



SCRUTINY OF SOUTH SUDAN'S OIL INDUSTRY

Community Relations, Labour Practices and Impact on Land Use Patterns



Colophon

Authors: Leben N. Moro, John A. Akec and Mekalilie B. Bol

Editors: Egbert G. Ch. Wesselink and Kathelijne A. Schenkel

Cover photograph: Nyiek village, re-established just north of Paloich as the original location was excavated.

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www.paxforpeace.nl

P.O. Box 19318

3501 DH Utrecht

The Netherlands

info@paxforpeace.nl

About the authors

Dr. Leben Nelson Moro is Director of the Directorate of Scientific and Cultural External Relations at the University of Juba, and teaches graduate courses in the areas of development, conflict, forced migration and humanitarian affairs. For his D.Phil. in Development Studies at the University of Oxford (UK) he carried out fieldwork in the oil areas of southern Sudan during 2005 and 2006, focussing on the connection between oil exploration and conflict. Dr. Moro has been a consultant on diverse social issues for the GoSS, World Bank, UN and NGOs.

Dr. John Apruot Akec currently is Vice Chancellor of the University of Juba, after having served as Vice Chancellor of the University of Northern Bahr El Ghazal (Aweil) since May 2010. Previously he taught at the College of Engineering and Architecture of the University of Juba. He holds a MSc. in Systems Engineering, a PhD. in Manufacturing and Mechanical Engineering and a Postgraduate Certificate in Environmental Innovation. Dr. Akec also chairs the Academics and Researchers Forum for Development (ARFD), an academics-led think-tank.

Dr. Mekalilie Benjamin Bol holds a Phd. in Farm Machinery and Power Engineering from G.B. Pant University of Agriculture and Technology (India). In 2010 he was the Dean of the Faculty of Agriculture at the Dr. John Garang Memorial University of Science and Technology in Bor, South Sudan. For many years he taught Agricultural and Environmental Engineering and held the position of Dean for different colleges at the University of Upper Nile.

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List of Acronyms

CNPC	China National Petroleum Company
CPA	Comprehensive Peace Agreement
CPFs	Central Processing Facilities
DPOC	Dar Petroleum Operating Company (formerly PDOC/ Petrodar)
ECOS	European Coalition on Oil in Sudan
E&P	Exploration and Production company
EPSA	Exploration and Production Sharing Agreement
FDI	Foreign Direct Investment
FPF	Field Processing Facility
GoRSS	Government of the Republic of South Sudan (since July 2011)
GoS	Government of Sudan
GoSS	Government of Southern Sudan (pre-Independence)
GNPOC	Greater Nile Petroleum Operating Company (now GPOC)
GPOC	Greater Pioneer Operating Company (formerly GNPOC)
ICESCR	International Covenant for Economic, Social and Cultural Rights
IFC	International Finance Cooperation
ILO	International Labour Organisation
JOCs	Joint Operating Companies
OBC	Oil Base Camp
ONGC	Oil and Natural Gas Corporation Videsh
PDOC	Petrodar Operating Company (now DPOC)
R&M	Refining and Marketing company
SAF	Sudan Armed Forces
SEIA	Social and Environmental Impact Assessment
SPLM/A	Sudan People's Liberation Movement/Army
SPOC	Sudd Petroleum Operating Company (formerly WNPOC-1)
UNGP	UN Guiding Principles on Business and Human Rights
WNPOC	White Nile Petroleum Operating Company (now SPOC)

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Introduction to the report

“It is time for us to stop blaming the North and be prisoners of the past. We should be moving forward and do better for ourselves.”

Workshop participant, Juba, November 2012

With South Sudan's independence, in July 2011, came the responsibility to manage its multi-billion petroleum industry, constituting the backbone to the country's economy as it accounts for over 95% of the Government's revenue. The studies in this report are the result of a research project designed to inform Government measures to improve petroleum sector practice, and with that, reduce tension between the oil companies and the local communities. It started in 2010 with a preliminary field visit to the oil areas of Unity State and Upper Nile State to identify the most pressing issues as voiced by the communities. They included: community-company relations, with special a special concern about compensation practices; questions about labour practices, especially on the rights of South Sudanese workers; and the impact on local land use patterns and environmental concerns. On these issues, separate in-depth researches were designed. The study on a fourth issue, concerning the security arrangements for the petroleum industry, could not be finalised due to the changing situation on the ground at the time.

The fieldwork for the three studies was conducted between end-2010 and 2012. In November 2012 a workshop on 'Social Dimensions of the Petroleum Industry' was organised jointly by ECOS, the (South) Sudan Council of Churches (SCC) and the Bonn International Centre for Conversion (BICC). Here, the research findings were presented and validated among a diverse group of people, including Chiefs, other community leaders, government representatives and members of parliament from state and national level, academics, company representatives from the Chinese National Petroleum Company (CNPC) and Total, and civil society organisations.

During the course of the research project, a petroleum policy was developed by the Government with the purpose to optimize the value of South Sudan's petroleum resources and to convert them into benefits for current and future generations, indicating a long-term perspective of the Government. In July 2012, the Petroleum Act was passed, including very strong sections on social and environmental management. The findings of the three studies presented here, point out the importance of effective and immediate implementation of these clauses and suggests topics to be regulated further.

Key recommendations

The South Sudan Petroleum Act of 6 July 2012 contains very strong sections on social and environmental management of the petroleum sector. The success of this law lies in the development of further regulations, and the enforcement and implementation of the law and regulations. With that, **sustainable management and utilization of petroleum resources for the benefit of the people of South Sudan**, including the protection of local communities' rights, can be ensured.

To the Government of South Sudan:

- ◆ Enforcement of the **Social and Environmental Audit** by the companies, following section 100(8) of the Petroleum Act, to finally determine the environmental and social impacts - including health impacts - to date, and to develop plans for restoration and compensation.
- ◆ Through regulations, require a **stronger focus on community impacts** in Social and Environmental Impact Assessments, following Petroleum Act section 59 (4), including addressing human rights concerns.
- ◆ Make all **petroleum agreements publicly available** allowing the public to scrutinize and monitor adherence to them, in accordance with Petroleum Act section 79 (1.a,e).

- ◆ Develop **regulations on remedy and compensation mechanisms** for adversely affected people and communities, complying with the highest international standards and relevant to the local contexts in the petroleum exploitation areas.
- ◆ Develop **regulations on grievance mechanisms** complying with the highest international standards and relevant to the local contexts in the petroleum exploitation areas.
- ◆ Develop, in line with the relevant labour laws, **regulations on employment and outsourcing** practices for the petroleum industry, including protecting the rights of casual workers.

To all contractors or licensees active in South Sudan's petroleum sector:

- ◆ For past and current projects: Cooperate fully with the Government to **"carry out and pay for an independent social and environmental audit**, in compliance with international standards to determine any present environmental and social damage, establish the costs of repair and compensation and determine any other areas of concern", following section 100(8) of the Petroleum Act.
- ◆ For new projects: Fulfil the legal obligation to conduct an **Environmental and Social Impact Assessment**, consistent with international practice as reflected in the IFC Social and Environmental Performance Standards, and conduct a **comprehensive environmental baseline study** as determined in sections 59 (2,3,4) of the Petroleum Act.
- ◆ Apply the principle of **Free, Prior and Informed Consent** to ensure local communities have a full and accurate understanding of the implications of petroleum activities on them and their land.
- ◆ **Make publicly available all information** on Environmental Management Plans and Environmental and Social Impact Assessments, as legally required by Petroleum Act sections 59 and 60.
- ◆ Establish a company **dispute resolution and grievance mechanism**, in accordance with Petroleum Act section 94 and the regulations determined by the Government.
- ◆ Establish **appropriate remedy and compensation mechanisms** for adversely affected people and communities, complying with the highest international standards.
- ◆ Invest in relevant **training and education opportunities** for South Sudanese, for both high-skilled and casual jobs in the petroleum industry.

Oil Company-Community Relations: Pariang County

Author: Dr. Leben Nelson Moro

Key Research Findings

- ◆ Since the conclusion of the 2005 Comprehensive Peace Agreement (CPA) between the Government of Sudan (GoS) and Sudan People's Liberation Movement/Army (SPLM/A), local complaints about adverse repercussions oil exploration and extraction have continued to fuel mistrust among local communities of oil companies.
- ◆ Expansion of oil activities has compounded local problems, including pollution of the environment with dangerous substances and uncompensated dispossession of land, but not much has been done by oil companies and the government to assess and correct them, or reduce their impacts.
- ◆ The CPA has empowered local people, who have become more assertive in demanding the recognition of their rights, in particular to compensation for losses suffered, by oil companies. On several occasions, local people have disrupted oil activities by way of blocking roads or seizing vehicles or machinery and other confrontational tactics so as to compel oil companies to meet their demands. Some protestors have been detained for varying periods of time by the local police in order to ensure continued oil flow.
- ◆ Under pressure, oil companies have become more willing to address demands for consultation with local people before activities are undertaken, support development activities, provide some jobs, and pay compensation to people

who suffer losses as a result of oil operations. Thus, oil companies are increasingly taking into account local concerns and complaints, however no structured company mechanisms seem to exist yet.

- ◆ In some cases, community expectations seem to be unrealistic but that is to be expected as oil agreements and operations are often opaque. Moreover, promises made to local people are often unfulfilled fuelling distrust of whatever companies say.
- ◆ Local authorities have set up institutions, particularly committees, to deal with local claims against oil companies and other grievances. The committees have played a significant role in estimating damages linked to oil activities, managing compensation issues, and planning development projects financed by oil companies. Many people, however, doubt the effectiveness of these committees in resolving grievances and presenting their concerns to oil companies, and hence seem to want some direct access to oil companies so as to present their concerns and complaints.
- ◆ The relations between local people and government authorities in the oil areas appear to be deteriorating because of disputes over management of money provided to government authorities as compensation. In some cases, authorities are viewed as the problem. In part, this is a consequence of measures, including arrests, adopted by authorities to contain unauthorized protests against oil companies.
- ◆ There are very few civil society organizations operating in oil areas, and none of them is involved in promoting transparency and accountability in management of oil resources or helping to resolve disputes between oil companies and local people. Security concerns appear to be the main reason for the reluctance of civil society organizations to establish programs in oil areas.
- ◆ The Petroleum Act (2012) provides a solid basis for building sound oil company-communities relations, notably its articles 52, 59, 82, 94 and 100. Unfortunately, these articles have yet to be implemented.

Introduction and Research Objectives

The exploration and extraction of oil in Southern Sudan during the period of fighting from 1983 to 2005 was linked to unprecedented atrocities, including violent evictions of people, for which oil companies bore some responsibility.¹ Although these egregious abuses ceased after the Comprehensive Peace Agreement (CPA) between the Government of Sudan (GoS) and Sudan People's Liberation Movement/Army (SPLM/A) was concluded in 2005, the relations between oil companies and local people in the oil-bearing areas are still characterized by conflicts. This is particularly the case in Pariang County, Unity State, where protests, road

¹ Moro, L.N. 'Sudan: Old Habits Die Hard,' Fahamu, 2 August 2007.

and other matters relating to oil companies. After completing work in Pariang, I interviewed some residents of Bentiu town who originally came from Pariang, including the Unity State Minister of Education, Science and Technology who is the chairman of the High Committee in Pariang dealing with oil issues. Moreover, I had intended to talk to the Commissioner of Pariang who was in the Bentiu for a short time. This did not work out.

In preparing this report, I also used information gathered during previous visits to Pariang. My most recent visit was the third since the CPA was signed. The first was in 2006, when I was still a student in the UK, and the second was 2008 after completing my studies. Moreover, the report also drew on publications on the Sudan oil issue.

The next section provides an overview of the wartime (1983-2005) oil activities and their links to violence. This background is essential to understand the current problems the local people are facing with oil development, in particular the tense relations with oil companies. Section four delves into the peacetime oil activities especially the continued local complaints about negative impacts of oil development, disruptions of oil operations by angry locals, increasing willingness of oil companies to meet local demands for compensation and the deterioration of relations between local people and local authorities because of disputes over distribution and management of compensation money. Then these historical practices are compared to the newly adopted laws in South Sudan and to international standards. The final part is a conclusion.

Wartime Oil Activities

The fierce struggle for control of oil areas between the Sudan Armed Forces (SAF) and rebel forces in the Southern Sudan escalated violence as well as human suffering during the war years between 1983 and 2005. Traditional conflicts among groups were manipulated by the belligerent parties, especially the SAF, with a view to securing and protecting oil areas.⁴ In Pariang, the SAF exploited conflicts over cattle between Arab nomads and Dinka during the war, with catastrophic consequences for ordinary people.⁵ In the dry season Arab nomads, mostly Bagara (cattle-keepers) from Misseriya tribe of Kordofan, graze their animals on Dinka land. Although mutual raiding of cattle is common between them and Dinka; but most of the time the relationship between the two groups is peaceful.

This changed during the war as leaders in the North supplied guns to the Misseriya and manipulated them to intensify attacks on the Dinka. The intention was to secure the activities of Chevron, the American company that discovered the oil in Sudan in 1978 and subsequently tried to exploit it.⁶

SPLA forces reached Pariang in about 1986 and took control of the northern part of the county. Riek Machar, a Dok Nuer from Leer, was the commander of the SPLA forces in Unity State.

4 Johnson, D.H (2003) *The Root Causes of Sudan's Civil Wars*, Oxford, James Currey.

5 Moro, L.N (2008) 'Oil, Conflict and Displacement in Sudan', Thesis for DPhil in Development Studies, Department of International Development, University of Oxford.

6 Scroggins, D. (2002) *Emma's War: Love, Betrayal, and Death in the Sudan*, London, HarperCollins.

Chevron's hopes of exploiting the oil were frustrated by the SPLA, and subsequently sold off its investment in Sudan in 1992, in part because of US government pressure. The Islamists who took over power in 1989 began forging ties with groups and individuals, including Osama bin Laden, who posed serious risks to US interests.

The Islamists' hopes of exploiting the oil were helped by the split in the SPLA in 1991, which took on Dinka-Nuer tribal dimensions. Being Dinka, the people of Pariang were considered natural allies of the SPLA faction led by John Garang, a Dinka from Bor, by the breakaway faction under the leadership of Riek Machar. Consequently, they came under sustained attack by Riek Machar's forces. In 1997, Riek Machar signed a peace agreement with the government which in effect allied his forces with the SAF against the SPLA and its suspected supporters. This combined force, directly or indirectly, brought oil-rich land in Unity State under the control of the government, which opened it up for oil exploration and extraction. Moreover, the government recruited companies from China, Malaysia and India. Some Canadian and European companies also got involved in the oil business. These formed big consortia that went to work in the oil areas.

The Greater Nile Petroleum Operating Company (GNPOC)⁷ which is now dominated by the China National Petroleum Company (CNPC), Petronas from Malaysia, and the ONGC from India, completed the building of a 1,610-kilometre pipeline from the oilfields in Heglig to Port Sudan. To secure the pipeline, massive violations of the human rights of the local Dinka population were perpetrated by SAF and its allies in militia groups.⁸

In particular, the SAF's assaults focussed on Heglig because of its rich oil wells. The local people were displaced and Arab nomads were encouraged to settle in the "cleansed" areas. No doubt, the violent demographic change was intended to legitimize the claims the Northerners laid on the Heglig areas. This dispute is supposed to be resolved by a National Border Commission, which has been formed but is yet to demarcate the border between Southern Kordofan and Pariang. Violent conflicts have taken place in some border locations, such as Kharasana, which has compelled the local people to move southward.

Without doubt, the main cause of violence in the North-South border zone were the oil resources. In the 1980s, Chevron discovered a large oilfield in Heglig (later called Block 2). The Dinka of Pariang insist that this oil-rich area is their land, which they locally call Aliny. Human Rights Watch has observed that the renaming of the area as Heglig denoted Arab control.⁹ Another strategy was to drive the local Dinka out of the area and encourage the nomadic Misseriya to settle so as to legitimize the claims of the North over the area. SAF and local militias were primarily to blame for the "ethnic cleansing" of local people from Pariang to protect oil facilities and workers from attacks by the SPLA. Oil companies were also to blame, because they turned a blind eye to the displacement of the local people, taking place throughout the 1980s and 1990s.¹⁰

7 Renamed GPOC under contract with the Government of South Sudan.

8 Franco L. (1999) Report on the Situation of Human Rights in Sudan, New York, Un General Assembly (A/54/467), page 10.

9 Human Rights Watch (2003) *Sudan, Oil and Human Rights*, New York, Human Rights Watch: 95.

10 Sudan Security is responsible for the security of oil concessions, 'directly or through subsidiary bodies (security companies or militias)'. See Ahmed, E (2006) *The Implementation of the CPA Wealth Sharing Agreement: The Oil Issue and Transition Process in Sudan*, Netherlands Institute of International Relations.



Grass burning by villagers near GNPOC facilities, 2011

The SPLA had also become more aggressive in the oil area in the late 1990s. For example, the SPLA announced that it had attacked the Heglig oilfields and brought oil flows to a complete halt in September 2001.¹¹ Of course, the escalation of violence also meant that more local people lost their lives, or had to flee their home areas to remain alive.

The violence ended with the return of peace following the signing of the CPA in 2005 but the memories of the bitter past continued to influence the relations between local people and oil companies. However, as will be discussed in the following section, the CPA did not end the suffering of the local people in the oil-bearing areas. Already, the right to compensation for local people negatively affected by oil activities which is guaranteed in the CPA has largely been ignored by oil companies and the government.

Peacetime Oil Activities

The formal end of fighting provided oil companies a golden opportunity to intensify the search for, and exploitation, of oil in many parts of Southern Sudan. Consequently, the government and oil companies have been reaping enormous benefits. No doubt, oil has become a huge blessing for the political and bureaucratic elites controlling the government machinery in the country. Other Sudanese citizens are yet to gain significantly from oil development, however.

¹¹ SPLM/A (2001) 'SPLA Scores Major Victory in Oilfields,' Press Release, 20 November 2001. Available from: <<http://www.sudan.net>> (accessed 11 January 2006).

Some of the worst off people in the country are the local people in the oil-bearing areas. For them, oil has remained a curse as benefits from oil activities continue to be elusive. Paradoxically, wrongs, such as uncompensated dispossession of land and pollution of the environment, that were prevalent during the war years have not been settled. The case of the headmaster of Athony Primary School in Pariang County is illustrative: "I went to Ethiopia in 1989 and joined the Red Army.¹² The *serikat* (companies) dug a *bir* (well) in our village here in Athony while we were away. I complained to the *serikat* and the government, which agreed to pay compensation. Up to now, nothing has happened and I am still following up the issue."

Many people are in the same situation. Thus, old problems have been carried over to the peacetime era, which is looking less peaceful than many local people hoped would be. The following section examines the problems that have continued to spoil relations between local people and oil companies.

HARM AND NEGLECT

The negative consequences of oil development have been causing deep resentment against oil companies in many oil-rich parts of Southern Sudan. Arriving in any oil area where active exploitation is ongoing, one is often confronted with persistent complaints from local people about poor management of "produced water", which is blamed for pollution of the environment. This is often linked to unexplained deaths of animals and strange or new human ailments. Moreover, the oil infrastructure, such as oil roads, wells and pipes, are frequently blamed for disrupting the means of livelihoods of local people as well as destruction of property.

In Pariang, complaints against oil companies are rampant. Reflecting the general mood, the headmaster of Athony Primary School lamented that, "oil areas are supposed to have facilities but our area has virtually nothing". Lack of water during the dry season is a particularly critical problem in many places. In some areas, people drink standing water from *hafirs*¹³ directly as a result guinea worms and other water-borne diseases are prevalent.

The available healthcare infrastructure is inadequate and not widely distributed. Healthcare centers or units are poorly equipped and often lack qualified personnel. People suffering from serious illnesses have to be taken to the healthcare centre at Pariang or the hospital in Heglig, which are far. A woman leader in Athony said that some expecting mothers and sick children die before getting medical help.

The health problems are made worse by the fact that some areas are not readily accessible as the road network does not cover the whole county. The administrator of Aliny Payam said people in inaccessible locations who fall ill have to be wrapped in blankets and carried to nearby roads to wait for a vehicle to take them to places where treatment can be provided. In the wet season, when water-borne illnesses are prevalent, access to healthcare facilities is even made more difficult as some roads became impassable because of the clay nature of the soil in this area. Most roads in the county lead to Pariang town and places of oil works. In fact, some payam headquarters are not linked to the town, and people have to walk to reach them. Local people

¹² These are children recruited by the SPLA and taken to Ethiopia purportedly to join school. They were given military training, and some of them might have taken part in combat.

¹³ Open pits that collect water in the rainy season, from which animals and people get water during the dry season. They are often dug by road construction companies along roads.

often tell distances between places by the number of hours spent walking to cover the distances between them. For example, the payam administrator of Gumriak Payam, who has a home in Pariang town, says that he has to walk for six hours to reach his office in Gumriak. Yiida Payam also has no road, and people have to walk from Pariang town for three hours.

Despite the difficulties that local people continue to endure, some positive changes have been realized. One of these is the receptiveness of oil companies to local demands for consultation.

CONSULTATION AND COLLABORATION

During the war, there were no consultations with local people. People were often violently evicted when oil companies want to work in a place. After the war ended, this abhorrent practice ceased. Indeed, the CPA requires people to be consulted when their land or property is to be acquired by the state, or agents of the state. This seems to be happening, to an extent. According to a government official in Pariang who has served as administrator for several payams, oil companies seek permission before starting work. It appears, however, that they seek permission from the commissioner and other administrators in Pariang and not from the ordinary people who are directly affected by oil activities. In fact, there are very limited occasions on which ordinary people interact with oil companies. Most local people say they do not deal directly with oil companies.

It might be argued that the local administrators in Pariang are the representatives of the local people, and hence can speak on behalf of ordinary people. This appears not to be true for two reasons. First, the local administrators are appointees of the Unity State government or GoSS and are not elected by the local people. Second, local people perceive the administrators as separate from them, and seem to prefer to talk directly, or through people they have selected, to the oil companies on issues that affect them. Likewise, committees formed to handle compensation issues are appointed from above.

Because of these and other factors, the relations between local people and oil companies remain tense, sometimes degenerating to disruption of oil activities. The deputy administrator of Aliny Payam offers this explanation: “*Serikat* do not seek permission from local people when they want to operate in an area. They simply show up, and begin work. Sometimes, local people refuse and ask them to leave. Then, they go to the county commissioner, who grants them permission. The county administrators come to persuade local people to accept the *serikat*.” So, the discussions are between local people and county administrators and not with the oil companies.

The same problem was explained by the administrator of Athony Boma as follows:

“We do not have any relations with the *serikat*. They come abruptly to a village, without any consultation or permission, and start work. The villagers will ask the *serikat*: why do you come to our village and begin work before asking permission? After being asked to stop work, the *serikat* go to the county headquarters and reach an agreement with administrators there and return to the village to drill, or to do other oil works. Local people do not have power. We face a crisis.” The headmaster of the school in Athony added that “the county administration does not have an agreement with local people in regard to development issues.” So, “the problem is the government policy, which does not protect interests of local people”, concluded another administrator closely involved in oil issues. Lack of genuine consultation with local people has resulted in some serious disruption of oil works by local people as well as straining of relations with local administrators. These are discussed in the following section.

“The villagers will ask the *serikat*: why do you come to our village and begin work before asking permission? (...) Local people do not have power. We face a crisis.”

Administrator of Athony Boma, Pariang County, 2010

RESISTANCE, DISRUPTIONS AND DETENTIONS

Many disgruntled communities have chosen the path of confrontation with oil companies. The blockages of trucks and other stoppages of oil operations, which are costly, happened mostly between 2007 and 2009. Some of the actions, according to local officials, were incited by members of the local government, and hence tolerated. In these cases, it appears that oil companies defied the wishes of local officials, who then turned to local people to press the companies through disruptions. The actions that were not approved by authorities often ended in arrests as they try to maintain peace and security in an unstable situation.

