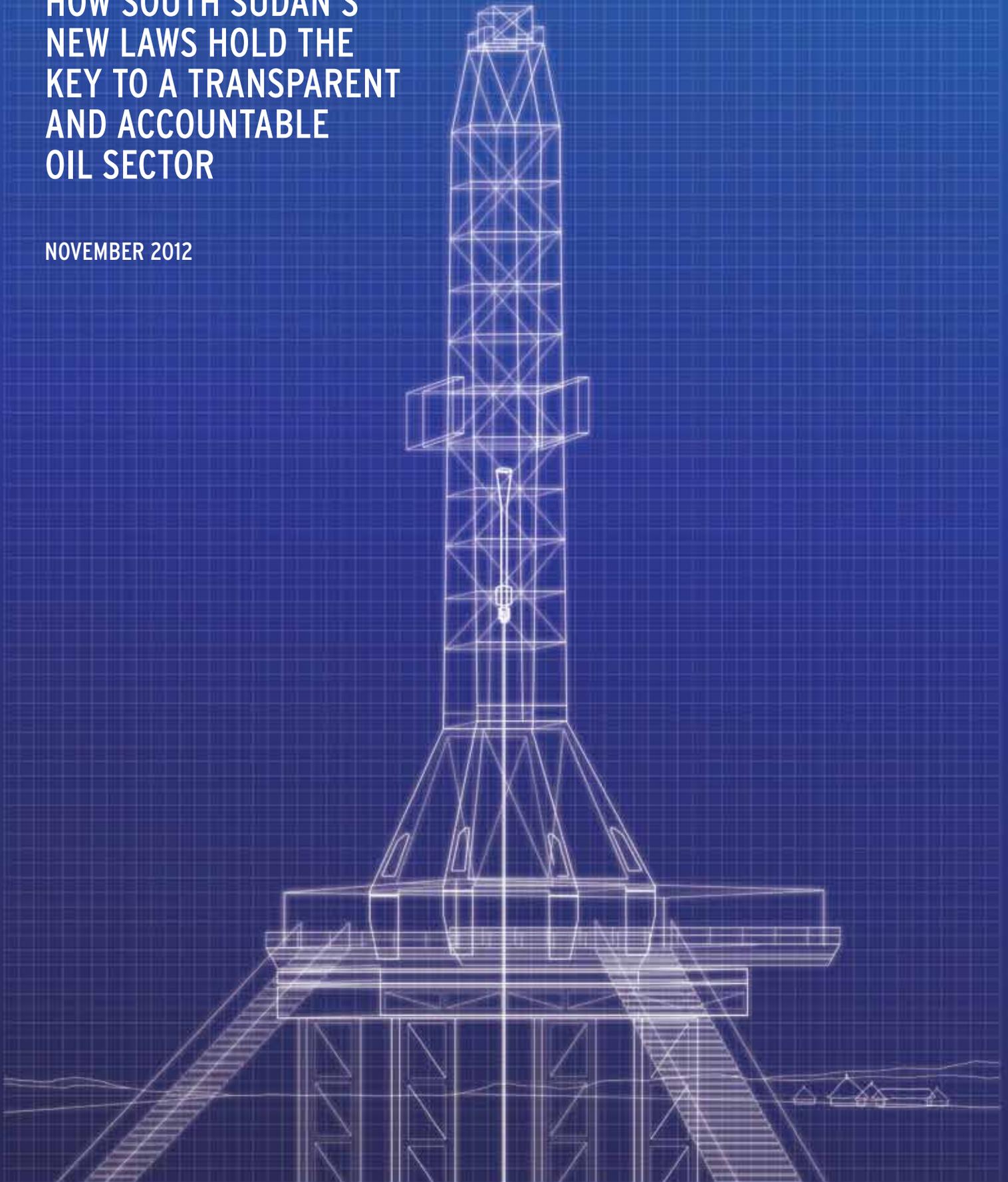
BLUEPRINT FOR PROSPERITY



global witness

HOW SOUTH SUDAN'S
NEW LAWS HOLD THE
KEY TO A TRANSPARENT
AND ACCOUNTABLE
OIL SECTOR

NOVEMBER 2012



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EXECUTIVE SUMMARY

With independence on 9 July 2011, the Republic of South Sudan became both the newest and the most oil-dependent country in the world.

South Sudan has been blessed with oil wealth that, if managed responsibly, could provide for the long-term development and prosperity its citizens deserve. There are encouraging signs that the South Sudanese government is committed to ensuring this outcome. Indeed, the country's emerging legal framework includes wide-ranging public reporting, contract allocation, and revenue management standards that draw from international best practice.

However, implementation of these transparency and accountability measures will not be easy. It will require a concerted effort and prioritisation from across the government. It will also demand a genuine commitment to move beyond the legacy of closed-door oil sector management left by the country's former rulers in Khartoum.

Now is the time for action.

The importance of oil to development in South Sudan was brought into sharp focus earlier this year, when the government halted all crude production following a dispute with Sudan. Up to that point, South Sudan derived more than 98% of its income from oil. The shutdown resulted in a sudden and near-total loss of revenues and had a huge impact across the country. The government was forced to make cuts to crucial public services and institution-building projects, while citizens were forced to deal with fast-rising food and fuel prices.¹



Prior to the production shutdown earlier this year, oil accounted for more than 98% of the government's annual revenues.

A deal has now been agreed for the use of Sudan's processing facilities, pipelines, and export terminal, and South Sudan's oil exports are expected to resume within the next few months.² It is critical that while this is happening, the South Sudanese government prioritises its commitments to transparency and accountability across the oil sector, so that by the time most of the taps are turned back on, the necessary standards and safeguards are in place.

Aside from its over-reliance on oil, one of South Sudan's biggest challenges is corruption, which is acknowledged to be widespread in the country. President Salva Kiir recently estimated that high-level theft has cost the government more than US\$4 billion over the last six years.³ This makes it all the more important that the oil sector is managed responsibly and opened up for genuine scrutiny by citizens, the ultimate owners of the resources.

There are already some red flags.

There is still a long way to go before South Sudanese citizens have access to the information needed to see exactly how their oil is being managed and where their money is going. Since independence, there have been several reports of new oil sector deals being negotiated and possibly already awarded, apparently without open and competitive bidding processes. No contracts or production data have been made public, and there is a concerning lack of support for oversight institutions like the Audit Chamber and the National Legislative Assembly.

South Sudan remains at risk of seeing bad practices become entrenched. If this is allowed to happen, it will be even more difficult to put robust checks and balances in place. Global Witness has repeatedly documented how in states where natural resource wealth is not managed in a transparent and accountable way, the results can include odious public debt, political instability, and even large-scale internal conflict.⁴

There are also many positive indications.

The good news is that the foundations for sound oil management are being put in place. Building on the transparency commitments enshrined in the Transitional Constitution, South Sudan's Petroleum Act and draft Petroleum Revenue Management Bill set out a clear blueprint for how oil operations, contracts, and revenues should be managed.

The Petroleum Act passed over the summer includes many important requirements to prevent corruption and mismanagement. In addition to general commitments to publish contracts and regular production and revenue data, the law requires that all oil contracts be awarded through a competitive, public process. Contract allocation is the starting point for the government's generation of oil revenues from the country's oil, and as such, it is critical that citizens are able to trust that these deals are awarded to the best possible companies on the best possible terms. This allocation standard, complemented by the now-compulsory publication of information on beneficial ownership of contractors (the individuals behind the companies), can help build that trust.

The government has also drafted a Petroleum Revenue Management Bill that includes important requirements for how revenues will be collected, managed, audited, and reported. To ensure South Sudan's oil income is subject to consistent public scrutiny and independently verified, this bill must be passed with these key provisions intact. The Ministry of Finance and Economic Planning, the institution responsible for managing all oil revenues and accounts, must also be provided with the training, technology, and administrative capacity needed to implement the requirements effectively.

Implementation is everything.

The laws are only as good as their implementation. South Sudan's oil sector will not be transparent until the government complies with the standards it is now legally bound to meet. At a minimum, this means:

- Publishing regular, detailed production and financial data, and all oil sector contracts.
- Ensuring that no new oil sector deals are negotiated or signed outside of an open and competitive process.
- Establishing a single petroleum revenue account and reserve funds, managing them tightly, and reporting on them regularly.
- Providing oversight institutions like the Audit Chamber, National Legislative Assembly, and local civil society with enough technical and political support to provide a robust check on how oil contracts and revenues are being managed.

With independence, South Sudan got a fresh start. Progress is being made to put better governance and reporting systems in place, including the recent



Implementing the blueprint for transparency and accountability which has been set out in South Sudan's new oil laws will help the young country realise its full potential.

publication of a fairly detailed report on crude oil marketing and sales since independence, available on the new website of the Ministry of Petroleum and Mining. The Ministry of Finance and Economic Planning is also working hard to improve the government's budgeting and accounting systems to prepare for the return of regular oil revenues.

There are many individuals within and outside of the government who remain committed to seeing South Sudan's oil sector managed responsibly. But following through on this vision will require significant capacity building and focused, consistent support for the blueprint set out in the new legislation.

The following pages outline ten recommendations on the action that must now be taken by the government and aid donors, and a quick summary of the value of transparency and accountability.

KEY RECOMMENDATIONS



The government of South Sudan must follow through on the transparency and accountability commitments enshrined in its new oil laws.

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- All funds paid and received by companies and the government, including in-kind payments.
- Transfers in and out of the Petroleum Revenue Account, the Oil Revenue Stabilization Account, and the Future Generation Fund (see page 18).
- Details of any government debt, including the exact terms of repayment and how the debt was initially incurred (see page 20).

This data should be clear and comprehensive to ensure that the public has access to all of the information needed to verify that no public funds are being lost to corruption or mismanagement.

TO THE GOVERNMENT OF SOUTH SUDAN

1) **Prioritise the passage of a Petroleum Revenue Management Law that includes robust public reporting, accounting, and auditing requirements.** Earlier this year, the president passed a provisional order of the Petroleum Revenue Management Law that was then rejected by the National Legislative Assembly (NLA) because it did not allow for proper parliamentary scrutiny.⁵ The bill will likely be tabled again in the coming months, and it is critical that the best practice transparency and accountability requirements that were included in previous drafts of the bill are included in the final law (see pages 9 and 18).⁶

2) **Publish all oil production and financial data from July 2011 onward, broken down in detail.**

This should include:

- Production volumes at the wellhead, processing facilities, and at the point of export.
- The split between production belonging to the government and to the oil companies, including the amount of oil claimed back by companies to cover capital and operational costs (see page 12).
- The per barrel price of oil sold and total income, disaggregated by sale.

3) **Put systems in place to guarantee the regular and detailed publication of production and financial data (as outlined above).** Detailed data and all quarterly and annual government reports should be published online and made available in print at the relevant ministry. Radio programmes and weekly or monthly newspaper inserts should be used to disseminate key information more widely (see page 14).

4) **Be extremely cautious and transparent in taking on large loans, particularly natural resource-backed loans.** Because the oil sector will be South Sudan's primary source of income for the foreseeable future, it is unlikely that financial institutions will be willing to offer the country a loan without repayment being somehow tied to the oil sector or possibly the nascent mining sector. Resource-backed loans can be extremely risky if not handled carefully. Transparent and robust accounting systems will be critical to preventing exploitative loan terms, corruption, and mismanagement from undermining any immediate benefits from this kind of financing (see page 20).

5) **Publish all oil sector contracts, including all major service contracts and joint venture agreements.** These agreements should be published online and made available in print at the Ministry of Petroleum and Mining (see page 13).

6) **Award new contracts, licences, and joint venture agreements – including with service**

companies and trading houses – on the basis of open and competitive bidding processes.

This standardised and fair method of allocating contracts ensures that the government receives the best possible terms and that contract negotiations are not used to broker corrupt deals to benefit elite individuals (see page 22).

7) Only award new contracts, licences, and joint venture agreements to reputable and capable companies, whose beneficial ownership is publicly identified and maintained in public records. The use of shell companies and unnamed partners to cover up corruption and cheat countries out of revenues is common.⁷ The only way to prevent this is to publicly identify and monitor ownership for all companies involved in the oil sector (see page 23).

8) Put systems in place for independent auditing and oversight of the petroleum sector.

National oversight institutions, like the Audit Chamber and National Legislative Assembly (see page 25), must be guaranteed:

- Full access to all oil data and documentation.
- Protection from influence and censorship by other government officials.
- Funding to build technical oil sector expertise.

TO INTERNATIONAL AID DONORS

9) Provide focused technical assistance and political support for the development and implementation of South Sudan's laws, reporting mechanisms, and oversight institutions related to the oil sector.