According to a local administrator at the county headquarters in Pariang town, there were serious disagreements between 2005 and 2007 in Athony and Nyiel, and the GoSS and Unity State decided that local people should be compensated by oil companies. That was the policy of the government, and the local authorities in Pariang were supposed to implement it. However, this has not been properly done as an official in Pariang has made clear: “In 2007, some people in El Toor were supposed to relocate to another location to the south because there were *bir* [oil wells] where they lived. Compensation agreement was reached. Affected families were supposed to receive between 1,000 and 20,000 Sudanese pounds, depending on the size of field. Some people moved to the new place after getting compensation. Others, however, did not get the compensation and refused to move. They also complained that the oil company promised to build houses, a school, a clinic and roads in the new place but failed to do so. So, those who refused to relocate are still living in the oil well area. The *serikat* prefer compensating fields affected and not houses, which are expensive.”



Street in Pariang town, Unity State, April 2011

Another problem surfaced more recently in one of the villages of Athony, which the headmaster of a primary school in the area, expounded on as follows: “Three days ago, *serikat* transported equipment to a village not far from here. The local people did not permit them to work, and they went to Pariang town to seek for permission. The administrators from Pariang came to negotiate with the local people, who totally refused the *serikat*. The *serikat* took their equipment away from the village.” In these cases, the local people were actively resisting the oil companies and also probably challenging their own leaders in Pariang. Nonetheless, it was possible that the oil companies stopped from operating in a given place would return with the backing of the county officials, who could order arrests to get the expected outcome. Indeed in some situations, the administrators acted forcibly against people who disrupted or engaged in protests against oil companies that they did not approve or quietly condone. Several arrests were made during protests. Some chief and administrators were put behind bars, but the most affected people were young men, whose main grievance is lack of jobs with oil companies.

Arrests are carried out by the county police and payam administrators, who then send them to the jail in Pariang town, where they are kept for several days and set free. The payam administrator explained the detentions as follows: “People are arrested for refusing companies access to some areas, stopping the work of companies or demonstrating against companies. The arrests took place between 2007 and 2009, and always followed complaints about compensation. The most affected group were the youth. Chiefs were also detained. Likewise, I was put in jail. They claimed that I failed to dissuade people from demonstrating. Normally, people are kept in jail for a few days, between three and seven, and set free. My detention lasted seven days.” Some of the people detained were taken to the court in Pariang town, and then set free.

A chief in the town court, who was afraid to reveal his name, explained some cases of detentions that he was aware of:

- ◆ “In 2006, about June, there was a demonstration in Athony against activities of *serikat*. Local people stopped the movement of vehicles. They were demanding social services, such as water, schools, clinics and electricity. Six people were arrested and brought to Pariang police post, and spent seven days in jail. They were not brought to court.”
- ◆ “In 2008, there was another demonstration because of lack of employment. This happened in Heglig. The arrested people were brought before us in the court. The court asked them: why did you demonstrate? They said they wanted their rights. The county administration said they were not supposed to act directly against oil companies but take their grievances to the committees concerned. That was the mistake, the problem. We forgave them and set them free.”
- ◆ “There were complaints and demonstrations against seismic surveys in Nyiel and Aliny, and arrests were made. These people spent time in jail and were released. They did not appear before a court.”

While meant to maintain peace and security, the detentions may be against the law. Legally, a person cannot stay in jail for more than 24 hours without being charged. In Pariang, this legal requirement appears not to be followed. Detainees stay much longer than 24 hours without being charged.

I sought to understand why detentions were thought to be effective means of dealing with people who took the law into their hands because of the dangers that oil operations pose to them. A senior administrator told me that the county administration was keen to maintain peace and security. All grievances against oil operations should be addressed to the high committee through the sub-committees at the payam level. Another explanation was that the GoSS relies on oil revenues and any disruption is a threat to the economic security of the Southern region and that is why the local authorities acted forcibly. In fact, another administrator said that the protesters risked being confronted by the SPLA were demonstrations to get out of hand. Several officials have explained that the cost of disruptions, such as the loss incurred when a rig is forced to stop drilling, is calculated and deducted from the 50 percent share of oil the GoSS receives. So, it is in the interest of GoSS that there are no disruptions of oil activities. It may be argued that the GoSS overlooks local grievances against oil companies because of its own interest in uninterrupted flow of oil.

Although risky as they can land one in prison, demonstrations are also associated with some positive outcomes, one of which is the willingness of oil companies to resolve complaints about losses individuals suffered.

COMPENSATION

Compensation in money terms or in kind (development projects) for damages linked to development of subterranean resources, including oil, is a requirement of the CPA. People who are asked to leave their land, or suffer other kind of losses, so that a national project, implemented in the public interest, must be adequately compensated lest they become

impoverished. Nonetheless, this has not been happening in an organized manner in Southern Sudan, in part it is a legacy of the war years when uncompensated acquisition of land and other abuses were the norm. Where compensation is provided, the amount is often not sufficient or some deserving people do not receive, stoking discontent even protests, as discussed in the foregoing section.

Most people complained about lack of compensation, or where some actions are taken to compensate people they are done in a discriminatory manner. According to the director of the Pariang commissioner office, compensation from oil companies only benefitted the Misseriya nomads during the war, and that between 2006 and 2008, the Dinka got some compensation from oil companies which was divided between people negatively affected by oil activities and the local government. The government has used the money to implement development projects in the whole county, supplementing projects that are directly done by the community development departments of the GNPOC or companies that formed this consortium.¹⁴

To manage compensation issues, the commissioner of Pariang has established a High Committee and a Development Committee. The former has been operating since 2008, according to its chairman. At present, it is reported to be composed of 15 members, who are charged with handling specific issues such environmental pollution and compensation. When oil companies want to operate in an area but the local people refuse to allow them access, they approach the High Committee. In fact, there is a special committee at the payam which contacts the High Committee in Pariang. Each payam, in which there are oil activities, has formed a committee to deal with oil issues. For example, according to the Nyeil Payam administrator, Nyeil has a committee dealing with oil matters. It is comprised of five members as follows: the administrator, SPLM secretary, youth leader, head chief and a woman representative. So, the committee at the payam level and High Committee work together, registering people affected and deciding the amount of compensation due to them. According to a former administrator of Athony, three copies of the list compiled by the committees are distributed; one copy is given to the oil company, another copy is retained by the administration of the affected area and the other copy is kept by the high committee.

The chairman of the High Committee gave a detailed account of the compensation issues when I interviewed him at the Ministry of Education, Science and Technology in Bentiu. After being appointed to the position by the commissioner, he decided to travel to Misseriya areas in Northern Sudan to learn about the way they dealt with oil companies. There, he collected a lot of information, and decided to put pressure on oil companies for compensation in terms of money to individuals or development projects for community betterment.

Compensation money is provided to the High Committee which apportions it among affected communities and the local government based on agreed percentages. The portion that goes to the government is passed to the Development Committee, which then implements development projects in the county. However, it is unclear how much money has been provided to the local government so far as it is done in an irregular manner. Local people, nonetheless, believe that large amounts have been provided by oil companies to the county administration between 2006 and 2009, the period when there were disruptions of oil operations by protests, but there

¹⁴ Detailed information on development projects implemented by oil companies was hard to come by.

are significant disagreements between local people and the High Committee in relation to the management of the compensation.¹⁵

Some of the cases of compensation mentioned by local people were:

- ◆ In 2008, 15 people were given money as compensation for the destruction of their houses.
- ◆ In 2008, oil companies provided monetary compensation for fields destroyed. According to a payam administrator this amount was handed to the government but the community got nothing.
- ◆ In 2008, according to a chief in the town court, fields were destroyed by seismic activity in Nyeil. A whole village was affected. The affected people were registered by the High Committee and then each family was given 150 Sudanese pounds (about \$70 – at the time). The rest of the money remained with the government. How much the amount was, was not known, though. There was a problem and people who complained were put in jail, he added.
- ◆ A payam administrator said some years ago, companies gave lots of money to the county but most of it was diverted. The money was used for all payams and problems arose. “The compensation issue created political problems. Some people were not compensated or felt that they did not get adequate compensation and complained or demonstrated. The government jailed them”, he said.
- ◆ A youth leader said that in 2008, oil companies dug a pit in Aliny and destroyed trees in Nyeil. They paid a large amount of money, which the government used to implement projects over the whole county. So, some of the money was given to places that do not deserve as there were not oil activities in them.

Thus, disputes over compensation were tense because some people felt that they got less amount or that their areas were not provided enough support, and instead support was extended to payams that did not face problems with oil companies. It is to be noted that oil prospecting and extraction only occurs in three payams, namely Aliny, Nyeil and Biu. In addition, oil companies excavate for gravel (murrum) from JanJieng payam.

Despite the complaints from local people about the conduct of the High Committee, its chairman argues that the committee has good relations with local people. Moreover, he pointed out the state authorities in Bentiu allowed the county to spend the compensation as it sees fit. The state authorities were only interested in seeing that projects were being implemented with compensation money. So, there are not strict accountability requirements from the state, which receives two percent share of oil revenues and spends it as it sees fit.

¹⁵ The former Commissioner of Pariang in November 2012 explained his dilemma with handling compensation for the affected people as follows: “The company will place a rig and promises compensation to be paid in two to three 3 weeks, and this will go through the Commissioner. Then the company doesn't show up and the Commissioners are blamed for taking the money by the citizens”.

It is the Development Committee which decides the projects to be financed with the money that it receives from the High Committee. Indeed, several projects have been accomplished. According to the director of survey and physical infrastructure, there were only a few buildings in 2006, just after the signing of the CPA. These were administrative building, a primary school, a secondary school and a mosque. More structures have been constructed since, partly financed with compensation money handed to the Development Committee, directly by development departments of oil companies or with funds from the state or the central government. The oil companies also funded an all-weather road from Pariang to JanJieng and to Wunkur, a distance of nearly 59 kilometres, and roads in Pariang town. However, this was not a development project but payment in kind to the communities for the murrām they excavated. The construction would not have happened without relented pressure on oil companies and collaboration between the local people and county administrators, see Box 1.

The Development Committee and oil companies implemented a number of projects in several payams, which the director of survey and physical infrastructure elaborated upon.

- ◆ In 2008, the oil companies built a primary healthcare unit in Nyiel, a basic school in Bonke, a primary school in Biu and constructed a water pump in Athony.
- ◆ In 2008, the county administration, with its share of compensation, built payam administrative buildings in eight payams. Each building consisted of four offices and a meeting hall. Also, a water project was implemented with the help of a local organization called Ruweng Association for Development. 16 hand pumps were constructed in parts of the county that encountered particularly acute water shortages.
- ◆ In 2009, the local government used its share of compensation to implement four projects: a conference hall in Pariang, SPLM office in Pariang, an office for police in Pariang, and a primary school in Bonke.
- ◆ In 2009, the state, using the two percent share, financed the construction of Pariang youth office as well as primary schools in Pariang, JanJieng, and Nyiel.

Management of some of these projects provided some opportunities for direct communication between local communities and oil companies. For example, the payam administrator for Nyiel said that: "We have some meetings with oil companies. However, these are unplanned and happened suddenly. Sometimes, I go to their camp and discuss about fuel for our water pump. They built for us a water pump and are supposed to supply one barrel of petrol every week so as to run the generator. I travel on public means to their camp in Manga when the fuel is not delivered. Manga is where *serikat* are based." But such meetings are very rare and are only aimed at solving specific issues. In general, the communication with oil companies is through the county administrators.

It is quite obvious from the above discussion that oil companies have been forthcoming in providing support to the development of the county. However, the assistance is viewed as limited, not meeting the expectation of the local people. It is however impossible to have credible estimates of damages inflicted to local people and value of support provided to locals as the whole system is opaque.

Box 1.

Road Construction in Return for Murrām

The oil companies excavated murrām for road and other constructions from Alel, JanJieng Payam, without paying the local people for some time. They were asked to pay compensation, in terms of constructing an all-weather road to link the payam with the county headquarters or pay a huge amount instead. According to the chairman of the High Committee, the local people wanted the road constructed and not the money. The oil companies decided to construct the road instead of paying the money.

However, according to the county director of survey and physical infrastructure, the oil companies were not serious, and were procrastinating while continuing to get murrām for free. In 2007, to compel companies to fulfil their promise, the local people, with the encouragement of some of the High Committee members, seized five heavy vehicles and stopped the companies from taking the murrām until the whole situation was clarified. This time the county police never took action against the disruption of oil operations. Finding no support in the county administration, the companies took their case to the state administration in Bentiu which was not sympathetic.

They were reportedly told to solve their dispute with the local people. This was obviously a serious matter for the oil companies as they badly needed the murrām. It is difficult to understand, however, why the oil companies were reluctant to pay compensation here but pay for gravel in Kharasana, a border area claimed by Southern Kordofan as well as Pariang. Most probably oil companies used different strategies in the North. They seemed far more responsive to claims for compensation from Northerners compared to claims from Southerners. The dispute could not be resolved despite intervention of the Unity State government and GoSS.

The local people were adamant that the oil companies construct this road as the price for the gravel or murrām that they had already illegally removed from their area and continued access to the area. Finally, according the chairman of the high committee, the oil companies and the federal Ministry of Energy and Mining invited him and other leaders from Pariang to Khartoum to discuss the disagreement. They were put up in Meridian hotel. After several days of heated discussions, an agreement was reached.

The oil companies accepted to construct the road from Pariang to JanJieng (53 km) and from JanJieng Payam headquarters to Wunkur village (6 km). This was completed in two years time. Also, the oil companies completed the construction of streets in Pariang town in 2008 as compensation for continued taking of murrām from JanJieng.

National and International Standards for Community Engagement

Art. 1.1 of the CPA Wealth Sharing Arrangement, that came into force in 2005, determined that “the best known practices in the sustainable utilization and control of natural resources shall be followed”. The article strongly suggests that companies were expected to work in a manner consistent with best international industry practice, which would arguably include the widely accepted IFC Performance Standards¹⁶ and its norms for community engagement.

The Petroleum Act of the Republic of South Sudan, signed into law on 6 July 2012, contains a number of provisions that deal with company-community relations.

(Art. 82) The Ministry shall provide a community development plan ‘after consultation with local communities in the contract area, that shall be financed by the companies’.

(Art. 52.4) Companies shall ‘disclose the health and safety management plan to the affected communities and to report to the communities periodically on any changes to the plan.’

(Art 59) For their obligatory environmental and social impact assessment, ‘companies shall consult with the public and local communities in a manner consistent with the Social and Environmental Performance Standards of the International Finance Corporation.’

Article 59 is of particular significance as it renders consistency with the IFC Performance Standards on consultation being obligatory and legally enforceable.

The relevant parts of the IFC Performance Standards read: “When Affected Communities are subject to identified risks and adverse impacts from a project, the client [company] will undertake a process of consultation in a manner that provides the Affected Communities with opportunities to express their views on project risks, impacts and mitigation measures, and allows the client to consider and respond to them. (...) Effective consultation is a two-way process that should:

- (i) begin early in the process of identification of environmental and social risks and impacts and continue on an ongoing basis as risks and impacts arise;
- (ii) be based on the prior disclosure and dissemination of relevant, transparent, objective, meaningful and easily accessible information which is in a culturally appropriate local language(s) and format and is understandable to Affected Communities;
- (iii) focus inclusive engagement on those directly affected as opposed to those not directly affected;
- (iv) be free of external manipulation, interference, coercion, or intimidation;
- (v) enable meaningful participation, where applicable; and
- (vi) be documented.”

And

“The client will provide Affected Communities with access to relevant information on:

- (i) the purpose, nature, and scale of the project;
- (ii) the duration of proposed project activities;
- (iii) any risks to and potential impacts on such communities and relevant mitigation. “

Furthermore: “The client shall make every reasonable effort to verify that such persons [those members of the communities that the company engages with] do in fact represent the views of Affected Communities and that they can be relied upon to faithfully communicate the results of consultations to their constituents.”

The Petroleum Act offers a mixed community consultation system with the government as the main actor and companies in a complementary role. IFC Performance Standard 1 defines company responsibilities under Government-led stakeholder engagement as follows:

“Where stakeholder engagement is the responsibility of the host government, the client will collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with the objectives of this Performance Standard. In addition, where government capacity is limited, the client will play an active role during the stakeholder engagement planning, implementation, and monitoring. If the process conducted by the government does not meet the relevant requirements of this Performance Standard, the client will conduct a complementary process and, where appropriate, identify supplemental actions.”

This implies that both parties are responsible for the outcome of the community engagement process. In case companies fail their duties, the Government can enforce the law; if the Government fails to do its bit, companies cannot lay back and blame the Government, they have to make up for this failure.

Finally, article 94 of the Petroleum Act contains norms for a company dispute resolution mechanism: “(1) The licensee or contractor shall establish a dispute resolution mechanism in accordance with the regulations, open to all persons or groups who are affected by or may affect petroleum activities, and that address grievances against the licensee, its contractors, and subcontractors. The mechanisms shall comply with the highest international standards (a) proportional to the complexity of the issue; (b) culturally appropriate; (c) understandable, transparent, accountable; (d) address concerns promptly; and (e) at no cost to the successful party and without reprisal.”

The Act is in harmony with the May 2011 UN Guiding Principles on Business and Human Rights (UNGPR) that has been embraced by the international business community at large. China, India and Malaysia, the owners of the three main companies operating in South Sudan, have all expressed their unreserved support for the principles. According to the UNGPR, non-judicial grievance mechanisms should be: “(a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes; (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access; (c) Predictable: providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation; (d) Equitable: seeking to ensure

¹⁶ IFC Performance Standards on Environmental and Social Sustainability, January 1, 2012;

http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_pps



GNPOC power plant at Unity Field, 2011

that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms; (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake; (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights; (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;" These requirements are unlikely to be met unless companies have already established mature and trusted relationships with communities. By requiring that the South Sudanese petroleum industry respects international standards for community engagement, the GoRSS recognizes that a strong social support basis is in the best interest of the country, local communities, and the petroleum industry itself.

The Petroleum Act confirms the right to compensation for past and present losses, for instance for land owners having to cede use of their property. It also confirms, in section 100(8), all environmental and social damage has to be independently established and that people whose rights have been violated must be compensated.

Oil companies' Practices in Pariang Compared to National and International Standards

CONSULTATION CONSISTENT WITH THE IFC PERFORMANCE STANDARDS

The research found several fundamental shortcomings with regards to community engagement. Notably:

- ◆ Neither the Government nor the companies are consulting early in the process, nor has the consultation process been on-going.
- ◆ The information provided to affected communities has been grossly inadequate and never prior to consultation. In most cases no relevant information has been received at all. Affected communities are typically ill-prepared for effective engagement.
- ◆ No process was encountered to ensure that the views of the affected people are represented in the consultation process. Companies typically consult with the commissioner and other administrators rather than with those directly affected. These functionaries and the members of the committees that deal with the oil companies and compensation issues have not been elected but appointed and are found not to be generally considered representative of those affected. By putting themselves in between the *serikat* and the people, and being sometimes used by the *serikat* to make communities accept their presence, they not only solve instant issues, but also sometimes undermine the industry's social support basis. The role for commissioners and administrators as both representing the Government and as intermediaries between the companies and the communities is standing in the way of an effective consultation of those directly affected.
- ◆ In some cases, the authorities have interfered and/or coerced communities into acceptance of petroleum activities, bypassing engagement requirements.
- ◆ No examples of meaningful participation have been observed.
- ◆ None of the engagement processes seem to have been documented and made publicly available.

DISPUTE RESOLUTION MECHANISM IN COMPLIANCE WITH THE HIGHEST INTERNATIONAL STANDARDS

No company dispute resolution mechanism seem to have existed in Pariang county during the time of research. Only government-led processes are available. The companies don't seem to take the effort to analyze whether these government-led processes achieve their objectives, and therefore there neither have been any efforts to compensate for government failure.

DISCLOSURE OF HEALTH AND SAFETY AND ENVIRONMENTAL MANAGEMENT PLANS

The research did not come across any examples of management plans having been shared with affected communities. In general, information that has been provided by the oil companies was haphazard.

APPROPRIATE COMPENSATION MECHANISMS

A large number of examples of unsatisfactory compensation has been encountered, indicating flaws in the existing compensation mechanisms. Prevailing issues are:

- ◆ No transparency about compensation granted and subsequent mistrust and accusations, including diversion of compensation monies by authorities.
- ◆ Use of compensation monies by authorities in non-affected communities without adequate discussions and consensus.
- ◆ Poor documentation.
- ◆ The right to compensation for people whose rights have been violated during the war, guaranteed by the CPA, has been completely ignored.

The field research has shown several cases of preventable grievances, indicating poor company-community engagement. Among the encountered preventable grievances were:

- ◆ Rejection by stakeholders of requests to relocate to places that they claimed were inappropriate for settlement.
- ◆ Numerous complaints about improper handling of claims for compensation of damages directly caused by oil operations, notably:
 - dispossession of land
 - pollution and related loss in livelihood
 - damages caused by 'produced water'
 - unexplained ailments and deaths of animals
 - breaking of promises related to service provisions or the building of roads.
 - Insufficient or ineffective development benefits, notably in health, education and transportation.

Concerning grievance mechanisms, the observed mechanisms do not comply with the Petroleum Act and the UN Guiding Principles. They are insufficiently legitimate in the sense that they have insufficient trust from all stakeholders and fail to deliver appropriate accountability. Their equitable accessibility is not guaranteed, leaving ground for jealousy and different outcomes for identical cases. They are not sufficiently predictable in the sense that they have no clear timeframes and means of monitoring implementation. They do not ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage on fair and informed terms. They are not transparent in the sense that parties are well informed about progress. There are no guarantees that they are rights-compatible and ensure that that outcomes and remedies accord with internationally recognized human rights. And finally, they are too ad hoc to be a source of continuous learning by drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

In all, the field research shows that the community engagement practices of the companies up to 2011 have not lived up to international standards, and shows important gaps with the South Sudan Petroleum Act 2012.

Conclusion

Since the conclusion of the CPA, oil companies operating in Pariang County, and indeed in other areas of Southern Sudan, have continued to have a negative image among local people, with whom they have limited contact. It is probable that oil companies perceive locals as over demanding, and instead prefer to deal with local leaders. In part, the gulf of perceptions and relations between locals and oil companies is a consequence of the bitter legacy of the war years, during which many people were subjected to egregious abuses by security forces that provided security to oil companies. The most serious cause of the bad relations, however, is the perception that oil companies do not care about the interests of the local people. They are viewed as being concerned with taking oil and not giving back to the owners of the land from which the oil is extracted.

The dangers posed to local people by the activities of oil companies, such as pollution of the environment and appropriation of land, have continued to militate against better relations with local people. Moreover, lack or inadequate compensation for losses suffered by the local people is another grievance against oil companies. Furthermore, limited development has continued to fuel anger, resulting in demonstrations and other disruptive actions undertaken by local people. Keen to maintain peace and security, local authorities have cracked down on some unauthorized actions against oil companies with the result that some anger is increasingly being directed at the local leaders in the county. The deterioration of relations between local people and their leaders is compounded by disputes over management of compensation money provided by oil companies.

Local committees formed by the county commissioner handle compensation issues. Some local people, however, think these committees are not managing the compensation well. This is a very important issue as Southern Sudan is likely to become an independent country in the not distant future, and local grievances need to be contained to avoid worsening insecurity in a very unstable part of the Southern Sudan.

Under pressure, oil companies have become more willing to provide compensation for losses linked to their activities as well as implementing development projects, as was already required under the CPA.

The South Sudan Petroleum Act of 2012 obliges the Government and the companies to comply with the highest international principles for community engagement. If well implemented these are likely to maximize the petroleum's contribution to the country and its people, and create a solid social support basis. For this to happen, existing routines will have to change and both companies and authorities will have to change attitudes and priorities.

Recommendations

1. Government authorities and oil companies should put more resources into local development activities, ensure that the local environment is protected, and create more employment opportunities for young people.
2. Local committees formed by counties and other local authorities so as to deal with oil companies should be more transparent in managing any compensation provided by oil companies, and in their dealings with local people to minimize suspicion, even accusations, of wrong doing on the part of authorities. They should make public financial, contractual and other relevant documents relating to compensation as well as information on beneficiaries.
3. Local authorities should maintain an up-to-date record of people who have received compensation and those seeking compensation, and expeditiously satisfy genuine demands.
4. Oil companies should hire local staff with sufficient authority to deal with local grievances as well as engage in discussions on broader development plans that will become the basis of community work. Such plans should include well-thought out strategies to improve living standards, protect the environment, expand infrastructures, and create job opportunities.
5. Civil society organizations should be encouraged to establish bases in Pariang and other oil-rich counties and subsequently expand operations. At present only one NGO has staff based in Pariang, a situation that should be changed. NGOs play a crucial role in extending services at the local level as government authorities are often very weak and poorly resourced. They could also potentially play a role in resolving disputes between local people and oil companies and between local people and their leaders.
6. Civil society organizations should follow up compensation issues as a way of providing assurances to local people that whatever resources are provided by oil companies to local authorities are apportioned fairly and put to the best use.
7. Support by civil society organizations in the areas of transparency and accountability should be extended to the local levels. Indeed, it should be targeted at all levels of government.
8. Although maintaining peace and security is crucial, local authorities should focus more on persuasion of people who protest against oil activities and less on detentions and other punitive measures as these can escalate tensions and mistrust of local authorities.
9. It is paramount to implement Petroleum Act art. 94 about dispute resolution and arbitration: "The licensee or contractor shall establish a dispute resolution mechanism in accordance with the regulations, open to all persons or groups who are affected by or may affect petroleum activities, and that address

grievances against the licensee, its contractors, and subcontractors. The mechanisms shall comply with the highest international standards." The Government is to impose its implementation right away, and require from the oil companies annual and comprehensive public reporting of policies, actions, and outcomes in this respect.

10. It is equally paramount to implement Petroleum Act art. 100 about prior contracts, that reads: "When a project involves existing petroleum activities, the contractor or licensee shall carry out and pay for an independent social and environmental audit, in compliance with international standards to determine any present environmental and social damage, establish the costs of repair and compensation and determine any other areas of concern." Urgent Government action is required.

Oil Industry Labour Practices in South Sudan

Author: John A. Akec

Table 1.
Petroleum consortia and share
distribution

Name of Consortium	Share distribution	Block(s)
GNPOC, now GPOC	40% CNPC 30% Petronas 25% ONGC Videsh 5% Nilepet	1,2,4
WNPOC-1, now SPOC	68.875% Petronas 24.124% ONGC 7% Nilepet	5A
PDOC/ Petrodar, now DPOC	41% CNPC 40% Petronas 6% Sinopec 3% Tri-Ocean 10% Nilepet	3,7

Introduction and Research Objectives

South Sudan declared its independence on 9th July 2011, and with that declaration the new nation has automatically inherited a multibillion oil industry, which until independence, had been controlled by the North as early as 1993 and especially from 1999 when Sudan began to export oil by exploiting its oil reserves estimated at 6 billion barrels, about 0.6 percent of world's proven reserves.¹⁷ Between them, Sudan and South Sudan rank third amongst Sub-Sahara African oil-producing countries, after Nigeria and Angola, and African fifth in term of proven reserves.¹⁸ Sudan oil production rose from 2,000 barrel per day in 1993 to 470,000 barrel per day in 2009.¹⁹ South Sudan's portion of this combined oil output is about 75 percent or about 360,000 barrel a day.

Before the independence of South Sudan, the country was divided into 23 prospective blocks, most of which were allocated to companies with exception of just 2 blocks.²⁰ The main international companies that have invested and continue to maintain major stakes in both Sudan and South Sudan's oil industry are: China National Petroleum Corporation (CNPC), Malaysian state-controlled Petronas, and Oil and Natural Gas Corporation Videsh (ONGC) owned by

the Indian government.²¹ The companies are organized into three consortia or Joint Operating Companies (JOCs); namely Greater Pioneer Operating Company (GPOC; formerly GNPOC)²², Sudd Petroleum Operating Company (SPOC; formerly WNPOC-1), and Dar Petroleum Operating Company (DPOC; formerly PDOC/Petrodar); see Table 1 for the distribution of shares. In this chapter the old names, still used at the time this research was carried out, are used.

Given the war circumstances and the environment of wide-scale conflict under which this industry had developed in Sudan, it is small wonder that the industry has come under fire from civil society, human rights activists, faith groups, and local communities.²³ For instance, while local community leaders acknowledge the necessity of bringing experts from outside, the fact that not only educated youth are not employed but also "gates men and drivers come from Khartoum²⁴". The companies involved have not followed international best practices that will guarantee the building up of social support basis, protection of environment, respect for human rights, and pursuit sustainable development.²⁵

²¹ ECOS, "Sudan's Oil Industry on the Eve of the Referendum", December 2010.

²² The JOCs were renamed in 2011 and GoRSS announced the seizure of Sudapet (Sudan's national oil corporation) shares in WNPOC (Block 5A) and PDOC with the intention of having them allocated to Nilepet, South Sudan's national petroleum company; 'Sudan accuses South of seizing Sudapet shares', Sudan Tribune, 17 November 2011.

²³ ECOS, "Community Concerns, Sudan's Oil Industry after the Referendum", Conference Report, March 2011, p14-15.

²⁴ Ibid, quoting a community leader from Unity State.

²⁵ Ibid, quoting a citizen of Pariang County in Unity State.

¹⁷ ECOS, "Facts Sheet II: The Economy of Sudan's Oil Industry", October 2007.

¹⁸ Ibid.

¹⁹ Jill Shankleman, "Oil and State Building in South Sudan, Special Report 282", United States Institute of Peace (USIP), July 2011.

²⁰ ECOS, "Facts Sheet II: The Economy of Sudan's Oil Industry", October 2007.

One of the areas of immense importance, which if timely addressed, will enhance the opportunities to build social support for the sector is a focus on betterment of labour practices and workers' rights. This aspect of governance, amongst many others, have been found wanting. For example, information in public domain describes a tale of discrimination against South Sudanese in recruitment in skilled and highly-paid jobs, wage rates, training opportunities, medical and social security insurance.²⁶

The main objective of this report is to provide a review and analysis of the labour practices in South Sudan's oil industry at the time of independence, and weigh these practices against those stipulated in the national and international labour laws, conventions and norms, and to the new South Sudan Petroleum Act; and to make recommendations to the companies and the government of the Republic of South Sudan about necessary measures to take in order to comply with national, and international laws and norms, as well as established best practices in the sector.

Applicable laws and regulatory perspectives of both Sudan and South Sudan have been reviewed as the former shaped the industry, and the latter is applicable today. This in addition to applicable UN and ILO conventions, such as the International Covenant on Economic, Social and Cultural Rights; the ILO Conventions, the Declaration on Fundamental Principles on Rights at Work and its Follow-up, in 1998; and the UN Guiding Principles on Business and Human Rights.

METHODOLOGY

The study focuses on the three above mentioned JOCs that have operational concessions in South Sudan. Field research was carried out in late 2011, after South Sudan declared independence. Through a letter from the Ministry of Petroleum and Mining in South Sudan, the researchers were able to gain access to information.

About 80 individuals were interviewed across companies starting with Human Resource (HR) Managers of all the three companies to base camp field managers, exploration and production superintendents, field engineers, maintenance engineers, operators, catering staff, warehouse labourers, and down to casual workers. HR managers gave an overview on companies' recruitment policies and statistics on employees in each company. This information was then verified by interviewing employees of the company (both core and outsourced) in the field. Researchers spent 4 days at Palouge, Thar Jath, and Unity Field. Within each operating base camp (OBC), onsite staffs were interviewed as well as staffs working at Central Processing Facilities (CPFs). Interviews were structured and were guided by a questionnaire; and when possible, the interviews were digitally recorded for later reference.

The study covered oil operators' core staff (both direct hire and partners' secondees), agency-employed workers, and contractors' employees. Members of local administration and community leaders were also interviewed to provide a perspective on labour practices on oil industry from their viewpoint. Some conversations took place with some expats and international employees working for a number of sub-contractors but could not qualify as 'interviews' because attempts to do so were unsuccessful as many of them declined, probably because it may go

against confidentiality clauses in their contracts. The researcher who conducted this work was accommodated at the main operating base camps during the field study and that gave opportunity to live and experience working environment. Oil companies facilitated travel to the field and back to Juba.

It is worth mentioning that most of the informants interviewed in upstream operations were mostly from the production side. It did not cover those working in drilling and development of new wells. Exploration tends to take place in the dry season, while the field research took place between October and mid December 2011, a time when the rainy season is just tailing off and its effect is still visible in the form of water poodles all over the place. By coincidence, a former employee of exploration contractor was interviewed. It turned out that the overall picture is not much different. Downstream companies such as pipeline operators, refineries, and export terminals were not part of the study.

In regards to drilling and well development operations, some aspects are carried out by contractors, and many contractors' employees were reluctant to be interviewed. However, engineers at the construction department within PDOC were interviewed. Also at least one engineer working for a construction company involved in preparation and installation of rig platforms gave some useful information which shows that labour practices in drilling activity follow similar pattern as those which will reported on production, administration, and general services subsections within the oil sector.

Beside direct interviews, valuable information was obtained through informal conversations with individuals in dining-halls, offices, and at oil processing facilities and power plants, while being driven on the road, and under trees during tea or lunchtime breaks.

It needs to be noted that PDOC has more people interviewed (33 informants), followed by WNPOC (26 informants), while GNPOC has least number of employees interviewed (22 informants). This was because at GNPOC there were very few but overworked South Sudanese (mostly volunteers) doing work since April 2011 when North Sudanese employees pulled out from the oil fields within Unity State. It was therefore much harder to catch them for interview as most of them were moving up and down most of the time.

It should also be pointed out that by carrying out this research across the three JOCs and not concentrate on just one joint operator or area, has allowed the research to cover a wider spectrum of job descriptions and led to more information being uncovered than would otherwise have been. The researchers were also able to refine questions as work progressed from one company to another and hence facilitated the gaining of better and deeper insights. Put differently, the quality of information obtained got better down the line.

When possible, telephone numbers of the informants/interviewees were recorded for later contacts to clarify points or confirm facts when need arose.

Last, but not least, given the fact that South Sudan inherited to a great extent the labour system from Sudan, this study reflects that reality.

²⁶ ECOS Preliminary Report: Oil and Peace in Sudan, June 2010, *unpublished document*; Melut County, Memo of Protest on Petroleum Activities in Melut, 2009.



Casual workers at WNPOC, 2011

Applicable National Laws

South Sudan's government budget depends heavily on oil income. Larger benefits will surely accrue if the industry's governance is underpinned by sound legal frameworks and labour practices that are in compliance with accepted international conventions. At the very least, the industry must be seen to comply with the existing national laws. In addition, South Sudan's oil industry should comply with international legal principles and industry best practices in labour and workers' rights. That way, the sector will come to create a good image for itself as well as erecting a business environment that stands a better chance of attracting more foreign direct investment (FDI) from international business community.²⁷

The oil industry in South Sudan developed under Sudanese law.²⁸ Thus, and in accordance with Article 208 (1)-(3) of Sudan National Interim Constitution 2005, South Sudan appointed representatives could access oil contracts but not renegotiate them or ensure their observance.²⁹

Since 2011 under stewardship of the Government of South Sudan, the oil industry must adjust

²⁷ ECOS, *Post-Referendum Arrangements for Sudan's Oil Industry: How to Separate Siamese Twins*, December 2010; Shankleman, J. *Oil and State Building in South Sudan*, Special Report 282, United States Institute of Peace (USIP), July 2011.

²⁸ See the Interim National Constitution of the Republic of Sudan 2005; and 1997 Sudan Labour Code.

²⁹ The Interim National Constitution of the Republic of Sudan, 2005; Article 208 (3) stipulates: "The existing oil contracts shall not be subject to renegotiation."

³⁰ South Sudan reviewed contracts signed before the signing of the CPA in January 2005; for the operational consortia these revised contracts (Transition Agreements) were signed in January 2012. In July 2012, the new Petroleum Act was signed.

to a different legal setting and comply with the laws of South Sudan.³⁰ In addition, it is expected to observe relevant international principles and conventions, notably those of the United Nations and the International Labour Organisation.

The next paragraphs will review and discuss the relevant national and international laws and conventions, and their implications for South Sudan's oil industry. The review of applicable UN and ILO's conventions is carried out under 'regulatory context' of this chapter.

APPLICABLE LAWS OF SUDAN

As the labour practices as described in this study came into being under the laws of Sudan, these are first reviewed. In regards to adopting legislative frameworks and systems of best practices in the management of natural resources, Article 11(3) of Sudan's Interim National Constitution states: "The State shall promote, through legislation, sustainable utilization of natural resources and best practices with respect to their management."

Concerning issues of social justice and equality of opportunity in employment, Article 12(1) stipulates: "The State shall develop policies and strategies to ensure social justice among all people of the Sudan, through ensuring means of livelihood and opportunities of employment."

To assert Sudan's readiness to comply with international conventions and treaties on peace and economic justice, Article 17(a) on foreign policy states: "Foreign policy of the Sudan shall serve the national interest and shall be conducted independently and transparently with the view to achieving the following: promotion of international cooperation, specially within the United Nations family and other international and regional organizations, for the purposes of consolidating universal peace, respect for international law, treaty obligations and fostering a just world economic order."

Article 27(3) on the Nature of Bill of Rights states: "All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill."

On the Freedom of Assembly and Association, Article 40(1) of the Interim National Constitution of Sudan says: "The right to peaceful assembly shall be guaranteed; every person shall have the right to freedom of association with others, including the right to form or join political parties, associations and trade or professional unions for the protection of his/her interests."

Furthermore, Article 190(a)-(g) sets a framework for management of petroleum sector, and specially section (a) (i) – (iii) talks of: "sustainable utilization of oil as non-renewable natural resource consistent with: national interest and public good...the interest of the affected state... and the interest of the local population in the affected areas..."

Then Article 190 section (b) goes further to assert: "empowerment of the appropriate levels of government to develop and manage, in consultation with the relevant communities, the various stages of oil production within the overall framework for the management of petroleum development."

Finally, 1997 Sudan Labour Code governs and regulates all aspects of work and labour relations in the country. It regulates a whole range of labour-related concerns that include but

not limited to establishment of institutions charged with monitoring and supervision of labour practices, labour-related statistical data gathering, registration with authorized employment agencies, certification and verification of workplace environment, health and safety at work, training and apprenticeship, employment contracts, industrial relations and workers and trade unions, complaint procedures and industrial tribunals, amongst others. It also determines 12 years as the minimum age for anyone to be legible for employment (Article 21(2)), and sets the terms for employment of women and young people.

However, 1997 Sudan Labour Code excludes public sector companies. Article 2(e) states: "The following categories of persons shall be excluded from the application of the provisions of this Code: employees of the Federal Government, the Governments of the districts, public bodies and undertakings, and public sector companies whose conditions of employment are governed by special laws and regulations with the exception of the provisions related to industrial relations and safety."

It also exempts casual labourers and those carrying out employment tasks that can be completed in less than 3-month period (Article 2(h) subsection (ii)).

A few observations need to be made on how Article 2 parts (e) and (h) of the Sudan Labour Code have impacted or are likely to impact oil industry's labour practices. Firstly, this exemption as will appear in the report, does affect Sudan oil industry labour practices in that it leaves large numbers of local workers, mostly casual, without legal protection from exploitation or manipulation of contracts of employment, specially for outsourced casual workers who have been in employment with oil companies for years without proper contacts and without enjoying any special job-related benefits such as holiday pay, and free or subsidized access to health care.³¹ Although Article 29 (2) should guard against such exploitation by preventing multiple renewal of short-term contracts: "A contract of employment for a limited period of time shall not exceed two years and shall not be renewed more than once with the same establishment. The period of renewal shall run consecutively from the period of preceding service." Because casual workers have no contract as such, they are vulnerable to exploitation.³²

Secondly, Sudan's Ministry of Petroleum, as a consequence of exemption of public sector companies by 1997 Sudan Labour Code, had rightly developed a Unified Human Resources Policy Manual that regulates all aspects of employment within the three joint operating companies (JOCs).³³ More will be discussed on the impact of such exemptions in sections on the workforce in the oil industry.

³¹ A plumber working as a casual employee for Petroneed and based at one of oil operating companies in South Sudan told the author: "I have been working in this base camp taking responsibility for all plumbing and water sanitation system for the last 6 years. My contract is terminated every 89 days and then renewed after 7 days from termination date."

³² The above plumber should have been protected by Article 29 (2) of 1997 Sudan Labour Code. In other words, Petroneed is in breach of this article of the law.

³³ The Unified Human Resources Policy Manual (GNPOC) reads on Organisation and Salary Structure, Part 1: "a) The Company makes decision on the Company's organisation chart subject to approval of the Board of Directors and the Minister (...) c) The Minister approves a salary structure and other supplemental allowances for employees. Any changes to the salary structure shall be approved by the Minister."

APPLICABLE LAWS OF SOUTH SUDAN

When it comes to South Sudan, there are many articles in the Transitional Constitution, if applied correctly to the oil and gas sector, that would bring about accountability, improve business environment, and result in sustainable development that brings lasting benefits to the society as a whole.

Article 9(3) on the Nature of the Bills of Rights stipulates: "All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified or acceded to by the Republic of South Sudan shall be an integral part of this Bill."

Article 25(1) of Transitional Constitution of the Republic of South Sudan asserts: "The right to peaceful assembly is recognized and guaranteed; every person shall have the right to freedom of association with others, including the right to form or join political parties, associations and trade or professional unions for the protection of his or her interests."³⁴

Article 38(2) (a) says: "All level of government shall: protect and ensure the sustainable management and utilization of natural resources including land, water, petroleum, minerals, fauna and flora for the benefit of the people"

Article 45(3) holds: "Citizenship is the basis of equal rights and duties for all South Sudanese."

Article 169(2) stipulates: "Equitable economic development shall be based, inter alia, on the agricultural and agro-industrial sectors, and promotion of private sector conducted in accordance with the best known practices of sustainable development within a framework of transparent and accountable governance."

The guiding principles in the Constitution in regards development of petroleum and gas sector says in Article 173: "Petroleum and gas development and management shall be guided by the following principles: (b) creating lasting benefits for society; (c) promoting efficient and sustainable resource management; (f) promoting fair competition to increase productivity and efficiency in the petroleum and gas sector; (g) promoting balanced and equitable development; (h) creating a secure and healthy investment environment; (j) building the capacity of South Sudanese within the petroleum and gas sector."

SOUTH SUDAN PETROLEUM ACT 2012

The South Sudan Petroleum Act 2012 includes certain provisions on employment, specifically on hiring and training nationals, and local content. Clause 65 stipulates that companies should "ensure that opportunities are given for the employment of South Sudanese nationals who have the requisite expertise or qualifications at the various levels of petroleum activities" and for unskilled labour only South Sudanese nationals should be contracted. The Act is very explicit on non-discriminatory practices, stating "a person carrying out petroleum activities shall not engage in discriminatory practices on grounds of race, religion, tribe, nationality or gender in the conditions of work and in the remuneration conditions of service provided for of personnel." Next to this, companies "shall, in consultation with the Ministry, prepare and implement plans and programmes to train South Sudanese nationals in job classifications and in all aspects of petroleum activities, including plans and programmes for post-graduate training and scholarships."³⁵

³⁴ The Transitional Constitution of the Republic of South Sudan, 2011.

³⁵ Petroleum Act 2012, Clause 65.1-5.

Companies are required to develop a Local Content Plan, which should include “a detailed plan and programme for local recruitment, employment and training, including post-graduate training and scholarships.”³⁶

To conclude, both Sudan and South Sudan have instituted laws that if implemented when designing employment policies and workplace environment in oil sector can have positive impact on workers, their families, and society as a whole. It could mean jobs that are accessible to all citizens who are eligible, that no one will be discriminated against in employment benefits or denied access to jobs based on factors such race, religion, or political affiliation; that employees will be trained and given skills to be competent in carrying out tasks; that local population will be consulted in matters that affect their livelihood and be compensated if necessary to build up social support capital; that no one will be exploited or made to carry out unsafe work without proper protection; that oil workers should be allowed by the oil operating companies to organize themselves into unions and associations to protect their jobs and interests through bargaining and democratic participation in decision making, that every employer’s right is guarded and protected by law; that companies can be made to account should they fail to uphold the standards set by national laws in the workplace.

Last, but not least, by subscribing to international conventions and committing the oil companies to adoption of internationally accepted systems of best practice in labour relations in oil and gas sector, South Sudan’s oil industry aims to attract foreign direct investment. The existence of such laws will also allow local civil society groups to monitor labour practices in the oil sector and bring companies to account when they are proved to be in breach of the articles of these national laws and international conventions and treaties signed by the national government.

Regulatory context

SUDAN’S REGULATORY PERSPECTIVE

Under the Government of Sudan, the oil industry was heavily controlled and regulated, but respect for the rules was routinely absent, as this report will show.

Sudan’s Ministry of Petroleum, Energy, and Mining produced a Unified Human Resources Policy Manual³⁷ based on the 1997 Sudan Labour Code³⁸, Sudanese Insurance Law for 1990, and the Exploration and Production Sharing Agreement (EPSA) signed between the Government of Sudan and oil companies. Because oil companies are tightly supervised by the government, they qualify to fall into the category of public sector companies and hence were be exempted from the 1997 Sudan Labour Code except for aspects related to health and safety in the workplace.

The 70-page Manual outlines in great detail personnel policies, and provides broad guidance

³⁶ Ibid. Clause 67.2b.

³⁷ A copy of the Unified Human Resources Policy Manual was obtained from GNPOC HR Department.

³⁸ Please note Article 3 (e) of 1997 Sudan Labour Code exempts public sector companies such as oil operating companies on which the government exercises great control: “The following categories of persons shall be excluded from the application of the provisions of this Code: employees (...) public sector companies whose conditions of employment are governed by special laws and regulations with the exception of the provisions related to industrial relations and safety.”

“We really do not know about all the benefits we are entitled to. One has to discover by digging deep, nobody will bother to tell us these benefits exist.”

Field engineer at DPOC, 2011

to line supervisors how to administer their duties. Companies were expected to adhere to the policies outlined in the document and administer the policies in their day to day operations and governance. Where the Unified Human Resources Policy Manual was silent, guidance had to be provided by Sudanese Labour Act 1997.³⁹ The Manual covered a wide range of policies that include: organisation and salary structure, recruitment policies, hours of work, public holidays and leaves, allowances and bonuses, employment benefits, performance appraisal, promotion, training and development, medical care, employee relationships, employment termination and retirement, among others.

That said, many problems arose with the implementation of the Unified Human Resources Manual. First, the most obvious shortcoming of the HR Policy Manual was that it only applied to those referred to in the Policy Manual as ‘established employees’ such as direct hire, Partners and Sudapet secondees; and ‘non-established employees’ who provided emergency cover for employees on sick-leave or providing short-term professional service on a direct contract with oil companies not exceeding 4 to 6 years.⁴⁰ Outsourced contract staff and casual workers who accounted for approximately 50 percent of the total workforce were not administered by the Policy Manual and hence left to their own devices. So whatever rights or privileges were outlined in Human Resources Policy Manual, outsourced and casual workers had nothing to gain from them. This left them exposed to exploitation and arbitrary treatment.

³⁹ Greater Nile Petroleum, Unified Resources Policy Manual, Terms of Reference, page B. This sounds like contradiction in terms. As public sector companies, they are exempted from 1997 Sudan Labour Code which the Unified HR Policy Manual use to fill any gaps in regulation.

⁴⁰ Ibid: p 18.