This must include:

- Assistance to the government to establish and maintain:
 - quarterly and annual public reports on oil revenues, accounts, and debt (see page 20);
 - information-sharing websites for the Ministry of Petroleum and Mining and the Ministry of Finance and Economic Planning;
 - monthly newspaper inserts outlining key oil data and news; and
 - radio programmes to disseminate oil sector information more widely (see page 14).

- Financial and political support for oversight institutions like the Audit Chamber and National Legislative Assembly (see page 25).
- Linking any direct budget support to the South Sudanese government's implementation of its own best practice reporting and auditing requirements. South Sudan's own industries can and should be the main driver of development, not outside assistance.

All of the above should be considered in the drafting of the New Deal Compact being developed as part of the g7+ initiative for donor engagement in fragile states.⁸

It is a donor's responsibility, both to the people of South Sudan and to taxpayers back home, to make sure these preventative measures are put in place to avoid millions of dollars/yuan/kroner/euros/pounds/yen in development assistance being swallowed up by corruption and mismanagement.

10) Support South Sudanese civil society groups and press to investigate, analyse, and report on oil sector management. There are many civil society representatives and journalists across the country who are committed to overseeing how oil and oil revenues are managed. But most are spread very thin, covering a wide range of issues with limited technology and manpower. Further, given the complex nature of the oil sector, building the detailed knowledge necessary to monitor technical and financial data will take time and consistent support. International partners may also need to provide strong political support should the freedom of civil society or the press to operate be threatened or their access to information blocked (see page 29).



Though the government has sent many strong signals to its citizens and international partners that it intends to run a transparent and accountable oil sector, huge challenges remain in setting up the necessary administrative and reporting systems, and effective checks and balances.

THE VALUE OF TRANSPARENCY AND ACCOUNTABILITY

When constantly bombarded with development rhetoric, it can be difficult to see through catchwords like 'transparency' and 'accountability' to what these principles mean in practice and why they are important. But there is a reason these terms are used so much in the context of South Sudan, particularly in relation to its oil sector.

Transparency in this context refers to the information that a government and companies make available to the public. An oil sector can be described as truly transparent if detailed information on revenues, accounts, production, operations, contracts, and companies are published. Accountability refers to the government's obligation to take full responsibility for, and to report, explain, and be answerable to stakeholders about the management of the sector, both internally (e.g., audits and parliamentary oversight) and externally (e.g., citizens, civil society, and the press).

Being transparent and accountable in how its oil wealth is managed is the single best way for South Sudan to demonstrate its commitment to establishing strong democratic systems, tackling corruption, and ensuring oil benefits the country as much as possible.

JUST A FEW OF THE BENEFITS

Less Corruption

In countries where significant natural resource wealth is managed by young or weak institutions, corruption can be the greatest threat to development, domestic stability, and political legitimacy. Corruption is already acknowledged as widespread in South Sudan, as evidenced by statements from President Kiir himself.⁹

The single best way to address this threat is to shine a light on all government operations and accounts. Given the significance of oil revenues in particular – and their notorious susceptibility to diversion for private benefit – the South Sudanese government must ensure that its oil sector is managed openly and subject to consistent public scrutiny.

A More Attractive Investment Climate

The political and economic stability that often accompanies more accountable government systems can result in a much more attractive investment

climate, which in turn brings in more reputable companies. Companies need to be confident that insecurity will not threaten their staff and facilities, and that their operations will be protected from unreasonable political interference and corrupt demands from government officials.

There is also increasing evidence that transparency helps lower long-term financing and borrowing costs while improving a country's sovereign credit rating.¹⁰ A better credit rating means better terms for loans, which means that the current government can negotiate deals that leave future generations in South Sudan with smaller debt burdens. Improving South Sudan's credit rating will be especially important as the government looks to secure loans for infrastructure development or to finance the budget gap left by the oil production shutdown.

More Revenues

In addition to preventing revenues from being diverted as a result of corruption or mismanagement, transparency can also lead to the identification of additional money due to the government. For example, while conducting an audit in accordance with the Extractive Industries Transparency Initiative (see page 16), the Nigerian government identified shortfalls of more than US\$560 million owed by companies in taxes and royalties.¹¹

BUSTING THE MYTHS AND MISUNDERSTANDINGS

Oil is a public resource ultimately owned by citizens, managed on their behalf by the government. This is a principle enshrined in South Sudan's own Transitional Constitution and echoed in statements by South Sudanese officials across the government. Any argument for preventing public disclosure of information about the oil sector must be weighed against this fundamental truth. Any decision to withhold information must be justified in detail by the government and very carefully scrutinised by South Sudan's National Legislative Assembly, citizens, press, and aid donors.

The 'Transparency Threatens National Security' Myth

Publication of oil sector information is not a security risk.¹² The only people that secretive systems will



Oil is a public resource ultimately owned by citizens, managed on their behalf by the government. Any decision to withhold information should be thoroughly scrutinized by the parliament, citizens, press, and aid donors.

protect are those individuals and companies looking to enrich themselves at the expense of the people of South Sudan. Lord John Browne, the former head of British Petroleum, observed that: "Opacity can create political risk by allowing rumour to predominate over facts and by allowing contracts to become entangled with the personal interests of officials."¹³

Further, countries around the world are beginning to open up about how their resources are managed, with no national security issues arising as a result. Brazil, one of the world's fastest developing economies, is very transparent in the management of its oil sector. Laws in Ghana, Liberia, and elsewhere require detailed publication of extractive industries data, and others, notably Sierra Leone, are in the process of developing online registries of contracts and payments. All of the thirteen EITI-compliant countries have already published audited revenue reports.

The 'Sharing Information and Contracts Violates Confidentiality Agreements' Myth

Perhaps the most common 'anti-transparency' myth is the idea that in publishing oil sector data and contracts, governments are either violating existing confidentiality clauses or asking companies to expose commercially-sensitive data. South Sudan has already covered this first point by including a provision in

its Petroleum Act which makes it clear that the laws of South Sudan trump any other legal claims or contracts.¹⁴

There has also been extensive research done by academics and analysts showing that there is no legitimate argument to be made for keeping entire contracts confidential as they are unlikely to contain any proprietary data.¹⁵ If the government feels it is absolutely necessary to keep parts of contracts from the public, the basic production entitlement and financial terms must always be published as they could never reasonably be deemed proprietary.

The 'Public Disclosure Undermines the Climate of Competition' Myth

Protecting the 'climate of competition' is also used as an excuse by companies and governments to block the publication of data and contracts. However, this argument does not hold very much weight when one considers that most major contracts and reserve, production, and financial data are already available on pay-to-access databases to those with enough money, e.g. other oil companies and analysts. By contrast, ordinary citizens will never be able to afford that kind of access. Thus, the only people left in the dark are those who have the most legitimate claim to the information.

1. INTRODUCTION

THE OIL IN NUMBERS

In the **7 YEARS** since the end of the civil war (when the semi-autonomous government of Southern Sudan first started receiving oil revenues), the oil sector has accounted for an average of **98.4%** of total government income.¹⁶

According to financial records published by the Ministry of Finance and Economic Planning, the government has received more than **38.6 BILLION SOUTH SUDANESE POUNDS** (applying the South Sudanese government's official exchange rate, this amounts to roughly **13.1 BILLION US DOLLARS**).¹⁷

In the current budget, foreign borrowing and new oil and mining concessions are expected to bring in more than **54% OF SOUTH SUDAN'S TOTAL FINANCIAL RESOURCES** for the fiscal year.¹⁸

With no guarantees oil exports would resume, this budget did not include any oil revenues.

Prior to the production shutdown, South Sudan was the **3RD BIGGEST PRODUCER OF CRUDE OIL IN SUB-SAHARAN AFRICA**.¹⁹

South Sudan has **3 PRODUCING OIL CONSORTIA**, in blocks 3 & 7, 1, and 5a. Production in these blocks peaked at just over **360,000 BARRELS PER DAY IN 2009**.²⁰

Remaining oil reserves are estimated by the government to be about **1.7 BILLION BARRELS**. Without significant new discoveries and investment in more efficient oil recovery techniques, production is expected to fall below **100,000 BARRELS PER DAY WITHIN 10 YEARS**.²¹

The purpose of this report is to provide an analysis of South Sudan's new oil legislation, the commitments that have been made to transparency and accountability, the challenges for implementation, and the institutional, reporting, and auditing gaps which remain.

In conducting the research for this report, Global Witness met with South Sudanese officials across the government, representatives from donor governments and operating companies, journalists, and South Sudanese civil society organisations. Our analysis is based on more than 17 years of experience working on natural resource-related conflict and corruption in countries including Afghanistan, Angola, Cambodia, Côte d'Ivoire, the Democratic Republic of the Congo, Honduras, Liberia, Libya, Turkmenistan, and Zimbabwe. This report has also benefitted from consultation with a number of industry, legal, and academic experts with extensive collective knowledge of South Sudan, Sudan, the region, and the inner workings of the oil sector generally.

The following chapters are organised around five core themes: public disclosure by the government,

public disclosure by companies, the management of funds, contract allocation, and accountability. Special features on the dissemination of information and security around oil facilities are also included. The annex provides a brief guide on the laws and institutions most relevant to the sector.

Overall, this report finds that in establishing the standards for how oil operations, contracts, and revenues will be managed, South Sudan has set out an encouraging blueprint for oil governance. However, the real test of this new legal framework will be its implementation.

Though the government has sent many strong signals to its citizens and international partners that it intends to run a transparent and accountable oil sector, huge challenges remain in setting up the necessary administrative and reporting systems, and effective checks and balances. Overcoming these challenges will require a sustained commitment from across the South Sudanese government, and consistent support and pressure from aid donors and civil society.

AND MINING?

Worldwide, the governance failures common to the oil sector occur equally in mining. Though this report focuses almost exclusively on oil, it is critical that the government applies the same standards of transparency and accountability described here to the country's nascent mining sector.

South Sudan is rumoured to have significant mineral wealth.²² Gold, diamonds, copper, iron ore, and uranium are among the many minerals reportedly discovered across the country. The government is right now in the process of finalising a new mining law to govern licence allocation, exploration, and extraction.

The country's mining sector is still 5-10 years away from generating significant revenues.²³ However, with oil production set to decline rapidly over the next decade, minerals may soon replace oil as South Sudan's most important source of revenue. Mining also has its own

unique set of processes and risks, making it all the more important that the government does not rush to kick start the sector and allocate new licences before building up the institutional and regulatory capacity necessary to govern them responsibly.

Some good news, though, is that there are strong examples to draw from for how to manage mineral wealth successfully, notably the experience of Botswana. In contrast, the Democratic Republic of Congo provides an important case study for the high cost of mismanagement and the dangers of military involvement in mining. South Sudan's own oil laws also provide a good example of the general public reporting, contract allocation, and accounting mechanisms that should be applied equally to its mining sector.

The example South Sudan follows may very well be dictated by how the mining sector – in particular new and existing licences – is managed in these early days.



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South Sudan's nascent mining sector must be managed with the same commitment to transparency that has been built into the new oil laws.

2. PUBLIC DISCLOSURE BY THE GOVERNMENT

POSITIVE INDICATIONS

- ▶ The Ministry of Petroleum and Mining is required to publish regular revenue, expenditure, and production data online, in its gazette, and by other means.
- ▶ The draft Petroleum Revenue Management Bill contains some strong provisions for transparency of oil revenues, including detailed quarterly and annual reports from the Ministry of Finance and Economic Planning.
- ▶ The Marketing Report published by the Ministry of Petroleum and Mining in July includes a lot of important information and provides an excellent template for the future publication of data.

RED FLAGS

- ▶ No contracts have yet been published.
- ▶ The Petroleum Revenue Management Law, which will dictate how oil revenues are collected and managed, has not yet passed the National Legislative Assembly.
- ▶ The capacity of the relevant ministries to collect and organise especially complex oil data remains limited and will require greater technical support and human resources.
- ▶ The Petroleum Act contains dangerously vague confidentiality clauses (nothing that threatens the 'climate of competition') and limited guarantees on publication.
- ▶ It is not clear if the publication of production data will include a breakdown of cost oil and profit oil, or the split of the government and contractors' entitlements.
- ▶ It is not clear if joint venture agreements and service contracts will be published.

According to the Transitional Constitution of South Sudan, though managed by the national government, the ownership of the country's petroleum and gas resources is vested in the people.²⁴ As the true owners, all citizens have a right to see exactly how these resources are being managed.

For citizens to exercise this right, the government will need to publish all of the oil data and documentation necessary to track production, revenues, and assets. Any gap in the information available to South Sudanese citizens could make it impossible for them to properly calculate the government's due income and thus be confident that their natural resource wealth is being managed responsibly.