Table 2.
Maximum Amount of Car Loan
Payable to Eligible GNPOC Employee

Employee grade	Amount in SDG	No. of monthly instalments
15 and above	52,800	48
10-14	33,600	48

Source: GNPOC: Unified Human Resources Policy Manual, p. 31

Second, even for many direct hire staff, the content of HR Policy Manual was not widely disseminated throughout the companies and there is no indications that it formed part of new employee orientation arrangement, during recruitment interviews, nor were copies of the Manual available to ordinary employees, only to HR departments and company top management. One field engineer with Petrodar at Palogue oil base camp (OBC) told this author: “We really do not know about all the benefits we are entitled to. When one is faced by a problem and then forced to dig deeper, one soon discovers that there are benefits one is entitled to that would solve that problem, and yet nobody will bother to tell us these benefits exist in the first place.”⁴¹

Third, even when someone knew his or her entitlement to a benefit, he or she might still not receive it. For example, one South Sudanese operator during an interview at a GNPOC’s Field Processing Facility (FPF) in Unity Field said during an interview: “As grade 11 and having served for more than 6 years, I am entitled to receive a car and land/house loan, but despite applying for it, I have never received a reply”.⁴² As shown in Table 2, the employee just quoted is entitled to a car loan of SDG 33,600, and yet he never got it despite his knowledge about his eligibility and despite applying for it. Fourth, the Unified Human Resources Policy Manual does not mention or recognize workers unions and associations. Perhaps it was the Sudan government’s policy to compensate for a wilful absence of trade unions in the sector with the Manual, which could violate Article 40 (1) of the Interim National Constitution of the Republic of Sudan.⁴³

Fifth, the Policy Manual is more or less an internal document used by the companies to provide guidance on administration and organisation of the work. However, the document is not publicly available and open to scrutiny by employees and civil society groups. Hence, no one can hold the companies to account should they deviate from the letter and the spirit of the Unified Human Resources Policy Manual.⁴⁴

⁴¹ The absence of workers unions to represent the interests of employees allows these kinds of practices to go on unchallenged. A HR manager told the author that the HR department of the company represents interests of the employees and, that it tries to make all the information about workers benefits available by publishing the Unified Human Resources Policy Manual on company’s internet portal. However, it was not there when visited by the author.

⁴² Unified Human Resources Policy Manual stipulates: “Employee [who has] served the Company [for] not less three (3) years on continuous basis may be granted a car purchase loan.” Part 8 Benefits, p. 30.

⁴³ Article 40 (1) of the Interim National Constitution of Sudan says: “The right to peaceful assembly shall be guaranteed; every person shall have the right to freedom of association with others, including the right to form.

All three oil operating companies have been served with copies of Unified Human Resources Policy Manual and so did the South Sudan’s Ministry of Petroleum and Mining.⁴⁵

SOUTH SUDAN’S REGULATORY PERSPECTIVE

In July 2011, the Government of South Sudan took over the management and regulation of its oil sector. This brought the full responsibility for the management and regulation of the sector. This is stipulated clearly in Article 37 (2) (a) of the Transitional Constitution of the Republic of South Sudan (TCRSS): “All level of government shall: protect and ensure the sustainable management and utilization of natural resources including land, water, petroleum, minerals, fauna and flora for the benefit of the people”, and Article 173: “Petroleum and gas development and management shall be guided by the following principles: (b) creating lasting benefits for society; (c) promoting efficient and sustainable resource management; (f) promoting fair competition to increase productivity and efficiency in the petroleum and gas sector; (g) promoting balanced and equitable development; (h) creating a secure and healthy investment environment; (j) building the capacity of South Sudanese within the petroleum and gas sector.”

In terms of workers’ rights in the sector, Article 9 (3) on the Nature of Bills of Rights: “All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified or acceded to by the Republic of South Sudan shall be an integral part of this Bill.” This obliges the government of the Republic of South Sudan to follow international labour laws and conventions (see below for a discussion of these international laws and conventions). Furthermore, Article 25 (1) of the TCRSS asserts: “The right to peaceful assembly is recognized and guaranteed; every person shall have the right to freedom of association with others, including the right to form or join political parties, associations and trade or professional unions for the protection of his or her interests.”

By reviewing the Unified Human Resources Policy Manual through the involvement of employees, and possibly civil society and national law-making bodies, and closing the gaps and shortcomings in content and implementation of the Manual such as instituting the establishment of workers unions, and bringing it in line with international systems of best practice, the Government of South Sudan can produce a much improved regulatory framework that allows the industry to thrive, build social support capital, and increase foreign direct investment in the oil sector.

REVIEW OF INTERNATIONAL LAWS, CONVENTIONS, BEST PRACTICES

South Sudan’s sovereignty comes with great responsibilities and high expectations attached to it. For example, Article 1 (1) of the UN International Covenant on Economic, Social, and Cultural Rights (ICESCR) states: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”⁴⁶

⁴⁴ A production engineer with Petrodar told the author during the research interview: “Although there is a Unified Human Resources Policy Manual, it is neither found in most offices, nor applied fully...”

⁴⁵ Personal communications with Vice Presidents of WNPOC and GNPOC. The author also saw a copy of the Unified HR Policy Manual at WNPOC Human Resource Department, however, it was GNPOC’s HR Department that provided a copy used in this research.

⁴⁶ International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly, December 1966; entry into force 3 January 1976.

To add flesh to the above article, Article 6 (1) –(2) of the same UN Covenant urges State Parties, to: “recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”; and that the steps taken by signing State Parties “to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”

Regarding equal opportunity, fairness, and provision of good working conditions, Article 7 of the ICESCR impresses upon the signing State Parties to “recognize the right of everyone to the enjoyment of just and favourable conditions of work” by ensuring, among other things, “minimum wage for all workers,... fair and equal remuneration for work of equal value without distinction,... a decent living standard for workers and their families,... safe and healthy working conditions,... equal opportunity for everyone to be promoted in his employment to appropriate level, ...rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”

Article 8 (1) (a) of the Covenant instructs the State Parties to ensure: “The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.” Article 9 of the Covenant requires all States Parties to recognize “right of everyone to social security, including social insurance.”

To safeguard against discrimination with regards to economic, social, and cultural rights, the International Convention on Elimination of All Forms of Racial Discrimination (Article 5 (e)) encourages States Parties: “undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: economic, social and cultural rights, in particular: The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration.”⁴⁷

What’s more, the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work (1998)⁴⁸ urges all its members without exception: “to promote and to realize, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.”

While (b) and (c) are important principles, nevertheless, the immediate and pressing demand is for the oil industry in South Sudan to implement principles stated in (a) and (d); that is, freedom of association and right to collective bargaining, and the elimination of all forms of discrimination in the workplace.

Freedom of association and right to collective bargaining are seen as indispensable tools for realizing higher levels of trust between workers and their employers, and in improving workers’ productivity, and therefore higher economic growth.⁴⁹

Another matter of great importance in terms of company’s corporate social responsibility and systems of best practice is that companies must have some internal non-state grievance mechanisms.⁵⁰ The United Nations Guiding Principles on Business and Human Rights recognizes: “... The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights breached.”

In order to implement these principles, among other things, the report obliges the States to: “...provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.”

One of non-judicial mechanisms touched on by the report is “operational-level grievance mechanism” that should be designed by the companies/businesses in collaboration with the stakeholders that are affected by their operations and includes company’s employees. Such non-judicial grievance mechanisms operate at interface between company and the employees or communities that are affected by operational issues, and can be administered by the companies themselves, or executed in collaboration with trusted external actors or third parties.⁵¹

While both Sudan’s and South Sudan constitutions commits themselves to “respect international law, treaty obligations and fostering a just world economic order”⁵², and that “All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified or acceded to by the Republic of South Sudan shall be an integral part of this Bill”⁵³, all of which

49 Report of the Director-General: Working Out of Poverty, International Labour Conference 91st Session, International Labour Office, Geneva, 2003.

50 Report of Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises in relation to Guiding Principles on Business and Human Rights and Implementing the United Nations “Protect, Respect and Remedy” Framework to the UN Human Rights Council in March 2011.

51 For more details on operational-level grievance mechanisms; Caroline Rees. *Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned*. CSR Initiative, Harvard Kennedy School, Cambridge, 2011.

52 Article 17(a) of Interim Constitution of the Republic of Sudan.

53 Article 9(3) of Transitional Constitution of the Republic of South Sudan.

47 International Convention on the Elimination of All Forms of Racial Discrimination, Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969.

48 ILO Declaration on Fundamental Principles on Rights at Work and its Follow-up, adopted by the International Labour Conference, 86th Session, Geneva, 18 June 1998.

imply the two states will abide by conventions such as International Covenant on Cultural, Social, and Economic Rights; this study will reveal to what extent do the pledges by Sudan and South Sudan's laws measure up in reality with the international laws and conventions.

Structure of the Oil Industry's Labour Market

The oil industry is complex and involves various companies providing specialized services in such a way as to optimize the use of resources and time as efficiently and cost effectively as possible. Before July 2011, there were at least nine categories of employees in South Sudan oil industry:

Partners' and Sudapet Secondees

The shareholders (different petroleum companies such as CNPC, Petronas, ONGC or Sudapet)⁵⁴ nominate some of their own employees to work for the Joint Operating Company (JOC) and negotiate the pay on behalf of each individual. Then the government (Sudan and/ or South Sudan) approves the final appointment. Partners' secondees are then treated as direct employees of the JOC and are henceforth managed and promoted by the JOC.

Direct Hire

These positions are advertised by the JOC and those who meet the job description are short listed, interviewed, and appointed when appropriate. This category of employees are directly involved in company's core business and include positions such as exploration and production engineers, operation, IT department, human resource management, training department, health and safety, finance, and core administration.

Expatriates

Expats are foreigners appointed to carry out jobs that require high technical skills that are rare amongst nationals. They tend to be concerned mainly with maintenance and operation of oil rigs and oil field equipment. Some of these expats work as consultants for oil operating companies. They look after the interests of the employing operator by supervising the work carried out by subcontractors.

Outsourced Manpower

This applies to low skilled jobs. Supplied and paid for by a third party/employment agency, but managed by oil operating companies. Petroneed is a Sudan's based employment company that has been supplying casual and low skilled labour for the oil industry for many years.⁵⁵ A South Sudan based company, Suud, is reported to be replacing Petroneed in those companies that are exclusively operating in South Sudan oil fields after the declaration of independence.

Contractors' Employees

This category is outside the radars of oil operating companies. Nevertheless, it is an important category of employment in the sector. Here, the employees are recruited, managed, and paid by companies that carry out a significant amount of work for oil companies. Examples include

road construction, power plants installation and operation, and oil well equipment maintenance and service companies. Here, there are two types of employment. Those employed directly by the sub-contracting company who tend to be internationals, and those that are paid through an employment agency, and they tend to be nationals.

Casual Workers

Casual workers are employed across the oil industry to do mostly odd or seasonal jobs such as clearing grass around oil fields or at base campsite. There is no job security and continuity is tied to allocated budget for specific tasks. Other employees with status of 'casual worker' can be working for a company for several years without any benefits enjoyed by contracted employees such as paid holiday or medical insurance.

Petroleum Security Service Personnel

These are requested by the company. Under Sudan's management of the industry, the national security and intelligence service department of the Sudanese Government nominated individuals and posted them with the companies. The companies accommodated these security personnel as well as taking responsibility for their monthly remuneration. Before 2005, no South Sudanese was allowed to work in security department. In July 2011, all security personnel within oil companies were replaced by South Sudanese. However, unlike their predecessors from the north, until the time of this field research, the companies had not been paying the salaries of the security personnel as was practiced under the old Sudan. This may be because no concrete agreement has been reached as yet between the government of South Sudan and Joint Operating Companies as to how this is going to be done. Perhaps, this could be described as a 'teething problem' that will disappear with time as contentious issues related to sharing of oil revenue and rent of assets are resolved to the satisfaction of all the concerned parties.

Trainee/Developmental Employees

This category of employees applies mainly to graduate engineers who are initially offered this low-paid position as trainee engineers. After two years, they are assessed to see if they have made the necessary progress. Those who have made progress are promoted to junior engineers through which they progress to engineer, senior engineer, and ultimately, team leader. After leaving trainee status behind, the salary almost doubles from US \$500 to US \$1,000 per month.

It is not uncommon to spend three years in the position of a trainee engineer. A South Sudanese who studied chemical engineering in Canada was offered a job by one of the three consortia as trainee engineer for at least 2 years at a pay of \$ 500 before promotion to junior engineer. This graduate chemical engineer tried unsuccessfully to convince the company to offer him trainee status for no more than 3 months after which he should be taken as junior engineer. When the company refused, this graduate chemical engineer rejected the offer outright and turned his back on South Sudan oil industry and joined a university to teach.⁵⁶

Another issue related to salaries, is that while the salaries are specified in some cases in US dollar and then paid in Sudanese or South Sudanese equivalent, while the conversion rate has not coped with the recent rise of the dollar against the Sudanese pound. That is, in real terms, employees of the oil companies in such cases earn less than they used to.

⁵⁴ Sudapet as the Sudan State owned oil company no longer has rights in South Sudan.

⁵⁵ Petroneed is a Sudan based employment company linked to Sudan's Security apparatus.

⁵⁶ Personal communications with the concerned chemical engineering graduate.

Trainee Engineering Intern

Strictly, these are not employees in the real sense of the word. Most of them are engineering students (chemical, petroleum, mechanical, and electrical) in the final or semi-final year. However, they are paid. For example, one of engineering interns with WNPOC was paid SSP 700 per month.

Composition of the Oil Industry's Workforce

Late 2011, the three Joint Operating Companies employed between them some 3,500 core/direct staff, and more than 3,000 contractor staff, in addition to unidentified number of casual workers, see Table 3.

Considering direct hire employees, Sudanese⁵⁷ have for long constituted a majority, taking a lion share of 85 percent in GNPOC, 71 percent in WNPOC, and 83 percent in PDOC. The share of South Sudanese in the workforce in 2011 was 5 percent, 10 percent, and 9 percent in GNPOC, WNPOC, and PDOC respectively; see Figure 1.

This level of representation of South Sudanese in the work force was excessively low, given the fact that most production took place in South Sudan and the availability of eager workers.. Previous conflict in South Sudan and lack of skills are blamed for the under- representation of South Sudanese in the work force. However, there is a wide perception among South Sudanese employees that war between the South and the North, racism, and the religious convictions of its regime have generated a strong prejudice within the industry against employment of South Sudanese in the oil sector even for those with the right skills and qualifications.⁵⁸ It is alleged that oil companies calculatingly supported abusive Government policies and prejudices.

Employment of South Sudanese improved after a South Sudanese became the federal Minister of Petroleum following Sudan election in April 2010.⁵⁹ This development accelerated after South Sudan's declaration of independence.⁶⁰ The shift was further reinforced after the appointment of South Sudanese nationals to the position of vice president in all three joint operating companies.⁶¹

While the composition of the workforce underneath does not reflect gender distribution, the researcher noted that he encountered no women in the field or in any of the oil base camps.

⁵⁷ The share of Sudanese nationals is actually higher than these figures because majority of Partner Seconddees (Sudapet Seconddees) are Sudanese nationals.

⁵⁸ Interviews with South Sudanese workers, one PDOC employee told the author: "Before 2005, South Sudanese were not allowed to work in security department. Until now most sections are headed by Northerners."; ECOS (2008) on page 33 observes: "The companies employ no educated Southerners and routinely dishonour working contracts. GNPOC and Petrodar recruit Southerners for the lowliest jobs only. They are not given any training and are not allowed to stay in the same job long enough to obtain any skills; they are frequently re-assigned and rotated from job to job."

⁵⁹ Communication with Dr. Lual Deng, former Petroleum Minister in the Government of National Unity (from July 2010 to June 2011) who told the author: "Actually until the time I left the Ministry [June 2011], the number of South Sudanese employed was less than 1% in all the Joint Operating Companies. In the Ministry of Petroleum we managed to raise the representation of South Sudanese to about 20%."

⁶⁰ A document obtained by the researchers from Petrodar HR Department indicates the company's new manpower plan to recruit around 542 in all job categories which will bring the representation of South Sudanese up to 44%.

⁶¹ Communication with Dr. Lual Deng, former Petroleum Minister, Sudan National Unity Government (from July 2010 to June 2011).

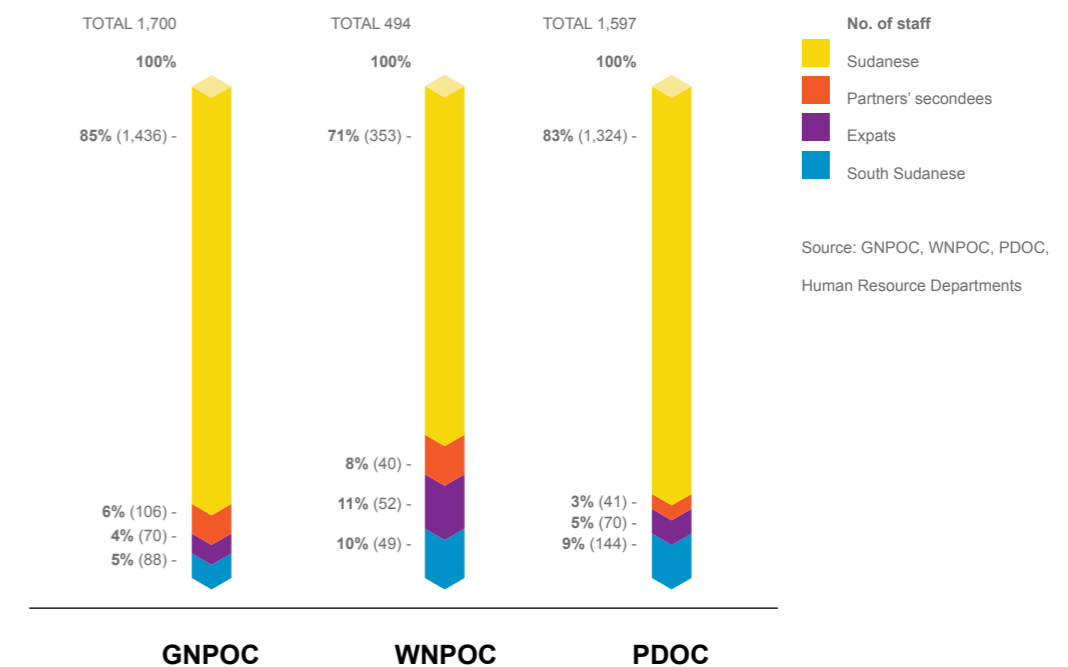
Table 3.

Distribution of Workforce across three Consortia, late 2011

Consortium	Direct Hire Staff	Contractor Staff	Total
GNPOC	1,470	1,300	2,770
WNPOC	492	360	852
PDOC	1,516	1,400	2,916

Figure 1.

Breakdown of GNPOC Core Staff, late 2011



However, there were women in JOCs' Khartoum Head Offices in finance, administrative, and secretariat positions.⁶²

HIRING AND RECRUITMENT

Direct Hire

In the core area of Joint Operating Company's (JOC) business, employees are hired directly. The core business of the company relates to monitoring of oil well daily crude, and monitoring and recording important parameters of production well such as oil level in the well, reservoir pressure, crude temperature, and ration water in the crude.⁶³ It also includes operation of field processing facilities that cleanse the crude and remove chemicals and other solids before pumping it into the pipeline on its way to export terminal. Management of oil field operations and maintenance staff, finance, administration, aviation, IT, communications, and other support staff fall within JOC core business. Construction, electric power supply, catering, cleaning, drilling operations, and operation and installation and maintenance of oil pumps are not regarded as core business for joint operating companies.⁶⁴

According to the Unified Human Resources Policy Manual, vacancies were advertised and applicants screened and those shortlisted interviewed by a recruitment panel. The best candidates were selected and names submitted to the top management for appointment. The appointments were then approved by the Ministry of Petroleum and Mining who represented the interests of the government. Only if no competent national was available to fill a certain vacancy, it could be filled by an international/ foreign staff.⁶⁵ The international staff taking the position had to agree by contract at some point in the future to vacate the position should a qualified national become available for the job. This practice is continuing under the Government of South Sudan. The joint operating companies identify and interview potential candidates and submit names of those nominated for positions to the Ministry of Petroleum and Mining for approval.

Partners' Secondees

This category was a type of direct hire. However, secondees were nominated by shareholding companies in various consortia. The salaries were negotiated between the government (of Sudan) and the oil companies. Once agreed, the secondee joined a company and salary was fixed irrespective of the position the worker holds. That is, the salary remained fixed, even if the assignment or position within JOC changed over time as need dictated.

Nationalization of Positions

Under Sudan, the oil contracts typically obliged companies to hire 80% Sudanese nationals within 10 years after the signing of the contract. This was termed "Sudanisation."⁶⁶ It obliged companies to do all that was needed to ensure that large number of Sudanese would qualify

for the available positions to replace international workers and ensure effective and efficient operations. This policy was specified in the Unified Human Resources Policy Manual and worked as follows:

1. A position was identified that could be filled by a national.
2. Profiles of 4 national employees were reviewed.
3. The best of 4 were selected.
4. The selected candidate left their current position with the intent to 'shadow' the international staff according to a time schedule.

The candidate was made to understand that their current position would be filled by another employee and should they fail to make satisfactory progress according to schedule, they would be fired or have to seek reemployment with the company, the chances of success which could not be guaranteed. The candidate assisted the international staff with the task for a prescribed period. Progress was reviewed and if the national staff had acquired sufficient competence to replace the international worker, the replacement would take place and the international worker left his or her position. Nationalization also targeted positions filled by secondees of international partner companies such as Petronas, and China National Petroleum Corporation (CNPC).

Employment Preferences and Equal Opportunity Policy

According to Unified Human Resources Policy Manual⁶⁷, priority for employment followed the following preferences: For direct hire vacancies, priority was offered to qualified Sudanese nationals. Fresh (new) Sudanese university graduates were employed as trainees in relevant positions. Applications from suitably qualified international candidates were considered if no qualified Sudanese candidates were identified to fill the vacancies. No direct relative should be employed within the same department or unit of a Joint Operating Company (JOC).

That being the case, there is nothing that suggests that South Sudanese had the same opportunities as northern Sudanese and profited from these arrangements. On the contrary, before the signing of Sudan Comprehensive Peace Agreement (CPA) in January 2005, South Sudanese were extremely underrepresented in the workforce in oil sector.⁶⁸ After the April 2010 election, a South Sudanese was appointed as Petroleum Minister in the Federal Government. Through a kind of affirmative action, he claims to have increased the representation of South Sudanese in the Ministry of Petroleum to about 20 percent. His attempts to increase the representation of South Sudanese in oil industry, however, "were met with stiff resistance from the JOCs."⁶⁹

As to women representation, none were appointed to any roles that involved field work responsibility. Hence, there was a bias for appointing women in head offices in finance, planning, and secretariat positions.⁷⁰

⁶² WNPOC Second Head, Manpower Planning department, a woman, told the author: "Cultural norms and values in Sudan militate against employment of women in roles that might involve field work. When the administration moves over to South Sudan, the situation may change as we might have different values and cultures."; GNPOC HR Manager said about affirmative action for women: "Because there are few [no] women in the field, there is a bias for recruiting women in the Head Office in planning, finance, and secretariat roles."

⁶³ Communication with production engineer in Palogue.

⁶⁴ Communication with Mr. Bior Ajang, former Petrodar Vice President.

⁶⁵ GNPOC Unified Human Resources Policy Manual, p 1.

⁶⁶ Interview with GNPOC Human Resource Manager.

⁶⁷ Unified Human Resources Policy Manual, p. 1. This information was confirmed through the interviews with HR managers of all the three JOCs.

⁶⁸ Interviews with South Sudanese workers in GNPOC, WNPOC, and PDOC.

⁶⁹ Communication with Dr. Lual Deng, former Minister of Petroleum, Sudan Government of National Unity (from July 2010 to June 2011).

⁷⁰ Interview with GNPOC HR Manger.



WNPOC oil facility, 2011

OUTSOURCING PRACTICES

Non-core jobs or jobs requiring highly specialized technical skills were given to national and international employment agencies to fill.⁷¹ Non-core jobs include general services such as construction, roads works, security of the base camps and oil fields, cleaning, catering, grass cutting around the base camps and oil fields, and room service. Two companies: Centroid (joint venture between Petronas 30% and Sudapet 70%) and Dietsmann provided manpower for drilling and rig operations. Petroneed, an employment agency owned by Sudan national security and intelligence, provided manpower as casual and non-core staff in addition to security services. After 2011, new entrants in South Sudan, Suud and VSS (Veterans Security Services) started to take over the work previously contracted to Petroneed in GNPOC and WNPOC respectively. At the time of writing, no substitute contractor was announced yet to take over the South Sudanese on Petroneed contract working for PDOC. Hence, PDOC has taken over paying them salaries directly until such time when a substitute is found.

There is a fear among oil workers that South Sudan is following a wholesale adoption of Sudan model as exemplified by replacing Sudanese petroleum security personnel with South Sudan national security organs personnel, without fundamentally changing the structure or mandate of security provision. A disappointed South Sudanese acting field base manager at GNPOC Unity Field base camp described this approach to reform as “copy and paste of Sudan oil sector governance policies.”⁷²

⁷¹ Communication with Petrodar’s Vice President and confirmed by Human Resources Managers of the three JOCs during interviews.

⁷² Interview with Acting Field Base Manager at Unity Field OBC.

ISSUES WITH RECRUITMENT PRACTICES

Outsourcing of employment has created exploitative industries. For example, many international contractors choose to have nationals sign a contract with a third party manpower company in Sudan.⁷³ While the contractor manages the employee, the manpower company receives the wage from the company, deduct a large chunk of the money before paying the employee wage.⁷⁴

Many casual workers have been exploited through manipulation of their contract. Sudan’s labour laws obliged the employers to grant a more long term or permanent contract after 90 days of continuous employment. Many manpower companies dismiss employees before the 90-day threshold. In some cases, employees working for many years as a casual worker were dismissed every 85 days, only to have the contract renewed in a week.⁷⁵ Casual workers with short-term contracts (less than 90 days) had no employment benefits such as free medical insurance.⁷⁶

Many employees have been working for oil operating companies for many years without prospect of getting a contract unless they have a person in government in South Sudan holding high position to recommend them.⁷⁷ Trainee engineers were exploited as many spend no less than two years working full time and under low wage, irrespective of where they come from.⁷⁸ There is too much intervention by South Sudanese local authorities in recruitment process which has been criticized of unfairness and nepotism (authorities employed people their own relatives or acquaintances) on the expense of competitiveness. The wrong type of people have found jobs instead of more qualified and skilled individuals.⁷⁹ Influential authorities seem to lobby the right level of management within the Joint Operating Companies or the Ministry of Petroleum to appoint specific individuals that may happen to be related to them in one way or another.⁸⁰

⁷³ Many of manpower supply companies are either government owned or owned by companies holding shares in a JOC. For example, Centroid is 70% owned by Sudapet and 30% owned by Petronas, and yet it is charged with recruiting contract staff. Another example is Petroneed which was owned by the Government of Sudan National Security Intelligence. In case of Centroid, there might be a direct conflict of interest.

⁷⁴ One outsourced electrical engineer employed by an electrical supplier company in Unity Field wondered: “The manpower company takes almost half of what I am supposed to earn. I was working as intern for this electrical supplier company before I was employed as a staff, and they knew me better than the company I am now contracted to, why should they [electrical supply company] do such a thing?”

⁷⁵ Article 2 (h) subsection (ii) exempts casual labourers and those carrying out employment tasks that can be completed in less than 3-month period. This Article has been clearly abused to keep employees for more than two years under low wage and without any benefits, which runs against Article 29 (2) of 1997 Sudan Labour Code that says: “A contract of employment for a limited period of time shall not exceed two years and shall not be renewed more than once with the same establishment. The period of renewal shall run consecutively from the period of preceding service”. A plumber with GNPOC interviewed by the author said he was dismissed every 85 days and reemployed a week later since 2006.

⁷⁶ Interview with WNPOC Second Head, Manpower Planning and Recruitment. This was later confirmed by interviews with at least a dozen casual workers in Palogue, Thar Jath, and Unity Field OBCs.

⁷⁷ A young man working as a room cleaner told the author during research interview at Unity Field oil base camp: “I am doing this work in hope of getting the job I aspire to once I am in the system because I have no influential person to recommend me to get a better job in this company.”

⁷⁸ A production engineer from Sudan working for Petrodar at Palogue expressed his dissatisfaction: “I spent three years before being promoted to junior engineer. I also saw many of my colleagues spending up to 4 years as trainee engineers.”

⁷⁹ Interview with Attorney, Melut County in Palogue. He told the author: “Interference of local authorities in employment has led to a lot of nepotism and unfairness in employment in oil sector. Recruitment responsibility should rest with the labour office.”

⁸⁰ Nepotism is a form of corruption which nobody admits. Talking to those who are looking for work or are working but looking for better position and can’t find it, believe if one doesn’t know someone influential in the oil company, the she or he won’t get hired.

Local government labour offices have not been doing a good job to regulate the recruitment of local people nor do they do much to monitor unfair labour practices going on in the oil industry. Often, they intervene after employees have been dismissed.⁸¹

Chinese contractors are perceived to have low standards, well below South Sudanese law, pertaining to workers' rights.⁸²

Work Environment and Conditions

FIELD-BASED ACCOMMODATION AND FEEDING

With exception of local casual workers, the great majority of oil industry's workers on the field rotation shift live in specially constructed and fenced off oil base camps (OBC's). OBCs provide sheltered accommodation to staff and workers. Some of the rooms are shared by up to 4 individuals. There is constant supply of water and electricity. Food is provided on site by contracted catering companies. Most, but not all, rooms have television set and internet. Some rooms are also fitted with telephone system. The situation varies from one company to another.

Socially, these places are akin to isolated army garrisons in no man's land.⁸³ For an average of 30 days, workers from distant places live away from their families. A provision of modest sports, gym, and entertainment have been made but only few employees take the trouble to use them. Perhaps, by the time they are back to camp in the evening, most of the workers are too exhausted to do anything else besides dropping on bed to take rest. Work stops between 12 noon and 2pm when most workers have lunch for an hour and then rest for another hour before resuming their duties. However, some locals employed with oil companies who are not accommodated on site have no place to rest during the 2-hour break.⁸⁴

In terms of quality of accommodation in South Sudan oil base camps, it would appear Petrodar has the best, followed by WNPOC, while GNPOC (Unity Field oil base camp) has the worst accommodation.⁸⁵

81 Interview with Attorney, Melut County in Palogue.

82 Through interviews with many oil workers, it was apparent that there exists a general perception among workers that locals working for Chinese service companies in oil sector are more likely to be unfairly dismissed. These sentiments were echoed by Melut County Attorney. Engineer working for PDOC he is always obliged to double check any maintenance work carried by Chinese contractors as "Chinese are very likely to cut corners."

83 South Sudan may need to look into these arrangements which were much influenced by prevailing security situation during the North-South war. Asked about one thing that needs to change about work environment, a production engineer told the author: "It would be better to live on site with my family."

84 A local carpenter working for Petrodar told the author: "The break time is not enough for me to go back home and I have no room to take rest onsite. Most of the time all I do is to find a shade under a tree to sit until time to resume work comes. In contrast, those who have rooms in the base camp onsite can have siesta and can better get refreshed."

85 In Unity Field Oil Base Camp, rooms are getting old and creaky for lack of maintenance, whereas where the accommodation for labourers and casual staff is extremely run down and overwhelmed by uncut bushes and grass.

86 The author measures this in terms of how long one can turn up late and still find enough to eat and in terms of variety and quantity provided. In Palogue, one can turn up 35 minutes late and still finds food available, although not necessarily with same level of choice and variety as when turning up on time. The same is almost true to a lesser extent in Unity Field. In Thar Jath, both variety and quantity are missing and food is all taken up in less than 10 minutes of opening of refractory!



GNPOC employee accommodation, 2011

In terms of quality and quantity of feeding⁸⁶, Petrodar again tops the list, followed by GNPOC, while WNPOC (Thar Jath oil base camp) is the poorest in both quality and quantity.⁸⁷ With no shops around the base camp, the situation in Thar Jath in regards to feeding borders scarcity as the workers hardly have enough to eat.⁸⁸ Asked about what they don't like working for WNPOC, some of workers answered: "food".

WORKERS' TRANSPORTATION

Great majority of employees are accommodated in the base camp. However, when camps are full, local employees (mainly casual workers or outsourced workers) live at home and travel to work by company transportation every day. At Petrodar's Palogue base camp, 2 buses are used to transport about 180 out of 300 in a shift employees to work every morning. This has proved inadequate and because the buses have to make more than one trip to complete transporting everyone, many employees are arriving late to work and return home late.⁸⁹

87 Apart from very limited choice and variety at Thar Jath oil base camp, those who arrive 10 minutes after the opening of refractory/restaurant find nothing to eat. Interestingly, catering at Thar Jath and Palogue is contracted to a Chinese company, Sijing. While it was possible to interview the Chinese Sijing manager in Palogue, the Sijing manager at Thar Jath, avoided the interview with the author by not honouring appointments and not picking up his phone when called by the researchers. Long term workers in Thar Jath told the author that catering services have deteriorated since Sijing took over the contract.

88 A clearly discontented engineer at Thar Jath's field processing facility told the author: "Given the limited choice of what to eat in Thar Jath oil base camp, I fear what will happen to me if I fall sick. That is why more than half of my luggage's load when coming back from a field rotation break is comprised mainly of food."

89 A member of the Petroleum Workers Union in Petrodar representing South Sudanese Petrodar employees told the author: "There are only 2 buses with capacity of 45, which can take only 180 by going twice, thus leaving 120 out of 300 workers in a shift without transportation." He also added: "those who come on a second bus arrive late at work and are also labelled as laid back and late comers by the company that is responsible for the problem in the first place!"

WORKING HOURS AND SHIFTS

A typical working day consists of 12-hour that includes 2 hours of break, starting at 7 am and ending at 7pm. For many casual workers, the working day is 8 hours. That is starting 7 am and finishing 5 pm.

Broadly speaking, all direct hire staff and the majority of outsourced workers work 28-day field-based rotation/shift. Then they take a holiday for 28 days before resuming. It needs to be pointed out that not all workers change shifts at one single whoop, but shifts take place at individual level, from field OBC (Oil Base Camp) manager to operators, to engineers, to administrators, and down to warehouse staff. There is much overlap of shifts as employees individually come and leave in an orderly fashion. It is also possible for an employee shift to be lengthened for a few days, weeks, or even months in case the ‘cross worker’, the term used for an employee holding the same position when the incumbent is on leave, is not back on their desk because of sickness or due to other compelling reasons. Moreover, as shown in Table 4, the length of the shift may vary from minimum of 28 days (for all PDOC, GNPOC, and WNPOC) to maximum of 5 months (for Sijing).

Certain jobs such as electrical supply maintenance, exploration and production, catering management, base camp administration, plumbing, etc are almost 24-hour occupations because those holding those positions are expected be on-call even beyond the official working hours.⁹⁰

Issues with Shifts

As mentioned above, there is a wide variation of shift length from one company to another. Hence, we note that shift length may range from 28 days⁹¹ to five months in some instances which is too long for those who will be staying away from their families.⁹²

Moreover, direct hire and expat workers get their monthly salary irrespective of whether or not they are in the field (on shift), or are on a shift break (off shift). However, some workers signed up with subcontractors are paid only for time spent on active field service (on shift), but not when they are home and out of active field service (off shift).⁹³ That means a certain category of workers employed by subcontractors could be paid a salary of 3 months during the time they are on the shift, and not pay for 1 month which is the length of break when off the shift. In other words, they have no income when they are in break and not in active field-based service.

And for the employees whose families live far away from Khartoum or Juba, the companies employing them just provide transport from the base camp to Khartoum or Juba. The rest of the journey to family homes outside the above two main cities is covered by the employee’s own resources or means. For those in low-paid jobs, the cost of transport from Khartoum or Juba to home and back is a substantial percentage of the monthly salaries spent on travel home and back is very significant. For casual workers and some of Petroneed staff, this used to put them at great disadvantage.⁹⁴

⁹⁰ Interview with individuals holding those positions.

⁹¹ In Unified Human Resources Manual , field-based rotation (shift) is 30-day on field followed by 30-day leave, p. 13 However, in practice, it is 28-day field work followed by 28-day paid leave for direct hire workers.

⁹² A foreign worker employed by a subcontractor told the author as we were chatting while on food service queue during a lunchtime in Unity Field that one thing he would like to see changed is to harmonize the length of shifts across the oil companies and subcontractors.

⁹³ Interviews with individuals affected by this policy.

Table 4.
Working Shift Duration/Field-Based Rotation

Company	Working Shift	Off Shift
GNPOC	28-day	28-day
WNPOC	28-day 35-day (Expat)	28-day 35-day
PDOC	28-day	28-day
Wärtsilä	35-day	35-day
Petroned	2- month 85-day (Casual workers)	1-month 7-day
Sijing	5-month (managers) 3-month (catering staff at Palogue) 2-months (catering staff at Thar Jath)	1-month 1-month 1-month
Yarmouk (Maintenance and Service Contractor)	3-month	1-month
Zad Oil (Contractor)	4-month	1-month

MATERNITY, FESTIVE, AND SICK-LEAVE

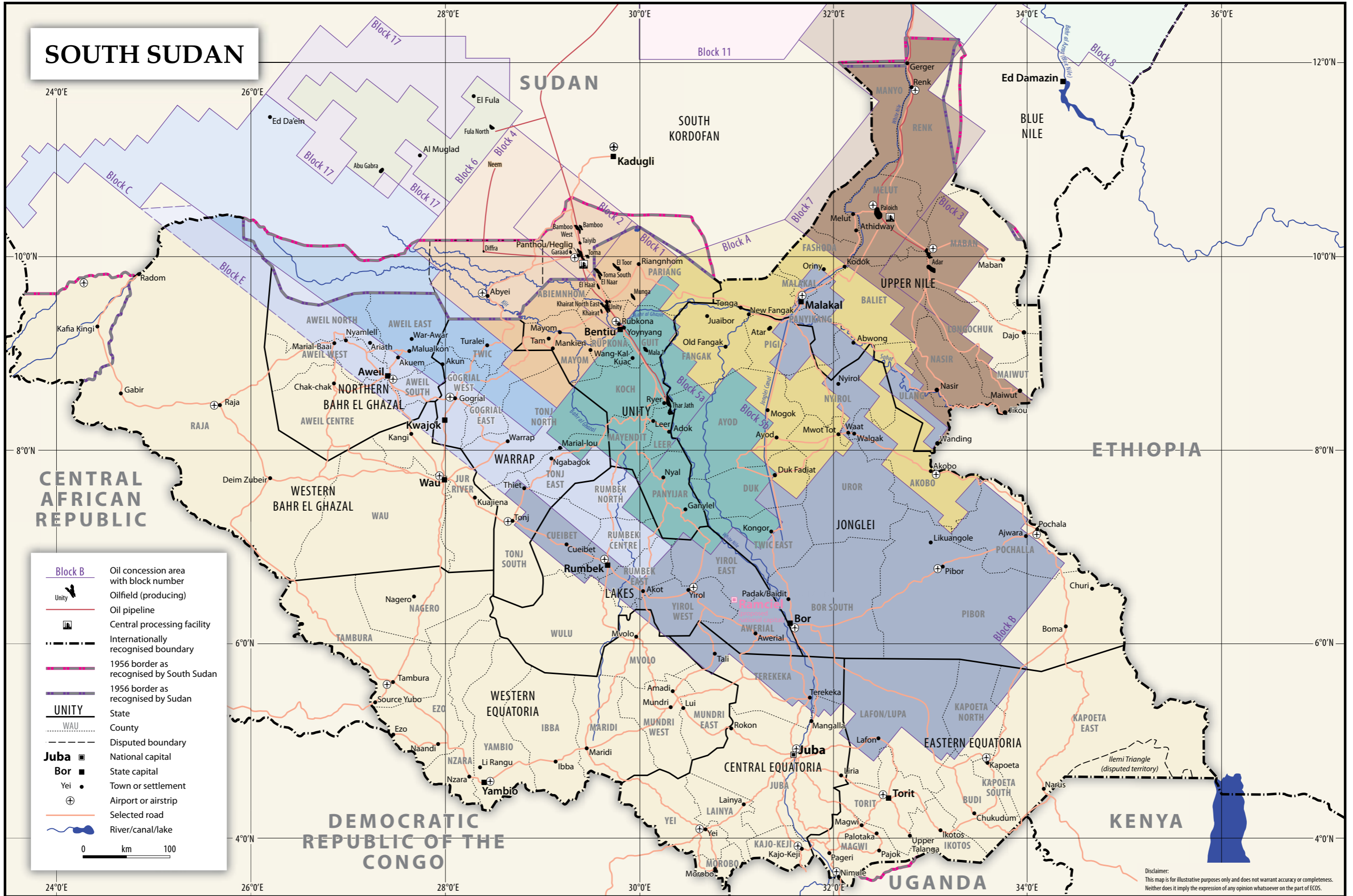
There is no maternity leave for fathers during shift and no festive holiday unless it coincides with the time when an employee is on off shift leave. However, if a close relative (family member) is seriously ill, or in case of bereavement, an employee may be granted up to 7 days to attend an operation or a funeral.

RELIGIOUS FESTIVALS ALLOWANCES

Most direct hire staff and contract workers used to obtain one month annual leave pay, 1-month pay for Muslim Ramadan month and 1-month pay for Muslim Eid Adha. All eligible workers received the allowance irrespective of religion or faith they subscribe to during Ramadan and Eid Adha festivities. Even though Christmas and Easter are important religious festivals for a significant number of South Sudanese and other Christian groups such as Sudanese Coptics and many Sudanese from Nuba Mountains, they were not recognized officially by the Unified Human Resources Policy Manual and no oil worker was paid any allowance during those two Christian festivities.⁹⁵

⁹⁴ A gardener earning SDG 700 per months with WNPOC contracted to Sijing said: "It costs SDG 640 from Khartoum to Dhaein in Darfur and back from my own resources. This is a big problem for me with this job."

⁹⁵ Interview with Christian workers.



Furthermore, all oil base camps in South Sudan visited during the course of this research had a mosque. On Fridays, all workers were given additional two hours break after lunch to allow Muslims to attend prayers.⁹⁶ There were no such provisions for Christians.⁹⁷ Hence, it would appear that Sudan oil industry's labour practices were designed around only one faith, Islam, in total disregard for Christians and people of other faiths.⁹⁸ By making it easier for Muslims to attend prayers on Friday, building mosques in oil base camps, and paying allowance to all workers during Muslim festivities; the work environment in oil industry was made favourable to Muslims in comparison to Christians or workers of other faiths.

This bias towards one religious group ignored the country's religious and cultural diversity and put the oil industry at risk of religious discrimination against sections of society. It constitutes a breach of the UN International Covenant on Economic, Social and Cultural Rights;⁹⁹ the International Convention on Elimination of All Forms of Discriminations; and ILO Declaration on Fundamental Principles and Rights at Work (1998),¹⁰⁰ and South Sudan Interim Constitution.¹⁰¹

EMPLOYEES' OCCUPATIONAL HEALTH AND SAFETY

Oil industry poses many hazards to individuals and groups of employees. Risks associated with each hazards depend on nature of the job carried out by an individual or group workers. Some of common work hazards are caused by bursting pipelines, produced water in environment, hazardous chemicals in the crude or those added to crude during processing, poisonous gases (mainly H₂S), heavy equipment, flying parts, explosion and fire, falling objects, electric shock, radioactive emissions, snake bites, wild animals and insects (such as bee), and road accidents, among others.

There are considerable variations in provision of health and safety training to employees between the companies and within departments in same company. Training provision ranges from reasonable to none in some situations. At the very best, most of employees in core business of the company have received some basic health and safety awareness. For example, PDOC and WNPOC give two-day training in defensive driving to all its engineers and operators. PDOC and WNPOC give training in first aid, emergency accident response, and oil field accident response. These courses are carried on company's site by third party providers. Almost all the companies impose maximum speeds to be adhered by all drivers in the company, especially in the field (60 Km/hour for GNPOC).

GNPOC has installed speed monitoring equipment in its vehicle fleet. This has been done in order to reduce the risks of car accidents on the roads. It is also company's policy that any driver who over-turns a vehicle would expect to be automatically fired from his job. In addition

⁹⁶ Instead of resuming at 2.00 pm as usual, work on Friday resumes at 4.00 pm.

⁹⁷ South Sudan engineers working in a field processing facilities told the author that on Sunday, those South Sudanese on duty have to agree among themselves as to who will go to church, while others do their jobs to the extent that sometimes: "4 people could be doing the job of 10."

⁹⁸ There is a case to be made of possible breach of International Convention on Elimination of All Forms of Racial Discrimination (Article 5 (e)) encourages States Parties: " undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: economic, social and cultural rights, in particular: The rights to... just and favourable conditions of work,...."

⁹⁹ Article 7 of the International Covenant on Economic, Social and Cultural Rights.

¹⁰⁰ ILO Declaration on Fundamental Principles and Rights at Work (1998).

to health and safety awareness, employees use protective equipment such as boots, hand gloves, helmet, and safety masks (for dust and keeping away insects such as bee).

About 600 locally recruited South Sudanese in PDOC and signed up with Petroneed never received any health and safety awareness training and barely use protective equipment. This might possibly have contributed to reported deadly accidents.¹⁰²

ISSUES WITH OCCUPATIONAL HEALTH AND SAFETY

There are wide variations and inconsistency in provision of training to employees on occupational health and safety from satisfactory, to inadequate, to none-existence. Some employees get significant amount of training and awareness/orientation courses. Others barely receive any.¹⁰³ Some lab technicians expressed discontent to the author during interviews about inadequate provision of protective safety equipment. More complaints about lack of protective equipment came from WNPOC and GNPOC South Sudanese workers, such as boots, hand gloves, and safety masks. Workers complained that they have gone over a year since they were issued with uniform, boots, and other safety outfits. It is very common to see an employee of an oil company wearing a uniform bearing a logo of another company he does not work for. Security guards are reported to fall ill very frequently due to insect bites. Kitchen workers have complained of suffering from respiratory health problems due to smoke and fumes in the kitchen.¹⁰⁴

Medical Insurance and Health Services

All directly hired staff, expat workers, and contractor workers have medical insurance that covers the employees and their nuclear family and direct parents. That medical insurance provides free medical treatment to employee, wife, children (until age of 17), mother, and father. Most treatment takes place in Khartoum or abroad if necessary. Petroneed contract workers recruited in Khartoum had medical insurance. However, locally recruited Petroneed employees were not covered by medical insurance. The same applied to casual workers doing serious technical service jobs such as plumbing or maintenance work in base camps. That is, they were not medically insured.

It was also quite common that two employees are doing the same job, same skills, and work same number hours per day, but have different employment contracts such that one enjoys free medical treatment and their families while the other do not. This situation has been a demoralizing factor and a cause for resentment amongst South Sudanese employed by Petroneed.

¹⁰¹ Article 9 (3) on the Nature of the Bills of Rights of Interim Constitution of the Republic of South Sudan stipulates: "All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified or acceded to by the Republic of South Sudan shall be an integral part of this Bill."

¹⁰² Chairman of Petroleum Sector Worker Union in Petrodar commented: "The 600 South Sudanese labourers which were employed in 2006 by mutual agreement between government and Petrodar in order to address imbalance never received any health and safety training. One worker lost his sight in a chemical accident and seven others died due to accidents in the last five years..."

¹⁰³ The lack of training for non-core staff was also reported during research interviews in Unity Field which is ran by GNPOC. In Thar Jath (WNPOC), many casual workers reported not receiving any form of health and safety training. A welder working for a subcontractor in Palogue denied receiving any health and safety training when he joined the company but acknowledged receiving "safety briefing about use of equipment before executing any new job. This includes briefing on dress that suits the nature of the job at hand."

¹⁰⁴ An assistant cook with one of JOCs served by Sijing said in an interview with the author: "There should be health checks for catering staff every six months. This is the general practice in catering industry. But not in Sijing."