Despite the Petroleum Act setting out a clear list of what must be published, the full detail of these disclosures in terms of their quantity, quality, and timeliness has not been defined. The Ministry of Petroleum and Mining is currently developing the regulations which will address these and other issues, but data reporting has not been included in the first set of regulations to be finalised.²⁵

FINANCIAL DATA

The Petroleum Act requires that the Ministry of Petroleum and Mining publish revenue and

CONFIDENTIALITY CLAUSES

Unfortunately, the Petroleum Act includes a section establishing a dangerous loophole. It specifies that any information can be withheld from the public if it contains proprietary data (sensitive commercial data owned by the government or companies) or if it threatens the 'climate of competition'.²⁶ As highlighted on page 6, it is unusual for oil contracts to contain proprietary information, and the production and revenue data cited throughout this report could never reasonably be deemed commercially sensitive.

The draft Petroleum Revenue Management Bill also contains a section on confidentiality, but it is accompanied by explicit limitations, time expiration, and a requirement that the justification for temporary confidentiality be made publicly available on request.²⁷

The government needs to be very careful in how it chooses to apply these confidentiality clauses. They should never be used as an excuse to maintain an opaque and unaccountable oil sector.

JULY'S MARKETING REPORT - WHAT HAS ALREADY BEEN PUBLISHED

For the first six months of South Sudan's independence, the only oil sector data that was made publicly available was via two short press releases.²⁸ These reports included only aggregate export and sales figures, and lacked any significant detail. Then after the oil production was shut down, several months passed without any new information being published. However, in July 2012, the Ministry of Petroleum and Mining used its new website to publish a Marketing Report for the period between independence and the production halt.²⁹

This Marketing Report includes a lot of key information, the highlights of which are:

- The most recent official oil block and pipelines map.
- Data on South Sudan's crude oil reserves, disaggregated by block.
- A production forecast graph, including a breakdown by block and some explanations for trends.
- Rough sales price data.
- The companies who bid for and purchased South Sudanese crude oil exports, disaggregated by month.
- A breakdown of the volume of oil sold and revenues, disaggregated by month, buyer, and blend.
- A summary of outstanding issues, including explanations for why some revenue was being detained, why the government was owed additional crude at the port, service fees owed for a ship agent and inspection companies, the impact of U.S. sanctions on Sudan, and fluctuating exchange rates.
- A summary of future activities, including options for new export and refining infrastructure, the estimated costs of the projects being discussed, and a brief profile of one of the companies the government is considering to assist in building a small refinery.



The government recently published a fairly detailed report on crude oil marketing and sales since independence, available on the new website of the Ministry of Petroleum and Mining.

The ministry has done very well to pull this report together. It is fairly detailed, it covers many of the major issues the country is currently facing, and it can provide an excellent template for the government's future publication of data. It is also a very good example of how very complicated data sets can be made more accessible to the public.

However, it is important to note that this report only focuses on the marketing of the government's crude oil entitlement. For this reason, it contains no detailed breakdown of the oil that was actually produced or split between the government, the contractors, and Nilepet. It is not yet clear if the government will produce a similar report on oil operations specifically, a separate report for Nilepet, or cover all the issues in an expanded marketing report.

expenditure data in its gazette, online, and by other means.³⁰ This is a good signal of the government's commitment to transparency, but on their own these requirements lack the detail necessary to be effective; for example, how often information will be published and how it will be broken down.

The Public Financial Management and Accountability Act includes a number of important public reporting requirements that will be relevant to the oil sector. As part of the annual budget process, the original budget proposal, the approved budget, interim quarterly expenditure reports, and annual report all have to be published. These documents must also contain estimates from the ministry of expected oil revenues, actual oil revenues for previous years, market risks, natural resource assets, and debt.³¹

When passed, the Petroleum Revenue Management Law will be the primary legislation governing how oil revenues are collected, managed, and reported. Because this law has not yet been approved by the National Legislative Assembly, it is still just a bill and therefore not a legal requirement. However, if the current draft is passed including the requirements outlined in this report, many very strong fiscal

transparency mechanisms will be enshrined in South Sudanese law. Arguably the most important of these mechanisms are the requirements that the Ministry of Finance and Economic Planning publish quarterly and annual records of all petroleum revenues.³²

As defined by the bill, 'petroleum revenues' refers to: **oil and gas sales, surface rental fees, signature bonuses, cost-based fees and charges, revenues due to the National Petroleum Corporation (Nilepet), oil income tax, interest on the oil account itself, and anything else related to oil activities.**³³ This broad definition of petroleum revenues is very important because it ensures that no oil sector income is received outside of the transparent revenue management framework outlined in chapter 4. If revenues were defined more narrowly, it could be very easy for the funds coming from sources other than direct crude oil sales, like surface rental fees and oil-related income tax, to get diverted to other accounts or off budget.

According to the draft Petroleum Revenue Management Bill, the public financial records must be 'disaggregated by type of revenue and individual transaction,' and include all transfers out of the central Petroleum Revenue Account (see page 18).³⁴ The publication of all of this information is critical because it will enable citizens to monitor and hold the government accountable for spending choices and progress.

PETROLEUM OPERATIONS

Though necessary for tracking revenue collection and expenditure, publishing financial data alone is not enough for the public to be able to see that their oil resources are being managed responsibly. It is critical that the South Sudanese government also publishes information on the major operations behind the financial data: the day-to-day oil sector processes that determine how much money South Sudan ends up – or should end up – receiving for the extraction of its natural resources.

The Petroleum Act covers this in general terms by requiring that the Ministry of Petroleum and Mining publish in its gazette, online, and/or by other means:

- **Oil production data.**³⁵ This information is the start of the extraction value chain and it is gathered at several points (wellhead, field processing facilities, central processing facilities, export point), which can make it difficult to decipher. But if published in a clear, consistent, and disaggregated way it becomes much easier for the public to use the production and export data to calculate

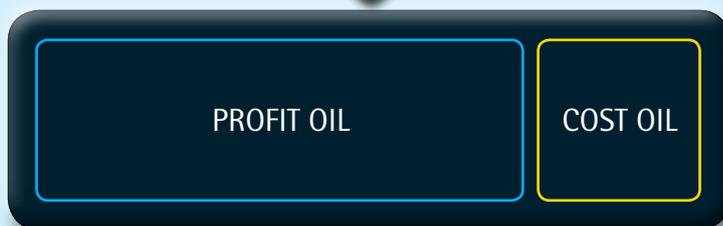


In addition to publishing detailed financial data, it is critical that the South Sudanese government also publishes information on the day-to-day oil sector processes that determine how much money South Sudan actually receives for the extraction of its natural resources.

PRODUCTION SPLITS - HOW THE CRUDE OIL IS SHARED BETWEEN THE GOVERNMENT AND THE COMPANIES



The total production that is split is the crude oil which remains after separating out the water and other impurities that come out of the wellhead.



First 'cost oil' is deducted to cover the contracted company's capital and operational expenses. Exploration and production sharing agreements usually contain a 'cost stop': a limit for how much oil companies can claim back at any given time.



The remaining 'profit oil' is then split between the government and the contracted company according to the terms set out in the exploration and production sharing agreement. The percentages can vary depending on crude oil prices and production rates.



The contracted company's share of the profit oil is then split between the companies holding stakes in the oil block. Where Nilepet has a share of the oil block, it also receives a share of the crude oil produced separate from the government's share.

what should be received by the government in revenues. For this requirement to be meaningful, data must be disaggregated by field, including net and gross production, a breakdown of the 'cost oil' claimed back by companies, and the actual split in production volumes between the government and the contractor (see box above). South Sudan's Petroleum Act includes no detail on what the 'oil sector production data' must look like when published so it is not clear if the necessary disaggregation of data will be provided.

- **All Environmental and Social Impact Assessments conducted for oil activities.**³⁶ It is important that local communities and civil society groups have access to these assessments both during the consultation period required before work begins and throughout oil operations. The publication of these assessments helps citizens hold the companies and the government accountable for operations which unreasonably impact their livelihoods.

- **Other information on petroleum activities.**³⁷ Though included in the list of what must be published, the law does not specify what this will mean in practice. In order to keep the public sufficiently informed, the status of the activities, including when exploration, evaluation, development, production, and decommissioning operations begin and end, should be included in this reporting.

Overall, South Sudan's Petroleum Act includes many general commitments to the publication of information. It also guarantees that any person has the right to demand access to public documents at the Ministry for free or for a copying fee.³⁸ The real value of these provisions will be determined by the quality of the information published; the production figures in particular.

CONTRACTS AND COMPANY OWNERSHIP

South Sudan's Petroleum Act establishes a Petroleum Registry, housed in the Ministry of Petroleum and Mining and open to the public, which is meant to maintain all agreements, licences, and authorisations.³⁹ It also requires that the Ministry publish a model petroleum agreement, all exploration and production sharing agreements (EPSAs), and all licences online and by any other appropriate means.⁴⁰

To date, the Republic of South Sudan has not published any EPSAs, licences, or other oil-sector agreements.

According to press reports, the government has considered, and possibly already agreed to, some joint venture agreements, facility construction deals,

and other oil sector contracts since independence.⁴¹ If new deals have in fact been signed, it is absolutely critical that the details of how and to whom they were allocated, and of course the content of the deals themselves, are published.

Contract transparency is a critical part of responsible and credible oil governance. If the terms which dictate how the government and companies operate and profit from the extraction of South Sudan's natural resources are not public, then it is impossible to verify if they are in the best interests of the country or if the government is receiving its due revenues. An increasing number of countries are recognising the need for contract transparency, with Ghana, the Democratic Republic of Congo, and Afghanistan among those already begun publishing contracts in their entirety.⁴²

As discussed further in chapter 5, South Sudan's Petroleum Act also requires that the government publish the justification for the award of EPSAs, 'beneficial ownership' of the chosen companies (see page 23), and documents proving their credibility and capacity.⁴³ This information is important because South Sudanese citizens need it to be sure only the best possible companies are allowed to do business in the country's most important economic sector, and that deals are awarded on the basis of the quality of the companies and the terms offered, not personal relationships or private gain. Unfortunately, this strong transparency requirement is partially undermined by the fact that the law could be interpreted to mean only exploration and production sharing agreements are subject to this reporting standard. All licences, goods and services contracts, and other major agreements should also be publicly justified (see page 22).

GHANA AND THE BENEFITS OF TRANSPARENCY

In Ghana, the fact that oil contracts were publicly available helped the country's Public Interest and Accountability Committee – a multistakeholder group including civil society representatives – produce a detailed and enlightening report on oil revenue management in 2011.⁴⁴ Using the terms of the contracts, the Committee was able to match the amount of crude oil exported with the government's due entitlement, essentially verifying that the figures being reported by the government matched what was legally owed.

The report also raised important questions about the data being used to forecast government revenues which if left unnoticed and unaddressed could have led the Ghanaian government to commit to an unrealistic budget.

As a result of this report, and related transparency and accountability measures adopted by the government, Ghana is increasingly being recognised as an important regional model for oil governance. If South Sudan follows through on its new legislation, the young country is entirely capable of becoming another positive example.

WAYS TO DISSEMINATE INFORMATION

Websites. The government must now move forward on setting up online databanks and registers for petroleum sector laws, regulations, data, and agreements. The Ministry of Petroleum and Mining and Nilepet both already have websites up and running.⁴⁵ A basic website can be set up quickly and simply. What will take more time and energy is collecting all of the information. Some important things to keep in mind:

- The publication of laws, regulations, and agreements is the easiest part. It is a matter of uploading existing documents which are already maintained in the government's records, or uploading new and updated documents as they are approved.
- The publication of disaggregated oil production information requires more regular uploading of data from the Ministry of Petroleum and Mining. However, the ministry receives daily production and operation summaries from the oil companies anyway, so this process would only involve pulling out the key data (including net and gross production, crude claimed back by companies to cover operational and capital costs, and the split between the government and companies' share) and loading it up onto the website.⁴⁶
- The publication of financial data may be more difficult simply because there is more information to collect and upload. Ideally, all revenues received and fees paid by the government should be published as quickly as possible as funds are transferred. But, at a minimum, the quarterly and annual reports compiled by the Ministry of Finance and Economic Planning and the Central Bank should be published.⁴⁷ A regular update of the balance and transfer history of the Petroleum Revenue Account, the Oil Revenue Stabilization Account, and the Future Generation Fund should also be included on the website.
- As with other regular reports, the uploading of reports from the Audit Chamber, Anti-Corruption Commission, and National Legislative Assembly should be fairly straightforward.

Newspapers. Monthly inserts published in local newspapers and available at all times at the relevant ministries are a great way to reach a wider set of people interested in learning more about the oil



Like the Ministry of Petroleum and Mining, Nilepet also already has a website where the government could start publishing contracts and data immediately.

sector. The inserts could be just a page or two, highlighting key oil sector data, including monthly production data, revenues, and petroleum account balances.