Each operating camp has a small clinic to treat minor illnesses and injuries, and carry out emergency and patient evacuation service in case of serious illness or injury. The base clinics operate a 24-hour schedule. These clinics are typically staffed with medical doctor, a medical assistant, a number of nurses, a receptionist, and a translator. In Thar Jath operation base camp (WNPOC), Faisal Hospital in Khartoum had the contract for supplying equipment and medicines and Petroneed employs some contract staff on similar terms as for other oil consortia. The staff worked on 28-day shift as described above. In Unity oil base camp (OBC), the clinic was maintained by Kordofan Insurance Company, which also employed the doctors and nurses.

These clinics are classed as primary health care facilities and most lack essential diagnostic tools such as X-ray equipment, although they have stock of a few life-saving drugs such as insulin and adrenaline. Available equipment includes malaria investigation kits (ICT Test for malaria), nebulizer, Intensive care unit, and defibrillators. Major life-threatening conditions being catered for in these clinics include diabetes, hypertension, and seasonal flu.¹⁰⁵

The base clinics at Unity operation base camp (GNPOC) was headed by a volunteer doctor aided by a few nursing staff and a translator. The contracted doctor has withdrawn since July 2011 when most northern Sudanese workers pulled out of Unity field, citing insecurity in the area as the main cause for leaving. Around the same time, following the economic blockade by the north, some of the clinics, especially one at Unity operation base camp were badly undersupplied with essential life-saving drugs.

In some of these clinics, wage discrimination against South Sudanese health workers has been reported. In one such clinic at Unity base camp, a South Sudanese certified nurse reportedly was paid SDG 500 per month while northern Sudanese cohorts received twice or three times as much.¹⁰⁶ And unlike his colleagues, he had no medical insurance.

Workers Unions and Bargaining Power

Article 25 (1) of Transitional Constitution of the Republic of South Sudan states:

“The right to peaceful assembly is recognized and guaranteed; every person shall have the right to freedom of association with others, including the right to form or join political parties, associations and trade or professional unions for the protection of his or her interests.” Even when under Sudan’s constitution, any workers numbering 15 or more had the right to form a union to protect their rights.

Despite this, the operating oil companies do not sanction nor encourage their workers to unionize. Petrodar had a Staff Association whose function was to support its members socially by raising funds for a member who was getting married or had been bereaved. Almost no directly hired employees with Petrodar and GNPOC were Union affiliates. However, 600 South Sudanese Petroneed-contracted workers employed by PDOC following riots in Melut in November 2006 (also referred to as “locally recruited Petroneed staff” as opposed to Kharoum-recruited Petroneed staff which enjoy most of rights such as free medical health

¹⁰⁵ Interview with the resident doctor, Thar Jath Base Camp Clinic.

¹⁰⁶ The nurse told the author: “Many of my North Sudanese colleagues are paid 3 times as much as I receive”

and paid holiday)¹⁰⁷, are affiliated with the South Sudanese Petroleum Sector Workers Union. Because their employment was meant to quench local community resentment and improve security around oil facilities, there were many shortcomings in the contracts awarded to these workers. The contracts were signed with Petroneed, and the department under which they are employed was Petroleum Security. Hence, neither Petroneed nor PDOC would really want to be associated with them. Many of them lived off the base camp and no adequate transportation was provided, hence many of them arrived late at work. Among them were holders of university degrees and diplomas, vocational technical certificates, and Sudan school certificates. Since their hiring, all received the same salary and all did manual jobs only. This has created resentment among them which affected their work performance.

Field base camp managers and supervisors within PDOC accused this group of South Sudanese workers of laziness, lack of job skills, lack of motivation, and incompetence.¹⁰⁸ On their part, the South Sudanese workers blamed the company of deliberate marginalization and failure to create conducive environment for good industrial relations through acknowledging good performance with incentive, training, promotion, and matching individual skills to tasks by allocating individuals to different departments within the company based on their skill profile, education, and abilities.

On the other hand, northern Sudanese employees at WNPOC formed a union in August 2011. They make no secret that the trigger for forming the Union was to protect the rights of North Sudanese in the now exclusively South Sudan based owned company. This confirms that the oil companies operating under the Government of Sudan were heavily controlled and manipulated by Sudan’s security apparatus which prevented the formation of workers unions and allowed their formation at the time of their choice. On the other hand, the 600 South Sudanese Petroneed labourers who were recruited by Petrodar in December 2006 formed the Melut Petroleum Sector Workers Union in order to fight for the interests such as better pay, medical insurance, and paid holiday, among others.¹⁰⁹ However, they made no headway. This for two reasons: they were small in number and could not affect company operation even if they were to take industrial action. Second, the company recruited them to solve a security problem posed by violent demonstrators of 2006, and hence the company can still function with or without their service.¹¹⁰

South Sudanese workers at WNPOC have formed a 7-member committee to allow them raise any grievances to WNPOC management.¹¹¹ However, it is very weak and rarely makes impact of any significance as far as unresolved complaints and disputes are concerned.

¹⁰⁷ There is a very strong case that under Sudan’s management, the oil industry in South Sudan has not followed International Covenant on Economic, Social and Cultural Rights, 1966, on many accounts, especially failure to provide “fair and equal remuneration for work of equal value without distinction” and failure to create favourable conditions for full and productive employment by providing skills to those who need it through training and vocational programmes. An angry member of the locally recruited Petroneed staff described himself as: “Second class Petroneed staff.”

¹⁰⁸ Interviews with Field Base Manager, PDOC, Palogue Oil Base Camp.

¹⁰⁹ Interviews with Chairman of the Petroleum Sector Workers Union and members of the executive committee. Other South Sudanese who are direct hire or Khartoum-recruited Petroneed workers are not members of this Union, or any other Union.

¹¹⁰ Asked why no one wants to take responsibility to address problems of the 600 locally recruited staff, Petrodar Field Manager in Palogue answered: “They were hired after big demonstrations that almost shut down oil production operations. So they were hired to solve the problem of security, about 700 or so of them were recruited, when Petrodar only needs 300 of them. Hence they are above what is needed by the company. That is why they are kept under Petroneed.”

¹¹¹ Interviews with members of Committee in Thar Jath.



Casual workers at GNPOC, 2011

At the moment, workers cannot negotiate wages collectively. According to Human Resource Manager at GNPOC: “the Sudanese oil industry decided in 1999 to follow Japanese and Chinese model of management of industrial relations in which HR department is expected to take care of employees’ interests; and to flag top management in the company if there are issues pertaining to employees rights that demand attention.”¹¹²

The Ministry of Petroleum in the Republic of Sudan produced a Unified Human Resources Policy Manual, perhaps with assumption that it would compensate for the desire to establish a trade union in 1999. This manual was based on 1997 Sudan Labour Code and set out recruitment procedures, legal relationships, and employee rewards and benefits that were allocated according to well defined criteria. Putting into consideration the guidelines set out therein, each company developed its policies that were aligned with the Human Resource Recruitment Manual. Without Unions to monitor its application, it is unclear whether the Manual has been respected.

This lack or slow recognition to the role of trade unions in the sector was against the national constitutions of both Sudan and South Sudan, and against many of previously cited international covenants and conventions.

This state of affairs in regards to unions does not compare favourably with the situation in South Africa and Nigeria. For example, study by the International Labour Office’s on Industrial

¹¹² Interview with GNPOC Human Resource Manager.

Relationships in Oil Industry in Nigeria depicts a picture of highly unionized and organized industry where workers’ unions play a pivotal role in wage bargaining, enjoy the right to take industrial action when need arises, and right to participate in negotiating work conditions.¹¹³ While in South Africa, the ILO conventions have been incorporated into labour laws and legislation and policies including South Africa’s oil and gas sector.¹¹⁴ Here, oil and gas industry has three main workers unions.¹¹⁵ The three major unions consult and coordinate activities with one another in regards to wage bargaining. There are also several associations dealing with industrial relations and cater for the needs of various interest groups such as Women in Oil and Energy South Africa (WOESA) which was launched in 2002 to ensure more effective participation of women in oil and gas business sector and ventures, and to improve the lot of historically disadvantage women groups (both blacks and whites).¹¹⁶

Complaints and Grievance Mechanisms

Throughout interviews with oil workers, it became evident that Joint Operating Companies (GNPOC, WNPOC, and PDOC), had no mechanisms that allowed employees grievances to be addressed or to handle complaints before they could escalate and provoke confrontations or wide scale industrial disputes.¹¹⁷ Those who felt they were unfairly dismissed or mistreated resorted to the labour office to seek a just settlement.¹¹⁸ Most complaints by the workers of JOCs tended to centre on welfare issues such as money matters, allowances, and unpaid claims, and lack of promotion.¹¹⁹ Other complaints were job-related such as delay of delivery of spare parts or unsatisfactory procurement procedures that impact workers’ productivity and job satisfaction. Such job-related complaints were submitted through direct supervisors.¹²⁰ And there was no unit on all JOCs’ organisation charts to handle workers complaints and grievances. While the Unified Human Resources Policy Manual set out comprehensively a Disciplinary Code with list of employee’s misconducts and associate penalties, the Policy Manual was silent about employees’ complaint and grievance mechanisms and procedures.¹²¹

In order to fulfil company’s social responsibility is imperative that companies set up a credible and effective internal grievance mechanisms.¹²² Since 2012, this is a firm legal obligation in

¹¹³ Sola Fajana, Industrial Relations in Oil Industry in Nigeria, Working Paper No. 237, ILO Geneva, 2005.

¹¹⁴ Shirely Miller and Tanya van Meelis, Industrial Relations in Oil Industry in South Africa, Working Paper No. 238, ILO Geneva, 2005.

¹¹⁵ Ibid: These are the Chemical, Energy, Paper, Printing, Wood and Allied Workers Union (CEPPWAWU), the South African Chemical Workers Union (SACWU), and SOLIDARITY.

¹¹⁶ Ibid. South Sudan can learn a great deal from experience of South Africa as a post-conflict nation.

¹¹⁷ A PDOC petroleum production engineer said: “Nobody in the company is specialized to handle complaints.” A PDOC labourer complained to the researchers: “Since my appointment in 2006, I have never been promoted. It would have been good to have some promotion every year.” Such complaints cannot be handled by a labour office but through the companies’ own internal grievance mechanisms.

¹¹⁸ Interview with Melut County Attorney.

¹¹⁹ Interview with WNPOC’s Exploration and Production Head at Thar Jath oil base camp.

¹²⁰ Maintenance Supervisor, WNPOC: “Shortage of spare parts put me under pressure and leads to client dissatisfaction. I often report this to base camp manager.”

¹²¹ Unified Human Resources Policy Manual, p. 53.

¹²² Report of Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises in relation to Guiding Principles on Business and Human Rights and Implementing the United Nations “Protect, Respect and Remedy” Framework to the UN Human Rights Council in March 2011.

South Sudan. What that means and how it can be implemented is outlined in United Nations Guiding Principles on Business and Human Rights, which codifies the principle that: "... business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights breached."¹²³

Discussion of Research Findings

This report has examined labour practices in oil industry in South Sudan. In particular, the research reviewed and discussed structure of oil labour market, recruitment practices, outsourcing practices, composition of the workforce, employees' accommodation, transportation, employee social and health benefits, health and safety at work, and workers unions. It also reviewed applicable national and international laws, covenants, and conventions that might have influenced the labour practices, or could be brought to bear to improve such practice where there are gaps. Both government of Sudan and South Sudan have committed themselves in their respective constitutions to respect international conventions such as rights of individuals and equality of all before the law.

While the industry can be described as reasonably institutionally well organized and fairly managed, it is true that it is poorly supervised and highly politicized, especially in environmental standards, compensation, and community services.¹²⁴ Although the Sudanese government had put in place a regulatory document in form of Unified Human Resources Policy Manual to guide the management and administration in most aspects of the oil industry in relation to employees rights and benefits based on Exploration and Production Sharing Agreement (EPSA) and 1997 Sudan Labour Code, there were no mechanisms for monitoring the implementation of the Policy, except by the government through the Ministry of Petroleum. This was far from effective.

The industry did not encourage its workers to organize as unions, except only recently when South Sudan declared independence when WNPOC Workers Union was formed in August 2011. It is very likely that the step was taken in order to safeguard the interests of Sudanese workers who constituted the great majority of the workers in the sector, and who were destined to become foreigners with the South Sudan's declaration of independence in July 2011.

In addition to lack of Unions, no evidence was found during this research work that employees of oil companies have a voice in the way industry is managed. The Unified Human Resources Policy Manual which regulates the oil industry was not widely disseminated amongst employees; and in the absence of workers' unions, the policy was not monitored nor was its implementation guaranteed.

Furthermore, elements of design of the work environment (building mosques at oil base camps and not doing the same for churches), and sole recognition of Muslim festive holidays in terms of special festivity allowances paid to all workers during Ramadan and Adha, while ignoring the needs of Christian and other faiths festivities such as Christmas and Easter, undermined social

cohesion within the oil industry and left the Joint Operating Companies (GNPOC, WNPOC, and PDOC) exposed to accusations of religious, or even racial discrimination. Hence, social benefits and work arrangements did not reflect South Sudan's rich cultural, racial, and religious diversity.

It is also noted that [North] Sudanese dominated the employment in the sector at all levels. The slowness of Petrodar management to address complaints raised by the 600 locally recruited South Sudanese Petroneed workers in regards to benefits such as medical insurance, holiday pay, and equal pay for equal work further reinforces the perception among a great number of South Sudanese workers that the oil industry's labour practices discriminated against them.

The CPA and independence have given the South Sudan's government a stronger power to bring changes to the sector that would address these imbalances. Notwithstanding, it takes considerable time and effort for the industry to achieve a labour force whose composition balances operational needs and South Sudan's justified ambition to provide appropriate employment opportunities to its citizens.

On their part, senior managers interviewed denied discrimination against South Sudanese. Instead, they justified their underrepresentation in the workforce, arguing they were lazy and lacked the necessary skills and qualifications. These arguments appear biased and self-serving, considering the fact that oil companies involved few if any South Sudanese in their training programmes, while making impressive efforts to train and hire North Sudanese personnel. The 600 locally-recruited Petroneed staff employed by Petrodar are a case in point. Outsourcing and agency based manpower supply practices have led to mushrooming of parasitic employment practices, exploitation, and manipulation by manpower supply agencies and international contracting companies. As some of manpower supply companies such as Centroid were owned by operators such as Petronas and Sudapet, there was bound to exist a conflict of interest which may negatively impact employees' rights and benefits.

Chinese companies are perceived to be the worst offenders in terms of following international best labour practice in oil industry. Local government has been interfering in a wrong manner most of the time and nepotism has led to local recruitment of incompetence and poorly qualified individuals. Local labour offices also failed to monitor labour practices and ensure fair and equal opportunity for all.

As high risk industry in which jobs are characterized by long working days that can extent for some to unsociable hours and locations, the industry needs to harmonize the length of time workers spent in the field. Research showed wide variations in on-shift and off-shift time across companies and employment categories. Job design and inequality in giving opportunity for training made many employees lose motivation and they are looking for better work environment and opportunity for career advancement.

Independence of South Sudan is both an opportunity and challenge to manage as well as effect positive change in the work environment. Open discrimination against South Sudanese in the sector, a legacy of civil conflict, created mistrust and hostility between local communities and companies, and between [North] Sudanese and South Sudanese working within these companies.

¹²³ Also for more details on operational-level grievance mechanisms, read report by Caroline Rees. *Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned*. CSR Initiative, Harvard Kennedy School, Cambridge, 2011.

¹²⁴ ECOS/ Fatal Transactions (2008).

Last but not least, it is noted that Joint Operating Companies do not have specialized departments to handle workers complaints such as those related to welfare, money, and financial claims and dues. Those who are aggrieved or dismissed unfairly tend to seek justice at labour office and at that time damage has already been done as the employee and the company have already passed a critical corner after which repairing relations is no longer possible.

Before July 2011, many prevailing practices in the oil industry violated Sudanese law and were well below international legal standards and industry best practices. Oil companies will naturally be reluctant to change the practices that they are used to, if only because of the costs and efforts that this would require. During a March 2012 discussion of the draft Petroleum Act, several CEOs of oil companies strongly opposed proposed targets for 'South-Sudanisation' of their companies. Ensuring respect for the law and international norms and standards will require explicit guidance, close monitoring and strict enforcement on the part of the Government of South Sudan.

Recommendations

The recommendations are given to provide guidance to the Government of South Sudan with regards to labour policies in the oil industry. Clearly, the industry has a legacy that cannot be dealt with without tailored measures and close monitoring and enforcement.

1. Outsourced manpower supply practices need close government scrutiny and regulation to rule out parasitic supply practices that overexploit workers. The regulation should put a cap on the percentage of employees' costs that manpower supply companies can pocket. In addition, to eliminate possible conflict of interest, companies with shares in a Joint Operating Company should not be allowed to have financial interests in manpower supply companies (or other service providers to the industry for that matter).¹²⁵
2. Companies must cease to manipulate employment laws in order to exploit casual workers by renewing contracts that are less than 3 months in succession over more than two years. An employee who has been working for a subcontractor for certain period of time must be given a longer term or fixed-term contract such as year, two years, or indefinite contract if they had been serving for more than two years. This should have been practice already under Sudan, in conformity with Article 29 (2) of 1997 Sudan Labour Code: "A contract of employment for a limited period of time shall not exceed two years and shall not be renewed more than once with the same establishment. The period of renewal shall run consecutively from the period of preceding service."
3. Companies must harmonise hours of work and shifts duration across the industry and limit the time of field-based rotation to a maximum of 5 weeks (35days), in order to eliminate excessive long absence of workers from their families.
4. Wage and health insurance discrimination on the basis of nationality, race, or religion against employees must be eliminated to comply with the principle of "fair and equal remuneration for work of equal value without distinction" as the UN Covenant on Economic, Social, and Cultural Rights and ILO Conventions.
5. Companies must strive to give appropriate jobs to people from local communities without sacrificing competence by providing appropriate training to those who deserve it and are in position to benefit from it. That way, the repeat of sort of Petrodar's half-hearted solution to the problem of under-representation of South Sudanese in oil industry (such as that involving 600 locally recruited Petroneed staff in Petrodar) can be avoided. Instead, any policy that aims to increase representation of certain groups should be planned thoroughly with commitment of resources and carrying through with individual career development plans until the goal of more inclusive industry is achieved.

¹²⁵ According to information obtained from GNPOC HR Manager, Centroid which is a manpower supply company, is 70% owned by Sudapet, and 30% owned by Petronas who are both shareholders in GNPOC. There is a case for conflict of interest because Centroid can get away with anything without being questioned by GNPOC, WNPOC, or PDOC.

6. The government of South Sudan must reconsider the 'copy and paste' of Sudan labour policies such as putting national security services in charge of outsourced labour force as was done by the government of Sudan. If war situation dictated that to happen in the past, it may not suit the unique post-conflict situation of South Sudan.
7. The Government of the Republic of South Sudan should ensure that petroleum workers can freely exercise their right to form workers and trade unions to fight for their rights on their behalf in accordance with South Sudan's interim constitution and ILO conventions.
8. Practice of fresh university graduates in "developmental/trainee" positions must be reviewed to keep the period of "trainee-status" to as short as possible (no more than 3 months). This to end the abusive practice of exploiting new graduates by extended low-paid keeping them in under low-wage for too long a time as been reported in the research work.
9. Labour offices in the vicinity of oil operation areas should be mandated and instructed to monitor and report whether the oil industry complies with the law, international conventions, and corporate best practices.
10. Local authorities must stop interfering with recruitment process and desist from any temptation to pressure oil companies to employ specific individuals or groups.
11. The Government of South Sudan should establish vocational technical training centres in oil-producing states aimed at qualifying that young local people for employment in the oil sector.
12. The Government and oil companies must look into redesigning of oil base camps and make them family friendly. This can be done by erecting residences for families, establishing schools, and providing health services, shops, and family recreation nearby. The domino effect will be economic revitalization of communities in and around oil production areas.
13. The government and oil companies must increase women representation in the oil sector.
14. Companies must consistently provide health and safety training to all employees in the sector, irrespective of their employment status or category.
15. Companies must be inclusive when designing work arrangements and social benefits to reflect South Sudan's multi-racial, multi-ethnic, multicultural, and multi-religious society and not to favour one group of their employees over another. In other words, companies must get rid of all policies that may appear to favour groups while discriminating against others.
16. Besides encouraging the formation of unions and trade associations in the oil sector, the government and oil companies should collaborate with workers and communities to develop transparent, accessible, just, legitimate operational-level grievance and complaint mechanisms, that can address grievances and complaints in accordance with the law.

Oil Industry's Impact on Land Use Patterns in Upper Nile State

Author: Dr. Mekalilie Benjamin Bol

Introduction and Research Objectives

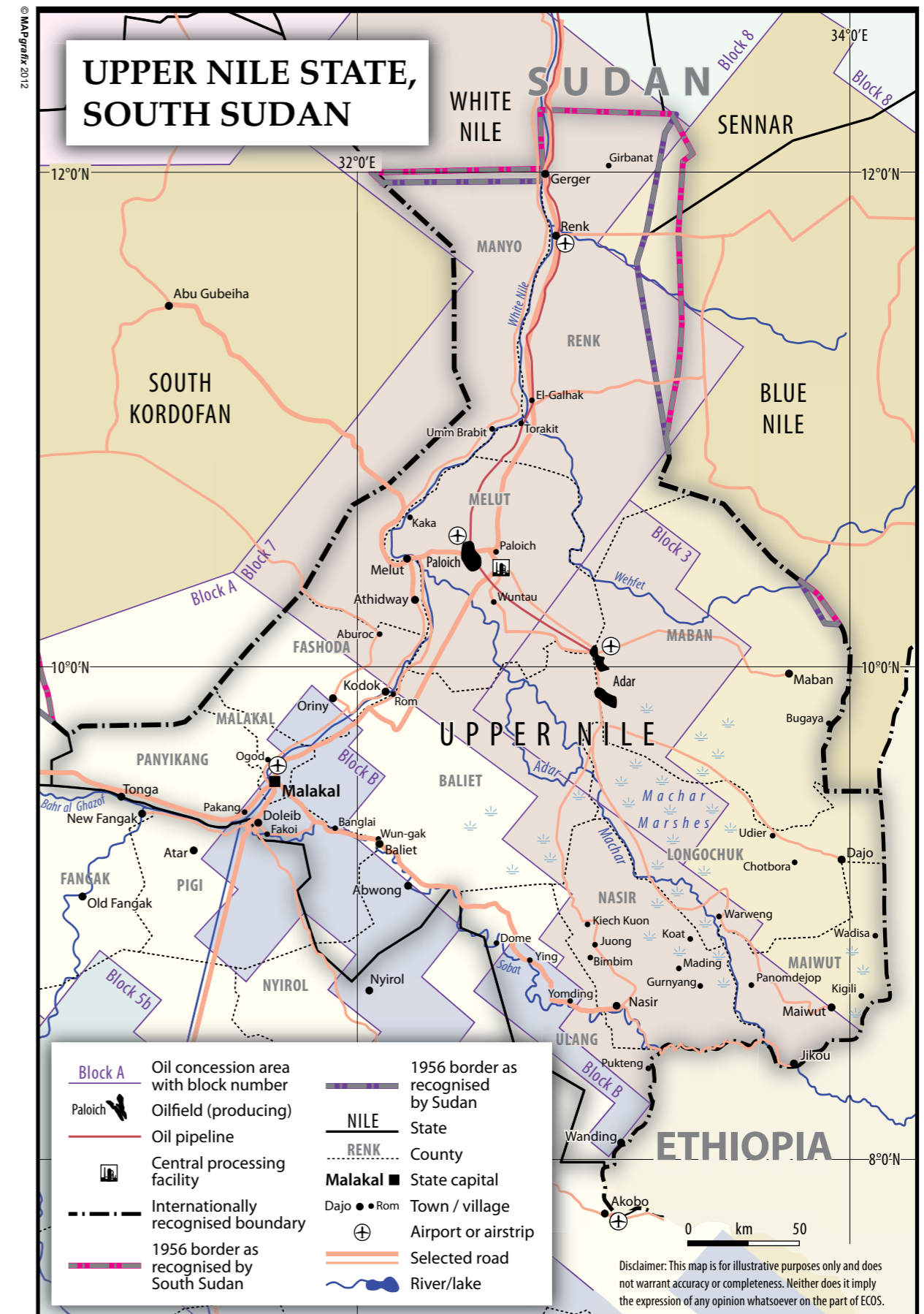
HISTORICAL BACKGROUND TO MELUT AND OIL

Melut County and its inhabitants

Melut County is one of the thirteen Counties of Upper Nile State, situated in the north of the State. It borders Renk County from the north, Maban County from the east, Fashoda County from south west, Akoka County from south east and Manyo County from the west. The word Melut originates from Meyor Luth which means Grey Bull. This County historically has been inhabited by Dinka. The Dinka in Melut County are divided into seven sections that are governed by paramount chiefs: Ageer Bai, Ageer Rer, Aboya, Beer, Ramba, Boweng and Adora. After the signing of the Comprehensive Peace Agreement (CPA) in 2005 and the formation of the Government of Southern Sudan (GOSS) these areas were turned into seven Payams that since have formed Melut County. These Payams are; Melut which is inhabited by Ageer Bai subgroup, Paloich¹²⁶ (Ageer Rer), Gomochoch (Aboya), Goldora (Beer), Thiangrial (Ramba), Panomdiet (Boweng) and Won Amum (Adora).