Radio. Because the South Sudanese population is spread across a huge expanse of land, with limited literacy and access to print newspapers or computers, the best way to reach the largest number of people in South Sudan is to broadcast information through regular radio programmes. The central purpose of these programmes should be to highlight key production, revenue, and bank account data. However, it could also be a highly effective way of allowing people the chance to ask questions and express concerns directly to their government officials. This model of open communication is becoming increasingly common in democracies around the world, with town halls, video conference events, and interactive Twitter accounts and blogs becoming popular at even the highest political levels.

Information Offices. The government should also open up public information offices in oil-producing states where citizens could go to access information, submit questions and concerns, and participate in regular government-held briefings and conferences. Oil committees comprised of local community and civil society representatives have already been set up in Unity, Upper Nile, and Jonglei states, and could also provide a useful basis for community engagement and reporting.⁴⁸

3. PUBLIC DISCLOSURE BY COMPANIES

POSITIVE INDICATIONS

- ▶ Companies are required to report all oil sector payments to an independent administrative body; the body then reconciles the reported payments with receipts reported by the government and publishes a report.
- ▶ The Petroleum Act requires that all 'in kind' payments to the government be included in the information reported by companies.
- ▶ Oil companies must ensure that regular production data is available to the public.
- ▶ Oil companies must publish annual reports on their use of local goods and services.
- ▶ Nilepet is required to publish extensive information on its operations and finances.
- ▶ The draft Petroleum Revenue Management Bill requires that all revenues due to Nilepet or related to Nilepet's activities be received by the National Petroleum Fund, rather than a parallel fiscal system.

RED FLAGS

- ▶ There are some indications that companies will not be required to report anything publicly themselves, meaning citizens will have no direct access to company information to compare to what is reported by the government.
- ▶ The current management and role of Nilepet is unclear, particularly with regards to the marketing and sale of its share of crude oil production.

Even total transparency can mean very little if the public is not able to verify the information published.

An effective way to provide for this verification is ensuring that comparable data is available. The best and often only comparable information is company production and payment data. Recognising this, South Sudan's new Petroleum Act and draft Petroleum Revenue Management Bill both include provisions requiring company disclosure of information relevant to the public interest.

DISCLOSURE OF ALL OIL SECTOR PAYMENTS (THE EITI MODEL)

All oil companies operating in South Sudan are now required by law to annually disclose the oil-related payments they make to the government. Rather than publishing this information directly, this disclosure is made to an independent administrative body to verify the companies' figures against the corresponding government records, and publish a report.⁴⁹ The resulting report and any discrepancies or other major issues identified can then be used by the government to improve the way the oil sector is being managed. It can also be a useful starting point for dialogue between the government, companies, and civil society.

This kind of company disclosure is very much in line with the Extractive Industries Transparency Initiative

(see page 16).⁵⁰ It is important to note too that this provision explicitly trumps any confidentiality clauses in the petroleum agreements, so companies have no contractual basis for refusing to cooperate.⁵¹

The Petroleum Act and the draft Petroleum Revenue Management Bill also specifically include both monetary and 'in kind' payments. This means that payments made in the form of goods, services, and crude oil must also be disclosed, in addition to standard financial transfers.⁵²

Ensuring these payments are disclosed is critical because it will help South Sudan keep all of its oil revenues on-budget and prevent corrupt officials from demanding things like cars, phones, or trips abroad. Such demands do not just affect a country's political culture and investment climate; they can also have a direct impact on the revenues received by state coffers. It may be the case that companies are able to claim these demands as 'regulatory costs,' recovering them in aggregated or even completely unreported 'cost oil!' A greater claim of cost oil means less crude to split between the government and contractors, meaning the country consequently has less oil to sell abroad for profit (see page 12).

Until the regulations accompanying the law are completed, it is difficult to judge how effective this dual disclosure mechanism will be in practice.

To effectively match up comparable payments and receipts, citizens must have access to company data that is as disaggregated as the government's published data.

The Extractive Industries Transparency Initiative



In December 2011, President Kiir announced that South Sudan would be seeking membership of the Extractive Industries Transparency Initiative (EITI).⁵³ The EITI is an international coalition that works to support transparency and improve communication between stakeholders in resource-rich countries.⁵⁴ The three central pillars of the initiative are government publication of revenues, company publication of payments, and civil society monitoring.

Though the government has already committed to publishing revenue data, and the Petroleum Act requires companies disclose all payments, civil society engagement in a South Sudanese EITI process is going to be a major challenge. For the country to move ahead with the EITI, it is critical that civil society is first provided with the assistance, training, and political space required for them to participate meaningfully.

This plan for EITI membership has been echoed by other government officials and supported in principle by the donor community. While a worthwhile endeavour, becoming an EITI-compliant country takes several years, committed human and financial resources, and consistent effort from the Ministry of Finance and Economic Planning and other institutions.

The South Sudanese government needs to very carefully consider how quickly to ramp up its work on EITI membership and implementation.

If the final Petroleum Revenue Management Law includes the same strong reporting and auditing requirements that are included in the current draft (see pages 9 and 18), South Sudan would actually gain much more from implementing those requirements properly than from shifting focus and capacity to the EITI right away. However, if the final Petroleum Revenue Management Law does not include those strong requirements, or if the Ministry of Finance and Economic Planning fails to produce the required reports, then South Sudan may be better off shifting focus back to implementing the EITI.

PRODUCTION DATA

The Petroleum Act requires that companies 'ensure that regular petroleum production data is made available to the public.'⁵⁵ Like the rest of the transparency requirements in the Petroleum Act, the details of what will be published are left to the forthcoming regulations. However, this requirement for company disclosure of production data makes the government's publication of oil sector information much more meaningful because the public is able to reconcile the figures and calculate payments due themselves.

In 2009, the availability of company production figures allowed Global Witness to highlight concerning discrepancies in the production volumes being reported by the government of Sudan, which were used to determine the north-south revenue split during the Comprehensive Peace Agreement.⁵⁶ These findings – a direct result of company publication of data – provided the then semi-autonomous southern government with a stronger platform to lobby for greater transparency in the management of the shared oil sector and independent confirmation of data and arrears.

Despite this new legal requirement being included in the law, one official at a recent Ministry of Petroleum and Mining workshop in Juba said that companies would not be asked to publish production data.⁵⁷ If true, the rolling back of this company obligation will have a direct impact on the quality of the legislation and on the ability of citizens to trust the information published by the government. Further, should the companies opt out of publishing production data independently, it may also leave the public with less information about the crude oil produced than was available when the oil sector was managed in Khartoum.⁵⁸



The oil companies in South Sudan already maintain incredibly detailed reports on the crude oil produced, which are made available to the government on a daily basis. Therefore, the government has no excuse for not making key data – like monthly production, the cost oil claimed back by companies, and the crude oil split between the government and the contractors – available to the public.

LOCAL COMPANIES AND SERVICES

Under the new Petroleum Act, companies must prepare and publish an annual report on their use of local companies and services ('local content') over the previous year. Minimum quotas for local content are generally used to ensure that citizens in resource-producing countries benefit directly from the sector as much as possible.⁵⁹ *In principle, ensuring that the wider South Sudanese economy benefits from the extraction of oil is ideal. But if not managed carefully and subject to public scrutiny, this can also offer a dangerous loophole for corruption.*

Taking advantage of 'local content' requirements is a common way for corrupt officials in resource-rich countries to guarantee they get a share of the profits.⁶⁰ When this system goes wrong, operating companies can be forced to form partnerships or sign service contracts with local companies owned and controlled by government officials or their close friends and family members. These deals are typically made without any genuine intention on the part of the local firm to operate but are justified to the primary companies as a 'cost of doing business' in the country. This may also be done in exchange for better terms (i.e., lower tax or royalty rates) for the foreign company, at the expense of the state and citizens.

International companies may also seek to cover these expenses using 'cost oil,' which affects the government's share of production and total export revenues (see page 12).

This form of corruption can be even more damaging than one-off payments for contracts because it means revenues can be stolen from the state continuously and in a way that is much more difficult for an audit to detect. It also does significant damage to a country's business reputation, making reputable international companies much more hesitant to invest in such an environment and risk violating foreign bribery laws in their home countries.

Complete transparency in local content used and in the beneficial ownership of all companies operating in the sector is the only way to prevent this (see page 23). These requirements must also be included in the country's forthcoming procurement and mining laws.

THE STATE-OWNED OIL COMPANY - NILEPET

As South Sudan's state-owned oil company, Nilepet's purpose is to act as a commercial entity on behalf of the government. It holds percentage stakes in the country's oil blocks and so it too receives a cut of the crude oil produced (see page 12).⁶¹

Nilepet is a corporation wholly owned by the government, and ultimately the citizens of South Sudan.⁶² As such, it should be completely open about all of its operations so that its ultimate owners can be sure it is being managed properly. This same principle applies to all of its subsidiaries.⁶³

The company is required by the Petroleum Act to publish:⁶⁴

- Audited accounts.
- Its share of production in blocks where it is a stakeholder.
- Marketing procedures and sales prices.
- Fees paid and received.
- The petroleum agreements and sub-contracts to which it is a party.

The Petroleum Act does not specify where this information will be published but Nilepet already has a website (<http://www.nilepetsouthsudan.com/>) that would suit this purpose well.

It is also important to note again that the draft Petroleum Revenue Management Bill defines 'petroleum revenue due to the government' to include any amount received from Nilepet's shares in oil blocks and any amount payable to Nilepet as tax, royalty, dividend, or anything else.⁶⁵ This is a very important provision because it means that all of the national oil company's revenues have to be received directly by the Petroleum Revenue Account (see page 18).⁶⁶ If passed and implemented properly, this requirement will prevent Nilepet from turning into a parallel, unaccountable financial entity, as is the case in some oil-rich and notoriously corrupt countries.

By holding Nilepet to the highest standards of transparency and accountability, South Sudan will be sending a very strong signal to international investors that the country will apply its commitments to good governance across the whole of the oil sector.

Unfortunately, despite all of the strong commitments to Nilepet's transparency that have been included in the new laws, the current management and role of Nilepet is unclear, particularly with regard to the marketing and sale of its share of crude oil production.

4. MANAGEMENT OF FUNDS

POSITIVE INDICATIONS

- ▶ All government revenues must be held in public accounts and subject to public scrutiny.
- ▶ According to the draft Petroleum Revenue Management Bill, all oil revenues must be received only by the Petroleum Revenue Account.
- ▶ The draft Petroleum Revenue Management Bill includes important restrictions on withdrawing money from the reserve funds.

RED FLAGS

- ▶ The draft Petroleum Revenue Management Bill is not yet law and so there is a risk that the strong management, reporting, and auditing requirements will not be included in the final version.
- ▶ Implementing the public reporting, accounting, and auditing mechanisms included in the laws will require resources and capacity that the government currently lacks.

In addition to general transparency commitments, South Sudan's Transitional Constitution and its Public Financial Management and Accountability Act explicitly require that all government revenues be held in public accounts, subject to public scrutiny, and documented in the public budgets.⁶⁷ The responsibility for managing all the government's accounts – including the Petroleum Revenue Account, Oil Revenue Stabilization Account, and Future Generation Fund – is vested in the Ministry of Finance and Economic Planning (MoFEP).⁶⁸

Once passed by the National Legislative Assembly, it will be the Petroleum Revenue Management Law that dictates how oil sector revenues should be collected, managed, and reported. For this reason, the majority of the chapter will focus on this draft legislation.

The draft Petroleum Revenue Management Bill builds on the parameters set out in the Transitional Constitution and Public Financial Management and Accountability Act to establish the Petroleum Revenue Account. It also provides a breakdown for how the reserve funds are to be controlled. In terms of transparency and accountability, the bill is very much in line with international best practice. It is clear from the mechanisms included that the government carefully considered the successes and failures of other resource-rich states, like Timor-Leste, Norway, Botswana, and Sudan, to establish the best possible framework for managing its resource revenues.

For South Sudan's oil sector to be genuinely transparent and accountable, it is critical that the final Petroleum Revenue Management Law includes all of the strong reporting, account management, and auditing requirements outlined in chapters 2 and 6,

and below. Implementing these requirements will take resources and capacity not yet fully developed in the government. MoFEP, the Central Bank, and their partner aid donors must prioritise the provision of the technical expertise, human resources, and political support necessary for these processes to function effectively.

A SINGLE PETROLEUM ACCOUNT

The draft Petroleum Revenue Management Bill establishes a single Petroleum Revenue Account to receive all revenues from the oil sector.⁶⁹ It is essentially a funnel account, into which all these revenues are paid before being transferred out either to the consolidated national budget for general spending, or to the reserve funds.⁷⁰ This single destination system is a best practice mechanism for responsible oil sector management because it provides for much better control and oversight of the revenues. And as discussed in chapter 2, the bill's broad definition of 'petroleum revenues' is important because it prevents less obvious oil income, like taxes on oil activities, from being directed elsewhere.

Unfortunately, the 2012/2013 Annual Budget did not include a breakdown of oil revenues received, only aggregate totals for previous years.⁷¹ And though the Ministry of Petroleum and Mining's recently published Marketing Report noted that all sales prior to the production shutdown were received directly by the Bank of South Sudan in MoFEP-approved accounts, it did not specify which accounts or how and where the money was then transferred.⁷² It also did not mention other types of oil revenue or specify whether Nilepet's crude oil sales were included in the reported figures.

RESERVE FUNDS

Countries dependent on exporting one or just a few key commodities are very susceptible to changes in the international market. **When commodity prices drop, governments can very suddenly be left without the money to maintain day-to-day government functions, let alone save for future generations.** This is one of the main reasons why some of the world's most resource-rich states also suffer from economic and political instability. Being so reliant on the oil sector, and with oil production in decline, building up and protecting savings in these reserve funds will be critical for South Sudan's future.

Oil Revenue Stabilization Account

In line with the Transitional Constitution, the draft Petroleum Revenue Management Bill establishes an Oil Revenue Stabilization Account (ORSA) as one of South Sudan's two reserve funds.⁷³

An ORSA is an account or a portfolio of investments into which the government channels all oil revenues received above what is needed to finance the annual budget. When the amount held in the ORSA reaches a

level that is half that of the national budget, the excess is then transferred into the Future Generation Fund.⁷⁴

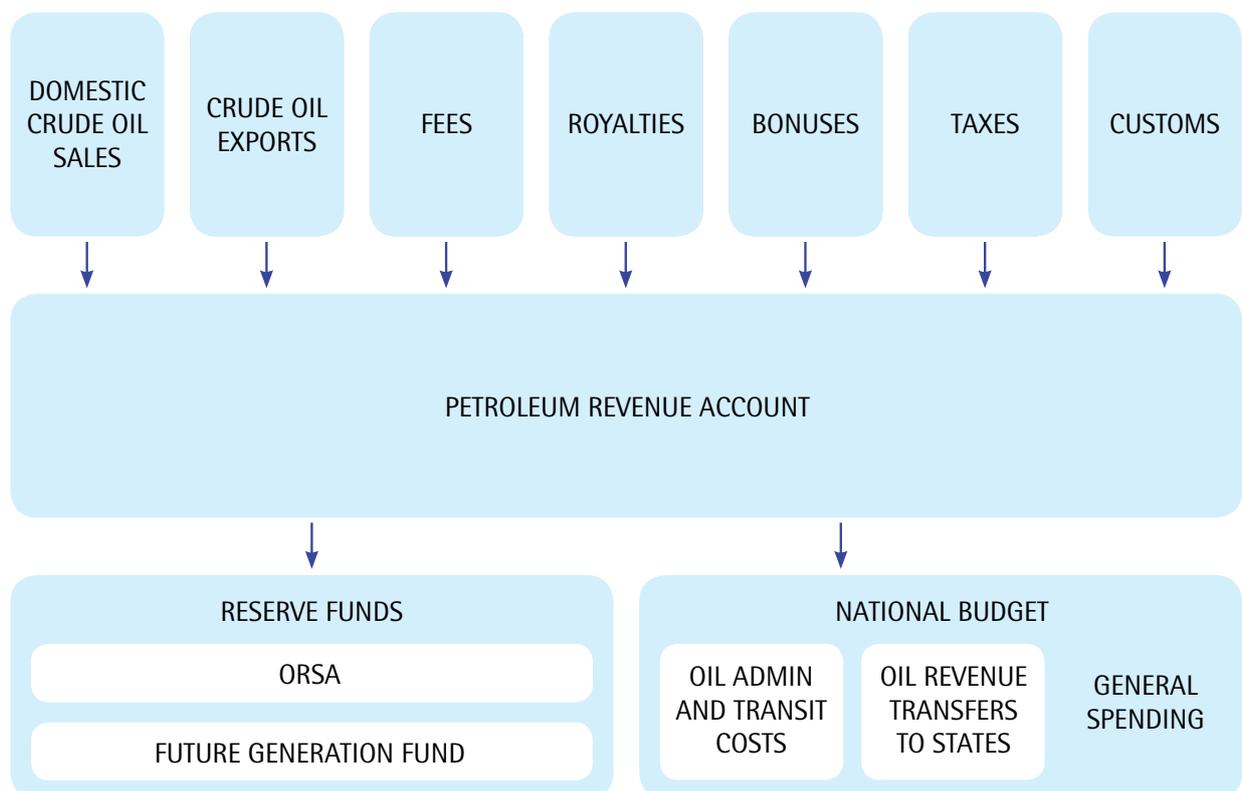
The purpose of the ORSA is to build up a protective buffer against market fluctuations. So if oil prices or total revenues are lower than the government anticipated during the preceding annual budget process, the funds in the ORSA can help cover any deficit and ensure South Sudan has enough money to finance the budget until spending is adjusted or oil prices rise.

This market protection only exists in practice if the ORSA is managed according to the strictest accounting standards. South Sudan is already facing pressing development needs and investment opportunities which can make it very tempting to draw from savings accounts like the ORSA. However, doing so would defeat the purpose of the account entirely and would leave the country without any kind of buffer against inevitable market slumps.

The draft Petroleum Revenue Management Bill sets out some strong protections for the account, including a provision dictating that withdrawals can only be made if there is a budget gap during a financial quarter.⁷⁵

HOW OIL REVENUES WILL BE COLLECTED AND DIRECTED

*ACCORDING TO THE DRAFT PETROLEUM REVENUE MANAGEMENT BILL.



Future Generation Fund

Oil is a finite resource. Sooner or later, South Sudan will exhaust its oil reserves and be forced to rely on other sectors. Prior to the oil shutdown, analysts were estimating that production had already peaked and that revenues would drop quickly over the next decade (see Annex). Recognising this, the government is making arrangements to set aside some revenues while oil production is high for use when it inevitably declines.

Alongside the ORSA, the Transitional Constitution establishes a Future Generation Fund. The draft Petroleum Revenue Management Bill sets out how this fund will be managed.⁷⁶ Perhaps the most important safeguard for the account is the fact that no withdrawals can be made for the first five years, allowing some time for the reserves to build up to something meaningful.⁷⁷ When withdrawals are eventually made, the law requires they be used only for specific, long-term projects with demonstrated financial return, and the amount withdrawn cannot exceed five per cent of the total held in the account at the end of the previous year.⁷⁸

PUBLIC REPORTS

Like the Transitional Constitution and Petroleum Act, the draft Petroleum Revenue Management Bill enshrines transparency as a fundamental principle. But it goes further by including explicit requirements that regular, detailed, and disaggregated information on the state of South Sudan's oil accounts is made available to the public.⁷⁹ This data must be published in the official gazette, in at least two national newspapers, online, and in print at the Ministry of Finance and Economic Planning (MoFEP).⁸⁰

In addition to reporting the revenue data outlined in chapter 2, the bill also requires that the government publish regular reports on its oil accounts. Specifically:

- The Bank of South Sudan has to compile and publish quarterly reports on the transactions and performance of the Petroleum Revenue Account and the reserve funds, including the value and location of the assets.⁸¹
- MoFEP has to compile and publish an annual report on the Petroleum Revenue Account and the reserve funds for the National Legislative Assembly. This detailed report must include:⁸²
 - a report on the accounts from the Auditor General and an independent auditor (see page 26);
 - a list of all transfers to the states and local councils;
 - any debt; and
 - the names of the government officials involved in managing the accounts.

THE DANGERS OF RESOURCE-BACKED LOANS

There have been several reports over the last few months of the government of South Sudan securing loans to mitigate the impacts of the current economic crisis and finance specific infrastructure projects.⁸³ The exact terms of these deals have not been published but there are indications that they will be, at least in part, tied to future oil or mineral production.

South Sudan's 2012/13 Budget also estimated that foreign borrowing and new oil and mining concessions would need to make up more than 54% of South Sudan's available resources for the next fiscal year.⁸⁴

South Sudan must exercise caution and total transparency in pursuing resource-backed financing. [Taking on loans with a commitment to repay them in natural resources or future resource revenues can be risky under the best circumstances.](#) This sort of financing, particularly when used to fund basic government functions rather than an investment project, can very quickly create a disastrous cycle of debt. South Sudan could end up caught in a loop of repaying debt with current revenues, while being forced to take out more loans to finance public services and government salaries. In 2005, the Republic of Congo's government spent US\$101 million just repaying debt, a figure that totally eclipsed the money spent on health care programs that year.⁸⁵

Oil and mineral prices can be incredibly volatile, which means using them as collateral for large loans is a major risk; essentially betting on prices remaining high throughout the whole repayment period. But beyond that, Global Witness and others have repeatedly documented the instability and capital flight that often result when resource-rich developing countries take on large public debt in the absence of robust public reporting and auditing systems.⁸⁶ In many cases around the world, such financing deals have been done behind closed doors, with the wider population having no idea that their natural resources have been pre-sold – sometimes

several years in advance – with much of the money redirected offshore for the personal benefit of government officials and their families.⁸⁷

Recognising this, an important warning about the long-term costs of financing the budget with foreign borrowing was included in South Sudan's most recent budget, with specific references to the 'hidden costs' of collateralising oil.⁸⁸

According to the Public Financial Management and Accountability Act, only the Ministry of Finance and Economic Planning (MoFEP) has the legal authority to take on, manage, and repay loans on behalf of the government, and the money must be received and repaid from the consolidated budget and recorded in the regular public reports.⁸⁹ This is an important provision because it prevents other government

agencies from taking out loans outside of the central, controlled fiscal system.

The act also specifies that the ministry must obtain approval from the National Legislative Assembly before taking out loans to finance a budget shortfall.⁹⁰ Unfortunately, it does not specify how this approval must be obtained; whether MoFEP will need approval on a loan-by-loan basis or if the passage of a budget including a line for undetermined 'foreign borrowing' will be sufficient. The former is necessary in order to have proper oversight of these important and risky loans.

It is also important to note that to protect savings, the draft Petroleum Revenue Management Bill prevents the value of the reserve funds from being used as collateral for foreign borrowing.⁹¹

A WARNING FROM THE 2012/13 ANNUAL BUDGET

“ Also, loans may come with some “hidden” costs. Although collateralization of the oil in the ground or future revenue stream may reduce the costs of borrowing in the short-term, evidence from other countries have shown that the long-term economic consequences tend to be significant. A cautious approach, together with a careful review of the pros and cons of using the oil as collateral for borrowing, is required. Terms and conditions on any collateralization of oil in the ground or future oil revenue stream will be carefully reviewed before entered into. **”**

5. CONTRACT ALLOCATION

POSITIVE INDICATIONS

- ▶ According to the Petroleum Act, all reconnaissance licences, exploration and production sharing agreements, and significant contracts for goods and services must be awarded on the basis of open, competitive, and transparent bidding processes.
- ▶ Contracts for oil sales since independence appear to have been awarded according to a clear and open bidding process.

RED FLAGS

- ▶ Some new oil sector deals may already be in late stages of negotiation or even already awarded, apparently without open bidding processes taking place.

Oil revenues can be lost to corruption and mismanagement long before any wells are drilled.

When contract negotiations take place behind closed doors, with little information available to the public before or afterward, government officials are in a prime position to demand off-budget signature bonuses, kickbacks, and dodgy deals involving their own private companies. Though they receive far less attention, these devices are common in the industry worldwide.⁹² They are also extremely difficult to trace and expose.

One of the best ways to prevent this form of corruption is to guarantee that all oil sector deals are allocated according to open and competitive bidding processes, that the ownership information for all contractors and sub-contractors is published, and that the deals themselves are made available in full.

The South Sudanese government is well aware of the risks around contract allocation and has included important protections in its Petroleum Act. In line with international best practice, all of South Sudan's new reconnaissance licences, exploration and production sharing agreements (EPSAs), and contracts for goods, services, and local content (exceeding a certain financial threshold) must be awarded as a result of 'open, transparent, non-discriminatory, and competitive' bidding processes.⁹³ This means that **the government can only award contracts after: announcing an open tender; verifying that the bidding companies have 'the requisite technical competence, sufficient experience, history of compliance and ethical conduct, and financial capacity'; and assessing them according to clear evaluation criteria.**⁹⁴

As discussed in chapter 2, the government must also publish the justification for choosing the companies awarded EPSAs, documents proving their credibility

and capacity, and their beneficial ownership. This level of transparency is an important part of responsible contract allocation. Without it, there is no way for citizens to be sure that their government is doing business with the best possible companies, or even to know to whom those companies really belong. Unfortunately, these requirements only appear to apply to companies awarded EPSAs and not those awarded licences or contracts for goods and services. This is a serious loophole that needs to be addressed in the forthcoming regulations. For more detail on why this is a corruption risk, see page 17.