The Dinka of the northern Upper Nile are the only Dinka that practice agriculture more than rearing of cattle. Therefore their livelihood is centred on cultivation, livestock, fishing and hunting of animals. These people have their own ways of coping with the environment, such that in the dry season when there is no water in their areas they move near the Nile where there is water and go back to their origins in the rainy season where they practice agriculture, rearing of

¹²⁶ Paloich is also spelled as Paloch, Palogue or Faluj.



cattle and hunting. Agriculture was largely practiced in the area but it diminished almost entirely because of the war in which people were forcedly displaced by the Sudanese Armed Forces (SAF).¹²⁷ The displacements continued to make way for oil exploration and expansion into large areas after the signing of the Comprehensive Peace Agreement (CPA) in 2005.

Most of the villages of these seven Payams were left during the war when the SAF and its militias forced the villagers to leave to the big towns such as Melut and Renk, or move north. After the signing of the CPA people started coming back to their villages but they found that most of their villages and land were occupied by the petroleum industry. Citizens complained to the authorities in Khartoum, specifically to the Ministry of Petroleum. They were told however that they did not deserve compensation because the government found no people on the land when the company started its activities in the area. This situation has caused a lot of depression to the citizens because land is a valuable asset and lies at the heart of their social, cultural, spiritual, political and economic life. At the same time, land is the only property the villagers owned.

Land use patterns entail diverse economic, social and environmental impacts. Land use refers to how the earth's surface is used, including the location, type and design of human development. It's also termed development, community design, urban form, spatial planning or urban geography.

Oil Development in Melut County

In 1981 Chevron made moderate oil find at Adar Yale¹²⁸ in the Melut Basin. Because of the war which started in 1983¹²⁹, Chevron suspended its operations in 1984 and in 1990 left Sudan altogether. Two years later a new consortium, Gulf Petroleum Corporation, was awarded a contract for Blocks 3 and 7, and re-opened Chevron's wells in 1996. From March 1997, production rate stood at 5,000 barrels per day and it was the first crude oil to be exported. There was no pipeline yet and the crude was transported by truck to Melut, and from there by barge to Khartoum. By May 1998, production had increased to 10,000 bpd.¹³⁰ In November 2000, the rights to Blocks 3 and 7 were awarded to Petrodar Operating Company Ltd (PDO), a consortium of Chinese National Petroleum Company (CNPC, 41%), Petronas (40%), Sudan Petroleum Company (Sudapet, 8%), Sinopec (6%), and Al Thani Corporation (5%). This was the start of large-scale oil development in Upper Nile. 31,000 b/d field production facilities (FPF) at the Adar Yale and Agordeed fields, a full-size airfield, and hundreds of kilometres of all-weather roads and feeder-pipes were constructed. The village Kotolok, just west of Paloich, became the centre of operations and the hub for the 1,392-kilometre pipeline to Port Sudan that was inaugurated in April 2006. Production increased to over 200,000 bpd. Kotolok was renamed as Majamah, an Arabic word for centre of operation.¹³¹

¹²⁷ The SAF started clearing the area 1991, estimations are that over 15,000 people were displaced; ECOS, "Oil Development in Northern Upper Nile Sudan: A preliminary investigation by the European Coalition on Oil in Sudan", May 2006.

¹²⁸ Disputed area between Melut and Maban Counties.

¹²⁹ Termed the Second Civil War, from 1983-2005.

¹³⁰ ECOS (2006-1).

¹³¹ Ibid.

The upstream oil industry in Upper Nile was developed at a time of forced displacements of indigenous populations through continuous, systematic and organized attacks on civilian settlements by government and pro - government forces. The settlers were forced out of their areas in order to enhance the companies' security to operate on the one hand, and leave the land without owners who could claim land rights afterwards on the other hand. Next to this, the Government and its militias were desperately eager to use the oil facilities and infrastructure for military purposes. Therefore, there was no consideration for applying a sustainable development approach that could help to establish sound coexistence and mutual benefits for the citizens and the company. All activities took place without proper studies on the effect of the industry's impact on land use patterns, especially when the area was inhabited before. Instead, long lasting conflicts and disputes developed over the industry's encroachment into rural settlements in terms of transportation, prospecting, safety and security, exploration, and production.

RESEARCH OBJECTIVE AND METHOD

The purpose of this research is to document the business practices of the oil industry in Sudan/ South Sudan at the time of independence of South Sudan in relation to industry's related changes in land use patterns. These are compared with national legislation and international standards and, where necessary, recommendations are formulated to align the practices with the standards.

The oil exploitation related changes in land use patterns in Northern Upper Nile are studied through:

- ◆ Analysis of economic and social consequences of related changes in land use patterns, and
- ◆ Compare the findings with (South) Sudanese law and international norms and standards

Based on the findings, policy proposals are given to improve the practices for South Sudan's oil industry management.

The methods used in this study involved; desk review of relevant literature, survey questionnaires, and field visits. All payams of Melut were visited, with a focus on villages in and around the oil fields. Interviews were held with 41 chiefs in all payams (see the Annex for their names), and groups of citizens in the villages. The field work was conducted in late 2011, just after South Sudan become independent.

Land use and impacts of oil exploitation

IMPORTANCE OF LAND IN SOUTH SUDAN

In South Sudan, land is a central issue to all rural communities. Almost all the land in South Sudan is under communal ownership. Individuals of the same clan, community, or ethnicity only own it through continual use. There are hardly any disputes arising over land use except among cattle owning groups or between livestock herders and sedentary cultivators. Land in South Sudan is the means for basic survival and a source of individual and tribal pride.

Ayoub (2006) stated that land is the most important resource in Sudan whether it is used for crop cultivation, herding livestock or for exploiting underlying natural resources, such as minerals, oil or water. Historically, land and the embedded resources in rural areas in South Sudan are owned by ethnic groups, communities or tribes, resulting in the strong relationship between an ethnic group and its homestead or area of origin.¹³² Land tenure or ownership is essentially ethnocentric like elsewhere in Africa. The laws and rights are peculiar to communities or ethnic groups and change as the communities enlarged and expanded or as they diminished.¹³³

Land resources in rural areas are administratively under the customary land tenure system which mainly allows for communal use and management, and a limited individual ownership. For administrative purposes, the land of a given ethnic group can further be decomposed into chieftainships, clans, villages or families. It is administered by a chief, headman, or elder responsible for land rights to be worked or grazed by clan and family members. The principle of a common interest is most evident in the use of land for grazing, drawing of water, collecting firewood and construction timber, hunting and fruit gathering. However, there are individual rights to cultivated crops, although these rights could be forfeited when the land is not effectively under any form of use, including fallowing and reverts back to the common pool. Communal land resources ownership and use acts as security insofar as one can easily return to the rural area of one's origin and work on family land upon retirement, retrenchment, or failure to secure employment in towns.¹³⁴

In 1923, the colonial administration divided the lands of the country into tribal homelands, this somewhat legitimized the ownership of the land along tribal or ethnic lines. The colonial government entrusted tribal leaders with legal, administrative, and financial authority over their respective land resources. The administration considered these traditional leaders as their appointees and expected them to maintain law and order and the territorial and demographic integrity of the areas under their jurisdiction. They were also entrusted with the responsibility for allocating land resources under their custodianship.¹³⁵ This is closely bound up with the principle of native administration.¹³⁶ However, the amendment to the land laws in 1990 under the Government of Sudan, consolidated the state ownership of land resources.

The first section of the amendment confirmed that all unregistered land effectively belongs to the

¹³² Ayoub, M., 2006. *Land and conflict in Sudan*. Conciliation Resources, London.

¹³³ Adeyoju, S.K., 1991. *Land tenure problems in tropical areas*. Paris: 10th World Forestry Congress.

¹³⁴ Moyo, S., O'Keefe, P., Sill, M., 1993. *The Southern African Environment: profiles of the SADC countries*. Earthscan Publications Ltd, London.

¹³⁵ Ayoub (2006).

¹³⁶ Rahhal, S., Abdel Salam, A.H., 2006. *Land Rights, Natural Resources Tenure and Land Reform*.



PDOC waste water basin insufficiently lined posing danger to the environment, 2011

state; it must be considered as if it was registered in the name of the state. The second provision of the act brought an unprecedented change, stating that no court of law or authority should consider any plea, petition or procedure concerning state-owned land that was established by the act.¹³⁷ This provision was exploited by the Government of Sudan to force citizens out of their lands because no rural land was registered and was considered to belong to the government and therefore the villagers have no rights when they claim land ownership. According to Ayoub (2006), southern Sudanese fought to resist this policy on state-ownership of land resources.

KEY IMPACTS OF OIL EXPLOITATION

The oil and gas industry comprises of two parts. The Upstream deals with exploration and production, while Downstream deals with refining and processing of crude oil and gas products, their distribution and marketing. Petroleum Companies may be regarded as fully integrated, in case they have both upstream and downstream interests, or they may concentrate on a particular sector, such as exploration and production (an E&P company) or just on refining and marketing (an R&M company).

The exploration and production activities are likely to induce economic, social, and cultural changes. The extent of these changes is especially important to local groups, particularly indigenous people who may have their traditional lifestyle affected.¹³⁸ The key impacts may include changes in:

¹³⁷ Ibid.

¹³⁸ E&P Forum / UNEP 1997. "Environmental Management in Oil and Gas Exploration and production", E&P Forum technical paper report no.37.

- ◆ Land use patterns, such as agriculture, fishing, logging, hunting as a direct consequence (e.g. in the case of land take), or as a secondary consequence (e.g. by providing new access route, leading to unplanned settlement and exploitation of natural resources);
- ◆ Local population levels, as a result of immigration by a new labour force and immigration of a remote population due to increased access and opportunities;
- ◆ Social economic system due to employment opportunities, income differentials, inflation, differences in per capita income when different members of local groups benefit unevenly from induced changes;
- ◆ Socio-cultural systems like social structure, organization and cultural heritage, practices and beliefs and secondary impacts such as effect on natural resources, right of access and changes in value systems influenced by foreigners.
- ◆ Availability and access to goods and services such as housing, education, healthcare, water, fuel, electricity, sewage and waste disposal, and consumer goods brought in to the region;
- ◆ Planning strategies, where conflicts arise between industry development and protection of natural resource use, recreation use, tourism and historical and cultural resources
- ◆ Aesthetics because of unsightly or noisy facilities;
- ◆ Transportation systems due to an increased number of roads, air, and sea infrastructure and associated effects (e.g. noise, accident risk, increased maintenance requirements or change in existing transport services).

Effects of oil industry on land use in Melut County

This chapter documents all impacts as reported by Chiefs and villagers of Melut County. The seven Payams of Melut County comprise of 478 villages. These are distributed over its seven payams as follows; 35 villages in Melut Payam, 56 villages in Paloich, 99 in Gomochoch, 75 in Panomdiet, 109 in Goldora, 21 in Thiangrial and 83 villages in Won Amum. Exact population figures are hard to obtain, but the Statistical Yearbook for Southern Sudan 2009, noted 49,242 inhabitants for Melut County, though likely this is a low estimation.¹³⁹

The below mentioned large scale removal of people from their lands in the oil areas mostly happened during war time, in the late 1990s and early 2000s. It is believed that the oil industry

¹³⁹ Statistical Yearbook 2009. No population figures are known from pre-1990s. At the time of the research in 2012, the number likely would have been higher because of the influx of returnees. The UNDP report "Upper Nile County Consultation Summary" (May 2010) estimated the number of inhabitants for Melut County already at 75,712.

¹⁴⁰ Human Rights Watch, Sudan, Oil and Human Rights, Washington DC: Human Rights Watch/Africa, 2003; ECOS (2006).

“We thought that the discovery in our area was a grace from God for us, but with the discovery of oil all our pastures have been destroyed.”

Maluth Communities Memo of Protest, March 2010

development was a driver for clearing the lands by the Government of Sudan.¹⁴⁰ It is hard to determine which people went exactly where during the war as it were no systematic journeys. Upon an attack, people scattered. Those who had the capabilities went far up north, other ended up in Melut town or scattered to nearby villages. However, also after the war from 2005, several entire villages were lost because of oil industry expansion. Geological surveys and installing rigs have been regular activities and have continued after the war.

IMPACTS PER PAYAM

Melut (Ageer Bai) Payam

This Payam is comprised of three main subgroups of Ayiual, Kil, and Jong Youm. They are spread over 35 different villages as shown in Table 1. Most of the villages in this Payam were affected by the exploration and oil industry expansion. 13 Villages were lost entirely.

The most affected subgroup in this Payam was Ayiual where eight villages were lost, followed by Jong Yom with four villages and Kill with one village, as shown in Table 1. Padiet and Gak Bany were lost because the two villages were converted by the company into a place where they disposed untreated water. Meryok, Rodong, Won Adop, Ageliu, Akot Youmnom, Anoka and Won Thoi were lost because of the presence of rigs in and around these villages in addition to excavation of soil for the construction of pipeline and roads. Moreover, Jibkir was lost because it was turned into an Oil Gathering Manifold.

The rest of the lost villages in Melut County are still being inhabited by a few villagers who keep insisting to stay in their land although it is full with rigs in and around the villages, and with big holes as result of unorganised excavation of the soil which endanger the lives of villagers and their

animals. As a result some villagers migrated to nearby villages which were not seriously affected. Others relocated to Melut town where they are facing serious challenges such as obtaining daily food, school for their children, and plots to settle.

The villagers who are still in their places do not practice agriculture nearby anymore. Neither the villagers whose villages were affected as a result of presence of the rigs, pipelines, electricity or roads – five in total – practice agriculture nearby anymore. They fear that the company would prevent them from cultivation because of the company's security arrangements, so they go far away to cultivate. They also complained of health issues which they never experienced before, such as frequent miscarriages suffered by pregnant women.¹⁴¹

Six villages were affected as a result of soil excavation. The holes created by these unorganised excavations are so big to the extent that they pose danger to the lives of villagers and their animals. Further, seven villages were impacted by geologically surveys. The life in the geologically surveyed villages is normal, but the fear is that the company comes at some point in time and drills a rig, or worse, puts them in the condition of those who are now affected in some way or another without being compensated. Only four villages in Melut Payam were not affected by oil industry exploration or expansion.

Paloich (Ageer Rer) Payam

This payam is comprised of two major subgroups of Peedhi and Joh and are spread over 56 villages, with Peedhi having 27 villages and Joh 29, as shown in Table 2. Two-thirds of all the villages in this Payam were affected as a result of oil exploration and expansion.

The village of Paloich was lost entirely. It was full of rigs, which were spaded in and around the village, to the extent that the villagers were advised by the company to move to a place called New Paloich where the company built a modern hospital and a mosque. However, many have refused to relocate because there were no houses, neither were they compensated to leave and build in the new place. They say they do not have money to build new houses. In addition, a section of the villagers fear another community inhabiting New Paloich because of a social problem between the two communities. All this was not considered by the company which urged the villagers to move to New Paloich. Furthermore, New Paloich village has become very congested because new returnees from other communities resettled there too. This complicates a possible compensation. Life there also became hard because the area where they practiced subsistence agriculture got diminished or completely lost as it is turned into residential areas by the returnees. Thirteen villages were affected as a result of the presence of the rigs, pipeline and soil excavation/ roads, most of them in Peedhi. Eighteen villages were affected as a result of soil excavation or the presence of a pipeline; seventeen were found in Peedhi and one in Joh. The five villages that were impacted by geological survey and those that were not impacted at all (19) were confined in the Joh subgroup. All this is shown in Table 2.

Gomochok (Aboya) Payam

This Payam is inhabited by three main subgroups of Anyakuei, Rawan, and Rom; these subgroups are spread over 99 villages as shown in Table 3. Ten villages were lost as a result of oil discovery or oil expansion; three villages are found in Anyakuei and seven villages in Rawan. Pabony village

became one of the biggest compounds of PDOC and was renamed Moleeta. Kiyoo and Won Aguer were turned in to the military camp in Anyakuei area. Tir was made into Paloich International Airport, with Akol Kol becoming an extension of the airport. Luak Teng became an OBC compound, while Pa Gout was made into an OGM. Also Bamach and Chewai in Rawan were lost. However, Kiyoo, Man Akuach, Bamach and Chewai were full of rigs in and around the villages.

Nineteen villages were affected as a result of presence of rigs and pipelines, where ten villages in Anyakuei, eight are in Rawan and one village in Rom. Four villages were affected as a result of soil excavation. The villages that were geologically surveyed are 61 villages, where one village is found in Anyakuei, 43 villages in Rawan and seventeen in Rom respectively. However, the villages that were not impacted were only five, as shown in Table 3.

Panomdier (Boueng) Payam

This Payam is divided into three main areas of Won Kie, Yel Kou and Rer Wotich and spread over 75 villages. 24 villages are found in Won Kie, eleven villages in Yel Kou and 40 villages in Rer Wotich as shown in Table 4. In this Payam, three villages were lost as a result of oil discovery or expansion. 25 Villages were affected as a result of the presence of rigs, pipelines, electricity, soil excavation or roads. Fifteen villages in this Payam were geologically surveyed, while 31 villages were not impacted at all.

Goldora (Beer) Payam

This payam is inhabited by three subgroups of Dout, Domrok and Kuach and spread over 108 villages; 35 in Dut, 43 in Domrok, and 30 villages in Kuach, as shown in Table 5. Only two villages were lost in this Payam, including Mayom which is in disputed area with Maban County and was renamed Adar. 29 Villages were affected as a result of the presence of rigs, soil excavation, roads and pipelines. Further to these activities, a total of 63 villages were geologically surveyed; five villages in Dut, 31 villages in Domrok and 27 in Kuach. Wech Ngol is full of rigs in and around the village and was lost. Fifteen villages were not affected by the oil exploration or expansion, as shown in Table 5.

Thiangrial (Ramba) Payam

This Payam is comprised of 21 villages, inhabited by the Won Rer and Won Tor subgroups. All villages were somehow affected by oil exploitation, though none was completely lost. Eight villages were affected as a result of the presence of rigs, pipelines, soil excavation or electricity, while thirteen villages were geologically surveyed, as shown in Table 6.

Won Amum (Adora) Payam

This Payam includes 83 villages, inhabited by Pakur, Auech, Adombok and Amoldare subgroups. The total number of villages lost as a result of oil discovery and expansion was eight villages, these are; Meyor Adol, Won Alek, Atheiang, Dokich, Nyimani, Agob Nyah Nhial, Won Amum Lual and Aleek as shown in Table 7. Several of these villages are disputed area between Maban County and Melut County and there used to be fights between Dinka and Maban tribes in this area.¹⁴² Seventeen villages were affected as a result of the presence of rigs, pipelines, or soil excavation. The total number of villages that were geologically surveyed was 31, while 27 villages were not impacted.

¹⁴¹ This complaint is heard frequently in the oil areas in South Sudan. The relationship between the reported health issues has not been established but needs to be researched.

¹⁴² The area south of Gumry oil field, up to Adar Yale/Agordeed oil fields is disputed area, mainly between Melut and Maban Counties, although some say parts of the fields are in Baliet County.

Table 1.

Villages of Melut (Ageer Bai) Payam
and the effects of oil exploitation

Subgroup	Boma/Village	Condition	Effect	Type of effect
Ayual	1	Aguetker		Soil excavation
	2	Padiet	Lost	Converted to a place where untreated water is disposed.
	3	Gak Bany	Lost	Converted to a place where untreated water is disposed, near Paloich.
	4	Rodong	Lost	Rigs, soil excavation, pipelines and roads
	5	Meryok	Lost	Rigs, soil excavation, pipelines and roads
	6	Won Adop	Lost	Rigs, soil excavation, pipelines and roads
	7	Won Nyok		None
	8	Ageliu	Lost	Rigs, soil excavation, pipelines and roads
	9	Akut Youmnom	Lost	Rigs, soil excavation, pipelines and roads
	10	Luak Dau		Soil excavation
	11	Pethjake		Soil excavation
	12	Kotolok (Majamah)	Lost	Converted to be the main company compound in Paloich
Kil	13	Beny		Rigs, pipeline, and excavation and electricity
	14	Ajiing Nyiel		Soil excavation
	15	Jibker	Lost	Rigs, excavation, OGM, and pipelines
	16	Won Nguich		Rigs, pipeline, and roads
	17	Won Apiath		Geologically surveyed
	18	Athem Raw		Rigs, pipelines
	19	Madiing		Geologically surveyed
	20	Wai Dhok		Geologically surveyed
	21	Mud		Geologically surveyed
	22	Koum		Geologically surveyed
	23	Tarkuach		Geologically surveyed
	24	Ajobiech		Geologically surveyed
	25	Marial		Rigs, pipelines
	26	Adap		Soil excavation
	27	Bai Doch		Pipeline, electricity
Jong Yom	28	Anoka	Lost	Rigs, soil excavation, pipelines and roads
	29	Kom Kom	Lost	Main pipe line and electricity
	30	Malet	Lost	Full of rigs and excavation
	31	Mul Dhok		None
	32	Mong Dor		None
	33	Won Thoi	Lost	Full of rigs, soil excavation, pipelines and roads
	34	Ayo		None
	35	Kiir Payol		Soil excavation, forest lost by contaminated water

Table 2.