A MODEL CONTRACT

The Ministry of Petroleum and Mining is required by the Petroleum Act to develop a model EPSA in coordination with the Ministry of Finance and Economic Planning.⁹⁵ Model contracts, provided they are subject to credible legal review, can be a useful tool for assessing companies' bids. They also help set a general standard for contract terms so companies can be assured they are operating on a level playing field.⁹⁶

UPCOMING CONTRACT ALLOCATION

At independence, all of South Sudan's most important oil blocks were already allocated. However, many licences, service contracts, joint venture agreements, and even new exploration and production sharing contracts (EPSAs) are yet to be awarded.

The Petroleum Act is very clear on this point: companies can only be awarded reconnaissance licences or a full EPSA through an open and competitive bidding process. Global Witness has no knowledge of any new environmental and social impact assessment being carried out or approved, or of new tenders being published. According to the law, these things must take place before specific companies should even be seriously considered by the government.⁹⁷



© UN Photo/Jim McKelvie

At independence, the oil blocks most likely to contain commercially viable crude oil deposits were already allocated. However, many licences, service contracts, joint venture agreements, and even new exploration and production sharing contracts are yet to be awarded.

In South Sudan, EPSAs can cover periods up to 35 years.⁹⁸ Though not unusually long by international standards, this could easily cover the productive lifetime of the oil fields. This makes it all the more important that, particularly in the case of yet unexplored areas, the government awards new EPSAs to the best possible companies, for the best possible extraction plans, recovery rates, and financial terms. A failure to do so means a long-term loss of potential revenues which would likely be impossible to recover later, even with formal reviews or renegotiations.

RISKS AND RUMOURS OF 'FAST-TRACKED' PROJECTS

Since independence, rumours of new oil sector deals being negotiated or even already allocated have cropped up again and again. In interviews with South Sudanese officials at the end of August, Global

Witness was told that contracts for the construction of several refineries were in the late stages of negotiations and that a construction site in Upper Nile had already been prepared for inauguration.⁹⁹

South Sudan has huge development needs, and the desire to quickly build up national infrastructure is understandable. However, **urgency should never justify opacity**, particularly when it means the government may appear to be disregarding the country's new laws.

If new EPSAs, licences, joint venture agreements, memoranda of understanding, construction or other service contracts have already been awarded, it is critical that the government opens up completely about how exactly these deals came about and publishes them in full. Any new deals should also be carefully scrutinized by the Ministry of Petroleum and Mining, as well as by the National Legislative Assembly, the Audit Chamber, and the Anti-Corruption Commission.

Any evidence found of corruption or mismanagement should lead to a full and rigorous investigation and if any wrongdoing comes to light it should be punished accordingly. Any deals found to be a result of corruption should be declared null and void and the individuals and companies banned from doing business in South Sudan.

OIL SALES AND MARKETING

As reported in the Ministry of Petroleum and Mining's recent Marketing Report, it appears South Sudan's oil sales (also known as 'lifting contracts')

BENEFICIAL OWNERSHIP - HOW CORRUPTION HIDES BEHIND OPAQUE COMPANIES

Definition

A 'beneficial owner' is the individual who truly exercises control over and derives benefit from a company or other corporate vehicle. This individual must be natural person: a live human being rather than a trust or another company.¹⁰¹

Importance of Identifying the Beneficial Owner

In theory, identifying a company's beneficial owner should be a straightforward process. The company should publish information on its ownership information in annual reports and online, it should be included in government filings, and also

documented in corporate registries. Unfortunately, in practice, this is often not the case. People conceal beneficial ownership information by appointing a relative or trusted friend to act as a nominal director, or using complex legal structures, shell companies, and offshore tax havens. In some cases this is done to avoid tax obligations. In others it is done to allow public officials to hold secret stakes in a state asset or to hide stolen funds.¹⁰²

The only way to prevent this kind of exploitation is to require that companies identify and prove their beneficial ownership, and for this information to be made available to the public for scrutiny.



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The crude oil sales reported since independence appear to have been awarded according to a clear and open bidding process; though this information still needs to be independently verified.

have been awarded according to a clear and open bidding process.¹⁰⁰ The criteria used by the Ministry's Marketing Team to evaluate bids from oil trading and refining companies is included in the report, as is the list of companies preapproved to bid and those actually awarded the sales. The volumes of crude oil sold and the total revenues reported are even disaggregated by the purchasing company and by month.

Though the quality of the information appears very high and there is no obvious reason to suspect a problem, it is important that these processes are independently verified. The Audit Chamber in particular should be provided with all of the documentation behind these sales, independent shipping data, and anything else necessary to check this information. These checks will be critical in guaranteeing that the public can trust the information presented in the recent and future marketing reports.

Guaranteeing that this information is published helps governments and civil society spot when a corrupt official or immediate family members try to take advantage of their positions. It also helps filter out individuals or groups with poor reputations elsewhere, helping ensure that only competent and upstanding companies participate in the national economy.

Relevance in South Sudan

Hidden ownership of service companies in particular (e.g., security firms, transportation facilities, goods suppliers) is a very common way for corrupt officials

around the world to solicit bribes and guarantee themselves a cut of profits. In fact, allegations have been reported that suggest South Sudan's public finances may have already fallen prey to such practices during the 2009 dura grain scandal.¹⁰³

The South Sudanese government has only legislated for the publication of beneficial ownership data for companies holding exploration and production sharing agreements. This leaves a huge loophole for corruption which must be addressed immediately by issuing regulations requiring all companies operating in South Sudan's oil sector to publish beneficial ownership information.

6. ACCOUNTABILITY

POSITIVE INDICATIONS

- ▶ The Audit Chamber is set to play an active role in overseeing oil revenues, expenditures, and savings.
- ▶ The draft Petroleum Revenue Management Bill requires that the Audit Chamber also appoint an independent firm to conduct a complementary audit of oil revenues and accounts.
- ▶ The National Legislative Assembly has the legal mandate to oversee and participate in the oil sector, in particular through annual budget processes and issue-specific hearings
- ▶ The Minister of Petroleum and Mining has said that civil society should be an active watchdog for the oil sector.

RED FLAGS

- ▶ The Audit Chamber and the National Legislative Assembly are not receiving enough political or technical support from the government or international aid donors.
- ▶ The investigative capacity and prosecutorial power of the Anti-Corruption Commission is still very limited.
- ▶ Civil society's capacity is still very limited and it has no formal participation in the oil sector as yet.
- ▶ Journalists and civil society representatives have reportedly been subjected to harassment, restriction of movement and access, detention, and abuse.

The publication of oil sector data means very little without independent verification and oversight. Particularly in a post-conflict setting, public trust in the government is hard-earned and the only way to build it is to offer citizens information they can count on.

The scale and complexity of oil sector management provides for a high risk of malpractice. In South Sudan, as in many developing countries, this risk is exacerbated by limited technical capacity not only within government ministries, but also in the country's oversight institutions and civil society. Consequently, it is critical that in developing its oil governance systems, South Sudan does not neglect capacity building and political support for institutions like the Audit Chamber, the National Legislative Assembly, and South Sudanese civil society organisations and press.

In order to function effectively, these oversight bodies must all be guaranteed three things: [the technical expertise, the funding, and the access necessary to properly oversee the sector](#). Because petroleum revenues so dominate the national budget, failure on any of these points risks undermining the integrity of the entire fiscal system.

Personal Risks

It is often the case that individuals and institutions working to combat corruption become political targets; convenient lightning rods or scapegoats for

corrupt officials. Thus, for simply doing their jobs effectively, they can invite great personal risk.¹⁰⁴

To prevent this happening in South Sudan, it is critical that the president, the Council of Ministers, and international donors commit now to protecting the independence and security of those playing a watchdog role. Any attack on the government institutions responsible for providing checks on the executive, or on the journalists and activists working to report on resource management issues and advocate for higher standards, should be taken as a direct threat to democracy. Such attacks should prompt a swift and clear response, including a full public investigation and prosecution of the individuals responsible.

AUDITING

Regular auditing of government accounts is a keystone of accountability and combating corruption.

National Audit Chamber

South Sudan already has an institution in place with the legal mandate to independently monitor government processes and audit accounts: the National Audit Chamber.¹⁰⁵ The Audit Chamber is the institution tasked with supervising the financial performance of the whole government and reconciling government accounts with the annual budget. This involves the auditing of all revenue collection and spending, which is then reported on annually to the president and the National Legislative Assembly.

The Audit Chamber – headed up by the Auditor General – has now published reports for 2005/2006 and 2007/2008, and hopes to publish reports covering 2009, 2010, and 2011 shortly.¹⁰⁶ The reports completed so far include a number of damning findings on how the government's finances have been managed.¹⁰⁷

Off-budget spending and expenditure levels well exceeding predetermined budget lines come up repeatedly in the reports. On oil revenues specifically, consistent with previous reports, the 2008 report stated clearly that the Audit Chamber "did not receive adequate data on oil production, processing, storage and sales," and cited unexplained discrepancies of nearly 70 million South Sudanese Pounds in the reported revenues.¹⁰⁸

Such poor fiscal controls present a grave threat to economic stability and the government's legitimacy should they continue unaddressed. *It is very important that the Auditor General remains able to highlight these issues in regular public reports, and that the findings and recommendations included are taken seriously across the government.* Already in South Sudan, the National Legislative Assembly has held hearings, requested more information from the ministries, and called for formal investigations based on some of the audit reports' findings.¹⁰⁹ However, it is not yet clear what will come of these efforts.

In addition to concerns over revenue collection and expenditure, the Auditor General has repeatedly noted the failure by some government agencies to provide account data and documentation, which rendered him unable to conduct a full audit.¹¹⁰ For the government's own auditors to be refused access to records and data raises serious questions about its commitment to accountable financial management.

For all the anti-corruption rhetoric from the South Sudanese government and its international partners, not enough high-level effort has been made to ensure that the Audit Chamber is empowered with the necessary authority, resources, access, and expertise to do its job effectively.

Independent Auditing

Oil revenues and processes are incredibly complex and can be difficult to track with limited expertise and resources. To guarantee that South Sudan's most important economic sector is effectively and independently audited, audits should be conducted not just by an internal monitor (the National Audit Chamber), but also a credible, international firm.

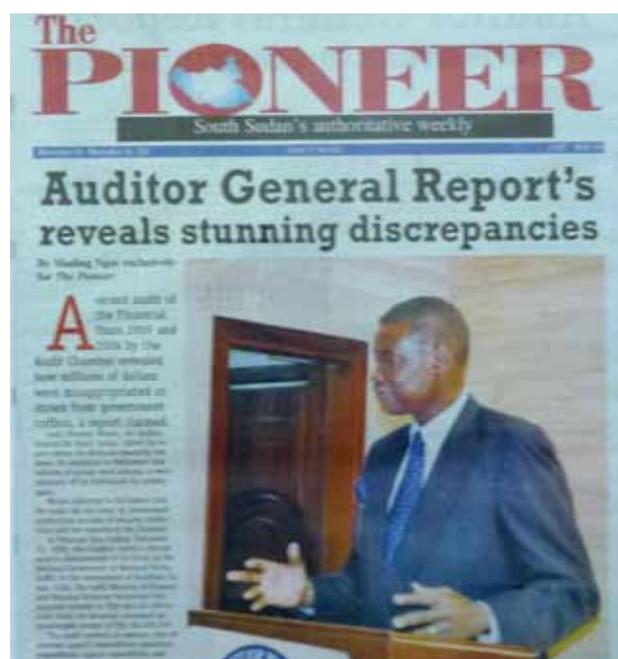
The draft Petroleum Revenue Management Bill provides this additional safeguard.¹¹¹ It also explicitly requires that both the Audit Chamber and the independent auditor have access to 'any account, books, minutes, records and any other document, information and data related to the management of the Petroleum Revenue Account and the reserve funds.'¹¹²

Public Reports

As discussed in chapter 4, the Ministry of Finance and Economic Planning is required to publish an annual report on the oil revenues and accounts, including the audited financial statements and reports from the Auditor General and independent auditor.¹¹³

ANTI-CORRUPTION COMMISSION

Transparent public financial management and auditing are powerful mechanisms for combating corruption because they help in the identification of discrepancies and systemic weaknesses. However, it is important that the findings of these financial reports are actually acted on by law enforcement authorities when problems arise, particularly if there is reason to believe that corruption is the cause. In South Sudan, the institution with the constitutional mandate to investigate and prosecute corruption cases is the Anti-Corruption Commission (ACC).¹¹⁴ But the capacity of the ACC is still very limited and it remains to be seen if it will actually be able to bring any major corruption cases to court.



Previous reports from the Audit Chamber have highlighted off-budget spending, expenditure levels well exceeding predetermined budget lines, and major gaps in the data needed to effectively audit South Sudan's oil revenues.

One major challenge for the ACC is that it lacks proper institutional independence under South Sudan's current legal framework. The Transitional Constitution includes a provision which could be read to leave the Anti-Corruption Commission somewhat dependent on the Ministry of Justice, with the Ministry given priority in bringing public prosecutions.¹¹⁵ Further, according to the U.S. government's 2011 Human Rights Report: 'since its establishment [in 2009], the SSACC has submitted six cases of corruption for prosecution to the Ministry of Justice, none of which had been adjudicated by year's end.'¹¹⁶ To the best of Global Witness' knowledge, no government officials have yet been convicted of corruption, despite the fact that corruption is widely acknowledged to be endemic.

In order to effectively perform its oversight duties, the ACC's investigation and prosecutorial powers need to trump those of the executive branch. It also needs to take a much more active lead in searching out cases of corruption, including at the highest levels.

Asset Recovery

The Anti-Corruption Commission has also been tasked with recovering the assets already lost to corruption, which President Kiir estimated to be more than US\$4 billion.¹¹⁷ Though the Chairperson of the ACC announced that they were already pursuing these lost revenues with assistance from the World Bank's Stolen Asset Recovery Initiative, asset recovery is incredibly

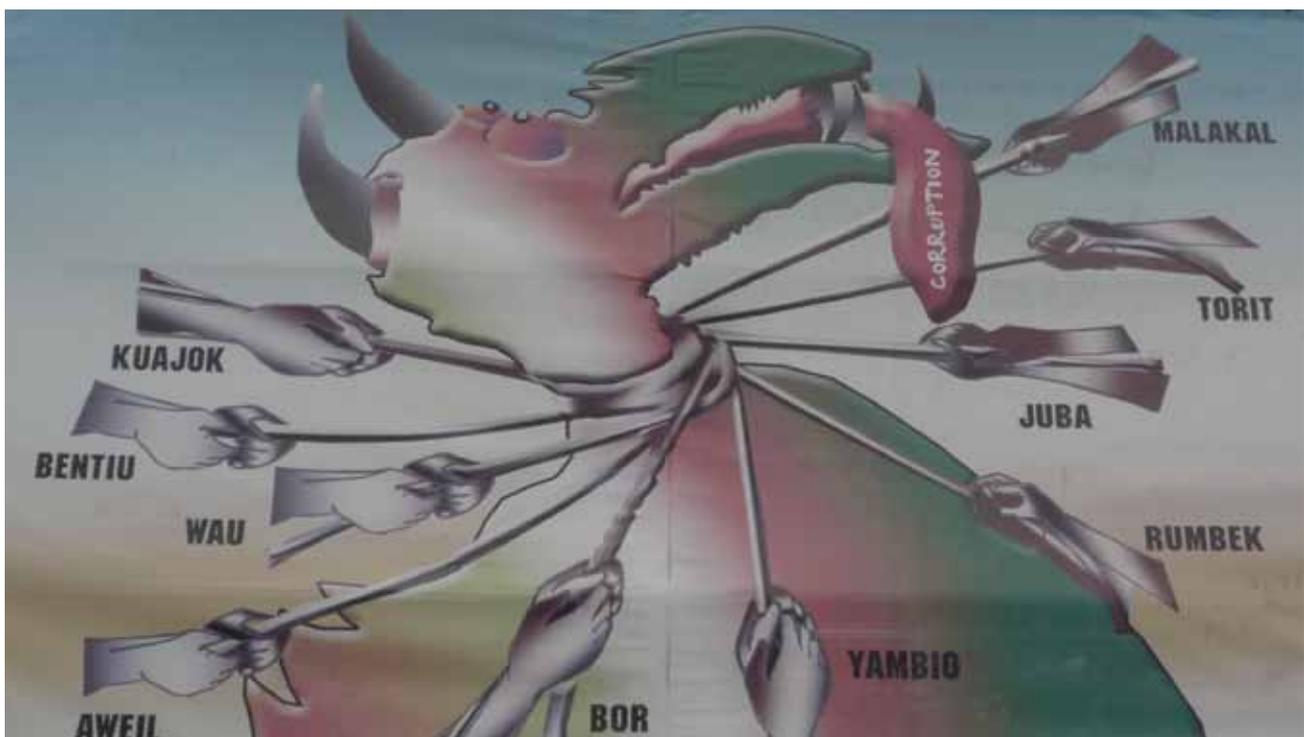
difficult, as evidenced by recent attempts by the Egyptian, Libyan, and Tunisian governments.¹¹⁸ Even in countries with strong public financial management and law enforcement systems, total recovery of public funds transferred abroad can be impossible.¹¹⁹

Considering how difficult asset recovery is generally, particularly on such a massive scale, the government of South Sudan may be better off prioritising preventative measures. Following through on the legally required reporting of oil data and documentation, and building up the administrative and oversight capacity of institutions like the Ministry of Finance and Economic Planning, the Audit Chamber, and the National Legislative Assembly will all be crucial for preventing further corruption.

PARLIAMENT

A strong and independent National Legislative Assembly (NLA) will be critical to establishing a truly accountable oil sector in South Sudan. There is enough of a commitment to accountability among the NLA's members to enable this to happen, in particular the Committee on Energy, Mining, Commerce and Industry.¹²⁰ However, substantial capacity building and technical training are needed to enable genuine oversight from across the institution.

According to South Sudan's Transitional Constitution, the NLA's role in the oil sector is primarily



Any attack on the government institutions responsible for providing checks on the executive, or on the journalists and activists working to report on resource management issues, should be taken as a direct threat to South Sudan's democracy.



South Sudan's parliament has a number of oversight powers applicable to the oil sector, including drafting, passing, and amending relevant legislation.

approving policies, international agreements, and appointments, holding ministers to account, and passing legislation.¹²¹ The Petroleum Act has the NLA playing an important part in contract allocation in that parliamentary approval is required to finalise past and future exploration and production sharing agreements.¹²²

South Sudan's National Legislative Assembly also has a number of general powers available to help in overseeing the oil sector, which can be broken down into three categories: legislative, representative, and oversight.¹²³

Legislative Powers

As discussed in chapter 4, the annual budget dictates the total government spending for the year, and consequently how much of South Sudan's oil revenues can be transferred from the Petroleum Revenue Account to the national budget and to the reserve funds. The NLA approves the annual budget request put together by the Ministry of Finance and Economic Planning and passes the annual Appropriations Act.¹²⁴ The NLA should be using this annual budget process to participate in adjusting and setting new government priorities, and guiding the executive branch's management of the petroleum sector when needed. This can be done by requiring specific spending lines be included in the final budget and including specific provisions in the Appropriations Act. Budget direction can be an effective way to prompt timely action by the ministries to build up capacity in particular areas, produce regular reports on issues of concern, and move forward on delayed projects.

In drafting and amending legislation, the NLA can also ensure that there are explicit transparency and accountability mechanisms required in the oil sector. Members should analyse legislation carefully to

identify critical gaps in the text and insert provisions that both strengthen proposed government and company requirements, and create new ones as necessary. The National Legislative Assembly exercised this power well in the readings of the Petroleum Act.¹²⁵

Representative Powers

As the direct representatives of citizens, members of the NLA should use their official platform and access to company and ministry officials to amplify the needs and concerns of ordinary people. They should also seek to educate constituents on relevant oil issues, such as the amount of money due to the oil-producing states and communities, and the potential environmental implications of new oil activities in their area. This will help the wider population better understand and feel that they have a say in how their resources are managed.

Oversight Powers

The National Legislative Assembly can exercise its oversight powers in a number of important ways, including:

- Calling government officials to appear in the parliament to provide regular updates on different aspects of the sector or explain specific issues as they arise.¹²⁶
- Requesting that ministers provide oil sector data and documentation for parliamentary analysis.¹²⁷
- Conducting hearings around issues related to the sector, including calling in expert witnesses to provide evidence.¹²⁸
- Approving or rejecting new petroleum agreements, or requesting more information.¹²⁹
- Approving or rejecting increases in government borrowing, including when using natural resources as collateral.¹³⁰
- Providing political support and funding for the Audit Chamber and Anti-Corruption Commission, including ensuring that their mandates are effectively fulfilled and they are free from executive influence or censorship.¹³¹
- Directing that official action be taken on reports by the Audit Chamber or Anti-Corruption Commission. Possible action might include asset seizure and legal proceedings against the individuals involved in wrongdoing.¹³²



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The media is integral to building accountability through its reporting on oil operations and revenues. As a democracy, the South Sudanese government should welcome scrutiny from civil society groups and the press.

In exercising their oversight powers, the members of South Sudan's National Legislative Assembly can address many of the red flags and gaps highlighted in this report. For example, when requesting information from the ministries, the NLA can produce and publish its own reports, including data and documentation otherwise missing from the public sphere. In approving new exploration and production sharing agreements, the NLA can request detailed information on the individuals behind companies awarded contracts and on how exactly they were chosen. Given how important parliamentary checks are to a functioning democracy, the government and donors should be providing strong support for all of the mechanisms outlined in this section.

CIVIL SOCIETY

The engagement of local civil society groups, the press, and other interested citizens is a critical part of holding governments accountable. According to the Transitional Constitution, South Sudan's citizens, who are the rightful owners of the country's natural resources, have a duty to help prevent and combat corruption.¹³³ In order to do this, citizens must be empowered with all of the information necessary to see exactly how their resources are being managed, and provided with regular, open forums in which to engage the government on issues of concern.

At the moment, civil society in South Sudan is very limited. The few organisations with the technical capacity and staff to operate effectively are either focused on basic service delivery or working on too many issues to yet be able to dedicate the time necessary to take on oil sector oversight. There is a small group of local civil society groups who have met to discuss how to coordinate on these issues, but it will take some time before they can meaningfully

participate in a process like the Extractive Industries Transparency Initiative (see page 16) or in consistently tracking how oil revenues are collected and spent.

Further, there are no systems in place yet which offer civil society a way to engage with the government on oil governance issues. The Petroleum Act requires the National Petroleum and Gas Commission to 'ensure co-ordination among all levels of government and states to promote co-operation among the private sector, non-governmental organisations and other persons, institutions and organisations interested in petroleum activities,' but provides no further detail on how this cooperation will work.¹³⁴ The draft Petroleum Revenue Management Bill does not mention civil society's role at all, but does go a long way in guaranteeing the public access to regular, disaggregated, and comprehensible data (see pages 9 and 18).¹³⁵

In countries where civil society is able to engage in monitoring the management of natural resource revenues, like Ghana and Liberia, this has been widely credited as strengthening efforts to combat corruption and mismanagement.¹³⁶ It is a good sign that the Minister of Petroleum and Mining, Stephen Dhieu Dau, has also repeatedly acknowledged the importance of civil society being an active watchdog for the oil sector.¹³⁷

Press Freedom

The media is an integral part of civil society, particularly when it comes to monitoring and reporting on the oil sector and the management of public funds. The fact that there is still no clear legal framework and set of protections for journalists in South Sudan is a serious threat to accountability in the country. And the fact that journalists have reportedly been subjected to regular harassment, restriction of movement and access, detention, and abuse, risks undermining all the best intentions behind South Sudan's strong transparency and accountability efforts.¹³⁸

KEEPING FACILITIES SAFE, SAFELY

One very significant omission from the Petroleum Act is detail on how the security around petroleum operations will be funded and monitored. The law states that the South Sudan Police Service and National Security Service will retain overall responsibility for securing oil facilities, with support and cooperation from the companies.¹³⁹ However, the law does not specify how this security (e.g., salaries, housing, equipment, transportation, living expenses) will be paid for. As written, it could be interpreted to make the companies responsible for covering these costs, then claiming them back in cost oil (see page 12).¹⁴⁰

If not very carefully controlled and monitored, these expenses could easily put an unreasonable financial burden on companies or unnecessarily cut into the government's revenues. Moreover, it is unclear if the security costs will be published alongside other revenue and expenditure data. If they are not, this could leave a serious gap in public information which could be exploited by corrupt individuals. Another major risk is the fact that if these costs are covered by companies outside of the national budget, there is no incentive for the government to ensure that forces are allocated efficiently.

Human Security

Protecting oil facilities and workers is important, but this protection must not come at the expense of the rights of the local population. During the civil war, people living in the oil blocks close to the border were repeatedly subjected to armed attacks, forced displacement and seizure of land and livestock.¹⁴¹ It is essential that South Sudan's oil never again becomes the pretext for such crimes.



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Protecting oil facilities and workers is important, but this protection must not come at the expense of the rights of the local population.

Recommendations

To mitigate the risks while providing for the security of oil facilities, the following measures should be taken:

- **All cost and payment information should be published.** Companies must disclose all payments made for security (direct or via cost oil) and the government must disclose all payments received. Given that these payments are related to oil activities, they should be received only by the Petroleum Revenue Account.¹⁴²
- **Only the necessary force size and equipment should be deployed.** The type and number of forces deployed by the government must be appropriate and proportional to the threats identified through due diligence. The number of troops being deployed should be agreed by the companies, the government, and local community groups beforehand.
- **Both the government and companies operating in South Sudan must take responsibility for preventing any human rights abuses by security forces working around the oil facilities.** A thorough risk assessment must be undertaken which includes extensive due diligence to ensure the forces deployed have no history of human rights abuse. Should allegations of abuse occur, companies should immediately record and report them to appropriate government authorities in South Sudan and in their home countries. The government should immediately launch a full investigation and prosecute those involved in the abuses.
- **These same protections – and those further detailed in the OECD Due Diligence Guidance and the Voluntary Principles – should also apply to all other extractives industries in South Sudan, in particular its nascent mining sector.**¹⁴³

7. CONCLUSION



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South Sudan has the blueprint. Now its path to either prosperity or long-term underdevelopment will be determined by the government's commitment to implementing the transparency and accountability requirements included in its new oil laws.

Implementing some of the provisions included in South Sudan's new oil laws will be difficult at first. In addition to the political and economic challenges resulting from the oil shutdown and instability along the Sudanese border, the government is contending with limited human resources and technical capacity in key institutions.

However, these logistical obstacles are by no means insurmountable.

To overcome them will require a sustained commitment from the government, which should signal its intent by immediately publishing all oil sector contracts and past production data. It should also prioritise passing a strong Petroleum Revenue Management Law, clarifying the management of Nilepet, and exposing any recent contract allocation to public scrutiny.

In parallel, more focused and coordinated technical support from aid donors is desperately needed, particularly for oversight institutions. But to be effective and not just prop up a failing system, this assistance must be accompanied by consistent political engagement to encourage the South Sudanese government to follow through on the blueprint set out in its new legislation.

For donor governments, aid may be cheaper than political capital but is not enough on its own.

In many resource-rich developing countries aid donors and other international partners focus on capacity building as the primary means of improving governance. However, in states like Nigeria, Liberia, Uganda, and Cambodia, a lack of sufficient political will at the highest levels, or a failure to properly implement fiscal controls and legislation, has cancelled out huge sums of development assistance.

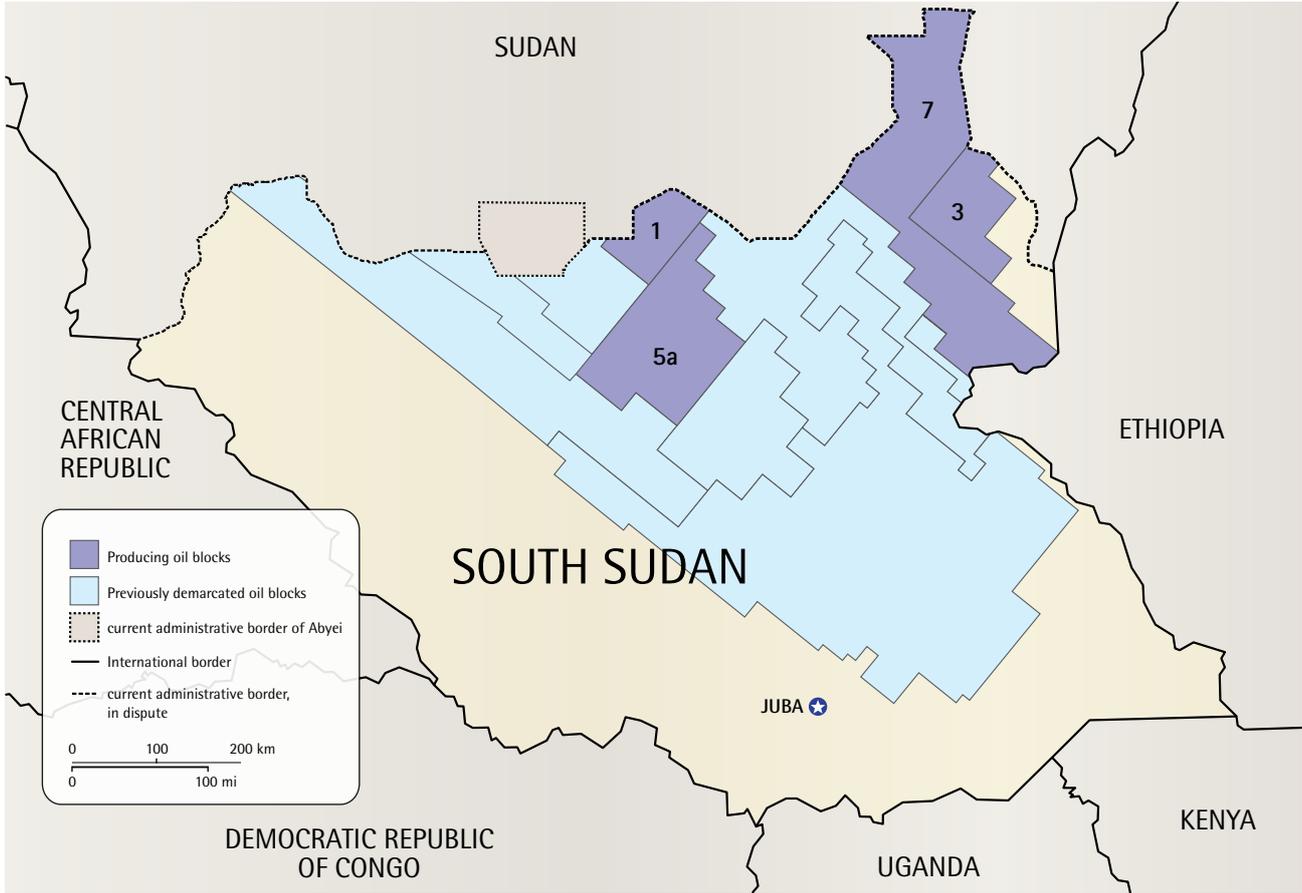
International partners should not be afraid to send repeated and public messages to the government that its commitments to transparency and accountability must be followed through. A failure to do so could render all of the legislative achievements outlined in this report irrelevant.

Ultimately, the new country's path to either prosperity or long-term underdevelopment will be determined by the government's willingness to abide by the democratic principles enshrined in its new oil laws.

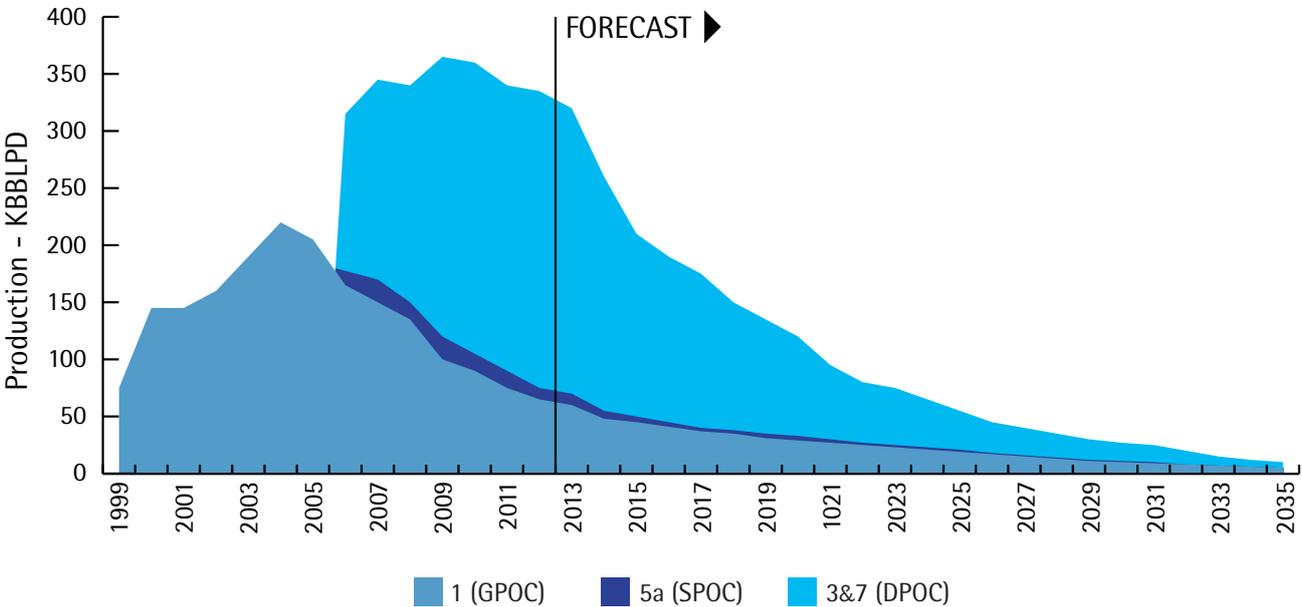
South Sudan has the blueprint. Now is the time to establish the transparent and accountable oil sector the South Sudanese people have been promised.

ANNEX - A GUIDE ON OIL GOVERNANCE IN SOUTH SUDAN

CURRENT OIL BLOCK MAP



PAST AND PREDICTED PRODUCTION



KEY INSTITUTIONS

Ministry of Petroleum and Mining (MPM)	The ministry responsible for managing South Sudan's oil sector. Its responsibilities include: <ul style="list-style-type: none"> ▶ initiating and enforcing relevant laws and regulations; ▶ negotiating, signing, managing, and terminating contracts; ▶ managing the government's relationships with oil sector companies; ▶ distributing, marketing, and selling crude oil and petroleum products; and ▶ publishing oil data and documents as required by law.
Petroleum Exploration and Production Authority	The Petroleum Act gives the Ministry of Petroleum and Mining the authority to create a regulatory body to assist in overseeing oil sector operations and provide technical advice. The Authority had not been established at the time of writing.
Nile Petroleum and Gas Corporation (Nilepet)	The oil company wholly owned by the government. Its purpose is to act as a commercial entity on behalf of the government, and having stakes in some of the country's oil blocks.
National Petroleum and Gas Commission	The policy-making, supervisory body tasked with ensuring co-ordination between all levels of the government and states, the private sector, civil society, and others. It is composed of 11 representatives from the relevant ministries and institutions, and from each of the oil-producing states.
Ministry of Finance and Economic Planning (MoFEP)	The ministry ultimately responsible for managing all of the government's revenues and accounts. It is also responsible for producing regular reports on revenues, expenditures, and the state of the accounts; securing foreign grants and loans; certifying government contracts; overseeing internal ministry audits; and managing the government's relationships with aid donors and international financial institutions.
Bank of South Sudan	The government-owned but independent central bank responsible for setting the country's monetary policy, issuing currency, and maintaining the national banking system.
Audit Chamber	The government institution tasked with independently supervising the financial performance of the whole government. This involves the auditing of all revenue collection and spending which is then reported on annually to the president and the national legislature.
National Legislative Assembly	The legislative arm of the government composed of two houses: the National Legislative Assembly (NLA) and the Council of States. The NLA plays the larger role of the two in oil sector oversight, with the jurisdiction of the Council of States being primarily the relationship between the national and state governments. The NLA is responsible for approving national policies and appointments, passing legislation and annual budgets, and holding ministers and other high-level officials accountable. The NLA is also responsible for approving major oil contracts and any withdrawals from the Reserve Accounts.
Anti-Corruption Commission	The independent commission set up to protect public property and combat government malpractice through investigation and prosecution. However, the Commission's powers are potentially limited in its dependence on the Ministry of Justice, with the Ministry given priority in public prosecution.

LAWS AND REGULATIONS

In South Sudan, the oil sector is currently governed by the Transitional Constitution and the Petroleum Act of 2012, which sets out the framework for oil development and activities. The Petroleum Revenue Management Law, the legislation which will govern the collection and management of the sector's revenues, has not yet passed the National Legislative Assembly but several draft versions have been circulated and the bill is expected to be reintroduced before the end of this year.

A draft Petroleum Policy, meant to provide general guidance and principles for the oil sector, has also been circulated. And the relevant ministries are currently developing the regulations which will accompany the laws to provide much more detailed requirements for the government and companies.

A number of other important laws will also play a part in the governance and transparency of South Sudan's oil sector. For example, the Public Financial Management and Accountability Act dictates how the government will manage and report on all public finances. The Companies Act of 2012 and the forthcoming Procurement Act will be relevant as well.

NEW OIL DEAL WITH SUDAN

Sudan and South Sudan have now agreed the terms of a new oil deal. Though it includes some mechanisms for independent verification – auditing, official access to metering stations, a Petroleum Monitoring Committee – it contains no requirements for the publication of information.

This failure to include public accountability in the deal makes it all the more important that the South Sudanese government is completely open about the volumes of oil being exported via Sudan and all associated fees paid.¹⁴⁴

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After decades of conflict, it's time the South Sudanese people saw the full benefit of their oil resources.

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