Villages of Paloich (Ageer Rer) Payam
and the effects of oil exploitation

Subgroup	Boma/Village	Condition	Effect	Type of effect
Peedhi	1	Won A'r		Soil excavation and roads
	2	Won Dau		Rigs, pipelines and roads
	3	Dal Amum		Soil excavation
	4	Won Kie Tor		Rigs, pipelines and roads
	5	Ayomnom		Soil excavation
	6	Lek		Rigs, pipelines and roads
	7	Riam Ajai		Rigs, pipelines and roads
	8	Atuel		Rigs, pipelines and roads
	9	Nyiek		Rigs, pipelines and roads
	10	Guk Amal		Soil excavation
	11	Thol Tong		Soil excavation
	12	Won Selik		Soil excavation
	13	Beny Ngang		Soil excavation
	14	Mol Awet		Soil excavation
	15	Won Thok		Pipeline
	16	Won Apur		Pipeline
	17	Won Thow		Pipeline
	18	Goi		Soil excavation
	19	Got Moch		Pipeline
	20	Libker		Rigs (and soil excavation)
	21	Makuach		Rigs (and soil excavation)
	22	Gout Agol (Amal)		Rigs (and soil excavation)
	23	Won Ajak		Pipeline
	24	Biemnom		Pipeline
	25	Alu Amel		Pipeline
	26	Won Ameleh		Pipeline
	27	Won Kie Rer		Rigs, pipelines and roads
Joh	28	Paloich	Lost	Full of rigs, excavation, the villagers had to relocate to New Paloich
	29	Luak Noah		Rigs, pipelines and roads
	30	Tek Nyah		Rigs, pipelines and roads
	31	Ba Peing		Pipeline
	32	Nyiek		Rigs, pipeline and roads
	33	Kol Rang		None
	34	Chol Yol		None
	35	Aboluk		None
	36	Beyen		None
	37	Leng		None
	38	Daau		None
	39	Yebiech		None

Table 3. (Continued)

Villages of Gomochoch (Aboya) Payam and the effects of oil exploitation

Subgroup	Boma/Village	Condition	Effect	Type of effect
	40	Pakuot		Geologically surveyed
	41	Cheng Bony Tuech		Geologically surveyed
	42	Agak		Geologically surveyed
	43	Panomdiet		Geologically surveyed
	44	Atuer		Geologically surveyed
	45	Gebek		Rigs and pipeline
	46	Won Dok		Rigs and pipeline
	47	Akech		Geologically surveyed
	48	Anyang		Geologically surveyed
	49	Dolbek		Geologically surveyed
	50	Bamach	Lost	Rigs, pipelines
	51	Chewai	Lost	Rigs, pipelines
	52	Man Akuach	Lost	Rigs, pipeline
	53	Akol Kol	Lost	Extension of the airport
	54	Kwath Adhok Dau		Geologically surveyed
	55	Pa Chagot		Geologically surveyed
	56	Yeb Nyang		Geologically surveyed
	57	Won Atheiang		Geologically surveyed
	58	Tor Thiong		Geologically surveyed
	59	Won Aguang		Geologically surveyed
	60	Amol Dare		Geologically surveyed
	61	Maluth		Geologically surveyed
	62	Dor Weel		Geologically surveyed
	63	Won Ngang		Geologically surveyed
	64	Won Aleng		Geologically surveyed
	65	Teb Chok		Geologically surveyed
	66	Thok		Geologically surveyed
	67	Nyang Jak		Geologically surveyed
	68	Anguet		Geologically surveyed
	69	Chewai		Geologically surveyed
	70	Won Akol		Geologically surveyed
	71	Kol Akuech		Geologically surveyed
	72	Ngebnom		Geologically surveyed
	73	Nyin Koi		Geologically surveyed
	74	Won Reyang		Geologically surveyed
	75	Won Dok		Rigs and pipeline
	76	Won Angoi Rer		Geologically surveyed
	77	Luak Guot		Geologically surveyed
	78	Luak Ajuot		Geologically surveyed
	79	Bai Luak		Geologically surveyed

Table 3. (Continued)

Villages of Gomochoch (Aboya) Payam and the effects of oil exploitation

Subgroup	Boma/Village	Condition	Effect	Type of effect
	80	Bangdiet		Geologically surveyed
	81	Won Aguer		Geologically surveyed
Rom	82	Gaikur		Rigs and pipeline
	83	Aboroh		Geologically surveyed
	84	Kol Rang		Geologically surveyed
	85	Pariak		Geologically surveyed
	86	Won Kie		Geologically surveyed
	87	Purlai		Geologically surveyed
	88	Acheer Adanga		Geologically surveyed
	89	Acheer Majok		Geologically surveyed
	90	Won Awul		Geologically surveyed
	91	Riak Dau		Geologically surveyed
	92	Weng Ayen		Geologically surveyed
	93	Won Riang		Geologically surveyed
	94	Awelich		Geologically surveyed
	95	Pa Gang		Geologically surveyed
	96	Angakuei		Geologically surveyed
	97	Nyimker		Geologically surveyed
	98	Karanga		Geologically surveyed
	99	Lek Dior		Geologically surveyed

Table 4.

Villages of Panomdiet (Boueng) Payam and the effects of oil exploitation

Subgroup	Boma/Village	Condition	Effect	Type of effect
Won Kie	1	Belgo		None
	2	Malual		None
	3	Won Bar Kou		None
	4	Bai Ajak		None
	5	Apiath		None
	6	Madiing Choul Juach		None
	7	Madiing Ajuot		Geologically surveyed
	8	Panomdiet		None
	9	Fluch		Rigs, soil excavation electricity and roads
	10	Panomthei		None
	11	Padiet		None
	12	Atul		Geologically surveyed
	13	Liat		None
	14	Liat Meyoth		None
	15	Alel		Geologically surveyed
	16	Won Alo		None
	17	Akatdiet		Geologically surveyed
	18	Joh Toich		None
	19	Joh Teng		None
	20	Luak Chok		None
	21	Bai Luek		Geologically surveyed
	22	Won Tuek		Geologically surveyed
	23	Won Bot		Geologically surveyed
	24	Dinkar		Geologically surveyed
Yel Kou	25	Abayat		Rigs, soil excavation and pipeline
	26	Mabek		Excavation
	27	Won Dok		Rigs and excavation
	28	Bai Biar		Geologically surveyed
	29	Leueng		Rigs, soil excavation and pipelines
	30	Kol Weer Chai		None
	31	Mayan		Rigs and pipeline
	32	Won Bar Kou		None
	33	Long		Rigs, soil excavation and pipelines
	34	Lo Kur		Pipelines
	35	Won Adop		Rigs, soil excavation and pipelines
Rer Wotich	36	Won Kie Bagak		Rigs, soil excavation and pipeline
	37	Won Reng		Rigs, soil excavation and pipeline

Table 4. (Continued)

Villages of Panomdiet (Boueng) Payam and the effects of oil exploitation

Subgroup	Boma/Village	Condition	Effect	Type of effect
	38	Man Guk		Soil excavation and pipeline
	39	Jik Awet		Soil excavation and pipeline
	40	Akuot		Soil excavation and pipeline
	41	Akuot Won Nyok		None
	42	Lo Jak		Rigs and soil excavation
	43	Won Akeer Ajak		Rigs, soil excavation and pipeline
	44	Won Akeer Ayiek		Rigs, soil excavation and pipeline
	45	Won Akeer Amoldare		Rigs, soil excavation and pipeline
	46	Won Yieth		None
	47	Goldora Meyoth	Lost	Pipelines
	48	Goldoradiet		Presence of rigs, pipe lines, and untreated water
	49	Kaljah	Lost	Electricity
	50	Towong Bagak		Presence of rigs, pipeline, soil excavation
	51	Towong Lai	Lost	Rigs and pipeline
	52	Won Beer		Presence of rigs, pipelines and electricity
	53	Youang		none
	54	Maker		None
	55	Mud Ngok		None
	56	Teem Ayeik		None
	57	Achan		None
	58	Goi		Geologically surveyed
	59	Bor Ajout		None
	60	Beim		None
	61	Kot Chor		None
	62	Guateng		None
	63	Ajoung		None
	64	Teek Ngol Thok		None
	65	Jok Toich		Rigs and soil excavation
	66	Mayor Juk		Geologically surveyed
	67	Puot Nom		Rigs surrounding the village
	68	Thaw Ke Thorow		Geologically surveyed
	69	Patok Nom		Rigs and pipeline surrounding the village
	70	Kach Guet		Geologically surveyed
	71	Akeeu		Geologically surveyed
	72	Won Abach		Rigs, soil excavation and pipeline
	73	Won Yib		Geologically surveyed
	74	Won Lib		Soil excavation
	75	Bor Nom		None

Table 5.

Villages of Goldora (Beer) Payam and the effects of oil exploitation

Subgroup	Boma/Village	Condition	Effect	Type of effect
Dut	1	Malau Auth		Rigs, excavation and roads
	2	Malau Wat		Rigs, excavation and roads
	3	Yelwut		Rigs, excavation and roads
	4	Goiech		Rigs, excavation and roads
	5	Nyok Wut		Rigs, excavation and roads
	6	Wech Ngol	Lost	Rigs, excavation
	7	Malek		Rigs, excavation and roads
	8	Luak Diing		Excavation
	9	Athony		Rigs, excavation and roads
	10	Akotweng		Rigs, excavation and roads
	11	Weer Wul		Rigs, excavation and roads
	12	Athith Thith		Rigs, excavation and roads
	13	Aluel		Rigs, excavation and roads
	14	Won Akol		None
	15	Weng Ajok		None
	16	Won Thaw		Geologically surveyed
	17	Tyiab		Geologically surveyed
	18	Nyakume		Geologically surveyed
	19	Tong Lai		Geologically surveyed
	20	Won Dai		Geologically surveyed
	21	Kach Reyal		None
	22	Selim Chok		None
	23	Won Anyoul		None
	24	Won Guach		None
	25	Pan Tong		None
	26	Derapol		None
	27	Panom Abach		None
	28	Guch Jak		None
	29	Won Jok		None
	30	Leweng Jok Diing		None
	31	Nyin Luel		None
	32	Abooch		None
	33	Lakur		Rigs, excavation and roads
	34	Geul Guk		Rigs, excavation and roads
	35	Deng Ajiing		None
	36	Mayom (Adar-2)		Rigs, renamed as Adar-2. Disputed area with Maban County
Domrok	37	Goldora		Geologically surveyed
	38	Anom Bul		Geologically surveyed
	39	Won Kiediet		Geologically surveyed

Table 5. (Continued)

Villages of Goldora (Beer) Payam and the effects of oil exploitation

Subgroup	Boma/Village	Condition	Effect	Type of effect
	40	Won Akuk		Geologically surveyed
	41	Won Rok		Geologically surveyed
	42	Won Ar		Excavation and roads
	43	Weng		Geologically surveyed
	44	Dut		One rig
	45	Guel Jak		One rig
	46	Anginya		Geologically surveyed
	47	Kom Weer		Geologically surveyed
	48	Ashowai Dok		Geologically surveyed
	49	Kom Thow		Geologically surveyed
	50	Won Nyok		Geologically surveyed
	51	Won Liet		Geologically surveyed
	52	Chawai		Geologically surveyed
	53	Awetich		Geologically surveyed
	54	Won Aguang		Geologically surveyed
	55	Aoch Tong		Geologically surveyed
	56	Kech		Geologically surveyed
	57	Apeath		Geologically surveyed
	58	Atok Dout		Geologically surveyed
	59	Thib		Geologically surveyed
	60	Akut		Excavation-
	61	Won Dhin Goch		Geologically surveyed
	62	Won Yor		Geologically surveyed
	63	Luak Leyach		Geologically surveyed
	64	Won Akoch		Geologically surveyed
	65	Yay Piny		Geologically surveyed
	66	Won Padiet		Geologically surveyed
	67	Manyiel		Rigs, excavation
	68	Bak Jaga		Rigs, excavation
	69	Bai Agor		Rigs, excavation
	70	Majok		Geologically surveyed
	71	Marial		Geologically surveyed
	72	Dhong Lony Agor		Geologically surveyed
	73	Beiany Lith		Geologically surveyed
	74	Anok		Rigs, excavation
	75	Beiany Chaar		Geologically surveyed
	76	Madiing		Rigs, excavation
	77	Won Kie Gethweing		Rigs, excavation
	78	Amom Domrok		Rigs, excavation
	79	Won Angoi		Rigs, excavation and pipelines

Table 5. (Continued)Villages of Goldora (Beer) Payam
and the effects of oil exploitation

Subgroup	Boma/Village	Condition	Effect	Type of effect
Kuach	80	Won Kii Adar		Geologically surveyed
	81	Tha Pieu		Geologically surveyed
	82	Won Bol Deng		Geologically surveyed
	83	Nguat		Geologically surveyed
	84	Won Deng Kon		Geologically surveyed
	85	Dol Beer Thiang		Geologically surveyed
	86	Won Alo Aguer		Geologically surveyed
	87	Won Alo Adar		Geologically surveyed
	88	Toh Dau		Rigs, excavation and pipelines
	89	Awan		Geologically surveyed
	90	Won Reyang		Geologically surveyed
	91	Momochok		Geologically surveyed
	92	Ram Tong		Geologically surveyed
	93	Won Doong		Geologically surveyed
	94	Gob Joh Athal		Geologically surveyed
	95	Shwar		Geologically surveyed
	96	Nyagoga		Geologically surveyed
	97	Ayel Nthial		Geologically surveyed
	98	Awu Weng Lok		Geologically surveyed
	99	Majak Choul		Geologically surveyed
100	Achony		Geologically surveyed	
101	Makuei		Geologically surveyed	
102	Won Peach		Geologically surveyed	
103	Gob Tong		Geologically surveyed	
104	Won Khor		Geologically surveyed	
105	Alo Bai Gueer		Geologically surveyed	
106	Won Dau Nyok		Geologically surveyed	
107	Ajen		Geologically surveyed	
108	Nyantol		Rigs, excavation and pipelines	
109	Won Anyual Kuach		Rigs, excavation and pipelines	

Table 6.Village of Thiangrial (Ramba) Payam
and the effects of oil exploitation

Subgroup	Boma/Village	Condition	Effect	Type of effect
Won Rer	1	Thiangrial		Geologically surveyed
	2	Dong Jok Bior		Excavation
and Won Tor	3	Dong Chir		Excavation
	4	Don Wat Ka Anyar		Excavation and electricity
	5	Jor Bor		Rigs and Pipelines
	6	Adol		Rigs and Pipelines
	7	Gob Rer		Rigs and excavation
	8	Anom pai		Geologically surveyed
	9	Anyoka		Rigs, pipelines and electricity
	10	Meyol		Rigs and excavation
	11	Chottony		Geologically surveyed
	12	Majak		Geologically surveyed
	13	Ror Ayiek		Geologically surveyed
	14	Won Thiab		Geologically surveyed
	15	Doki		Geologically surveyed
	16	Teet Nyin		Geologically surveyed
	17	Gor Tor		Geologically surveyed
	18	Adoldiet		Geologically surveyed
	19	Aluel		Geologically surveyed
	20	Athiak Moch		Geologically surveyed
	21	Raw Ageeth		Geologically surveyed

Table 7.

Villages of Won Amum (Adora) Payam and the effects of oil exploitation

Subgroup	Boma/Village	Condition	Effect	Type of effect
Pakur,	1 Agordiet			Excavation
Auech,	2 Won Alek	Lost		Excavation, relocated to Agordiet
Adombok	3 Dokich	Lost		Rigs, Excavation and Electricity
and	4 Agob Nyah Nhial	Lost		Rigs, excavation and electricity, displaced
Amoldare	5 Aleek (Gumry)	Lost		Rigs, pipelines and renamed as Gumry OBC
	5 Chir			Geologically surveyed
	6 Won Kie Amom			Geologically surveyed
	7 Won Amom Adol			Geologically surveyed
	8 Aboong			Geologically surveyed
	9 Acheey			Geologically surveyed
	10 Geling Kuer			Rigs, excavation and pipelines
	11 Nayng Geu			Geologically surveyed
	12 Won Thaw Wal			Geologically surveyed
	13 War (Won) Awet			Geologically surveyed
	14 Kuem Weng			Geologically surveyed
	Achoum			
	15 Long Kuach			Rigs and pipelines
	16 Got Aweer			Geologically surveyed
	17 Yan Chok			Geologically surveyed
	18 Ram			Geologically surveyed
	19 Aoich Jeer			Geologically surveyed
	20 Kuele			Geologically surveyed
	21 Won Ajuot Kuem			Geologically surveyed
	Nom			
	22 Theyai Wat Thiang		None	
	23 Lad Jale			Rigs, and excavation
	24 Bla Gat			Rigs, pipelines and excavation
	25 Amrot			Rigs, pipelines and excavation
	26 Won Reyang			Geologically Surveyed
	(Kon Wara)			
	27 Won Thaw			Geologically surveyed
	Amoldare			
	28 Jok Thet			Geologically surveyed
	29 Won Luar Roon			Geologically Surveyed
	30 Tor Anguel Beuk		None	
	31 Adad		None	
	32 Maker Kon Wareng		None	
	33 Them Bany		None	
	34 Them Ngol		None	
	35 Won Beut		None	

Table 7. (Continued)

Villages of Won Amum (Adora) Payam and the effects of oil exploitation

Subgroup	Boma/Village	Condition	Effect	Type of effect
	36 Geeruel			None
	37 Arich			None
	38 Won Shawai			None
	39 Nyiyok	Lost		None
Domrok	40 Malek Pakur	Lost		None
	41 Biach Yen	Lost		None
	42 Pathgyel			None
	43 Meyor Adol			Excavation
	44 Atheiang	Lost		Rigs, Excavation
	45 Nyimemi			Rigs, pipelines and excavation <i>Disputed area with Maban</i>
	46 Tony Agor			Rigs and pipelines
	47 Nyiob Luang			None
	48 Won Amom Luar			Rigs, excavation and pipelines <i>Disputed area with Maban</i>
	(Adar-1)			
	49 Tam Wal			Geologically surveyed
	50 Ader Apol Adar			Geologically surveyed
	51 Gei			Rigs, excavation and pipelines
	52 Won Rang			Geologically surveyed
	53 Ajok Toich			Geologically surveyed
	54 Won Lualdiet			Geologically surveyed
	55 Tiu			Geologically surveyed
	56 Nyob Gook			Rigs and pipelines
	57 Leweng Cham			Rigs and pipelines
	Thiang			
	58 Majok (Majak)			Geologically surveyed
	59 Alo Dhang			Rigs, pipelines and excavation
	60 Dong Adomrok			Rigs, excavation and pipelines
	61 Arek			Geologically surveyed
	62 Kach Aror			Geologically surveyed
	63 Arenk Achok			Rigs, pipelines and excavation
	64 Bakoma			Rigs, pipelines and excavation
	65 Agorthei			Rigs, pipelines and excavation
	66 Man Weng			Rigs, excavation and pipelines
	67 Dong Adomrok			rigs, pipelines
	68 Won Adop Amon			Geologically surveyed
	69 Thiab Lawau			Geologically surveyed
	70 Wat Ngok			Geologically surveyed
	71 Machok			None
	72 Amrot			Rigs, excavation and pipelines
	73 Maker Aoich			None

Table 7. (Continued)Villages of Won Amum (Adora) Payam
and the effects of oil exploitation

Subgroup	Boma/Village	Condition
		Effect Type of effect
74	Won Achuil	None
75	Boum	None
76	Wot Jal Ke Neem	None
77	Moth Aleech	None
78	Thiang Rot	None
79	Bolich	None
80	Adir	None
81	Won Lual Anyang	None
83	Akout Deng Kim	None

Discussion of Research Findings

LOST VILLAGES

A total of 37 villages were lost, or almost eight percent. Melut Payam lost most villages (13, or 37%), followed by Gomochock Payam with lost 10 villages (10%) and Won Amun Payam with eight villages (10%), Panomdiet with three villages (4%), Galdora with two villages (2%) and Paloich with one village (2%); see Figure 1. Thiangrial Payam did not lose entire villages. Most of the villages were lost because of clearance during the war time.

The people whose villages were lost, due to occupation or encroachment by the oil company always relocate to the nearby villages where they stay with other relatives. The challenges associated with such relocation is that they are only allowed to build houses or even given a place to cultivate but do not have right to own the land where he / she can sell or donate. Some communities relocate to Melut town where they experience difficulties in coping with the urban life that includes owning a plot, schooling of children in addition to the daily live.

IMPACT OF THE PRESENCE OF RIGS, PIPELINES AND ROADS

Over a hundred villages in Melut County were affected by the presence of rigs (feeder) pipelines and roads. The affected areas are inhabited by villagers but they usually do not practice agriculture in those areas anymore because the security personnel of the company prevents people from doing activities around the rigs and pipelines. The elevated roads impact the hydrology of the land because of blocking natural water flows.¹⁴³

In Paloich Payam 54% (30) of the villages see these impacts. Also in the other Payams have between a quarter and forty percent of their villages impacted this way; Thiangrial 38%, Panomdiet 33%, Melut 31%, Galdora 26%, Gomochock 24%, Won Amun 20%.

IMPACT OF SOIL EXCAVATION

Generally, Melut County is a flat low land area. Excavation especially happened at the sites where people build their homes sometimes on higher grounds. When people are moved away, these high grounds remain and that soil gets excavated for the sand to be used for building elevated roads and rigs. The place where the village once was, now is a hole. Those holes are so deep, a mature man cannot see over the edge when standing inside. Sometimes people do not go far away or return near the old village. Then it happens that goats or children fall in. Especially in the rainy season this is dangerous as those holes flood, and it is said that people have drowned. Especially in Paloich Payam this impact was found.

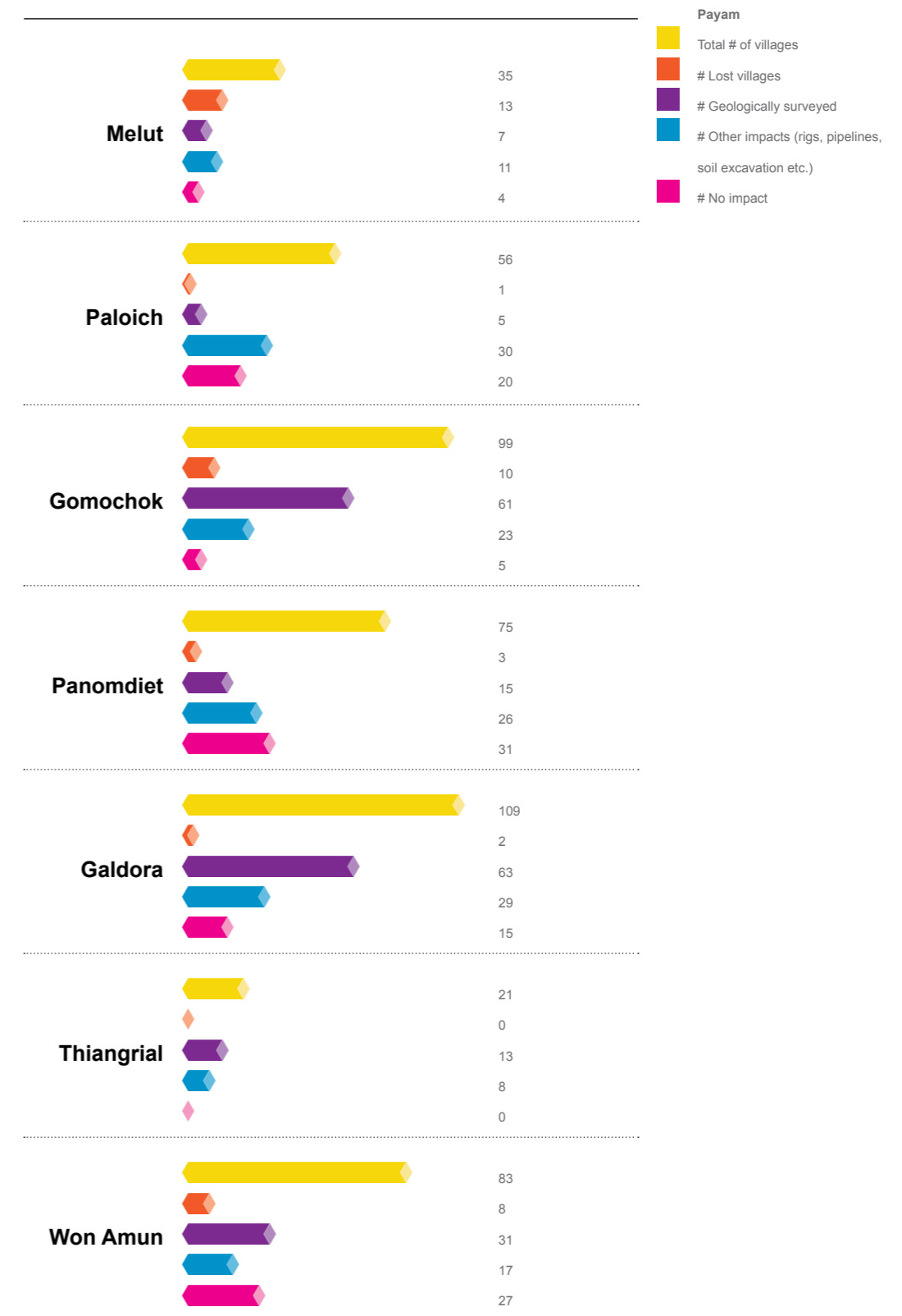
Elevated roads were built for heavy traffic in the dry season, but no effective measures were taken to prevent serious hydrological disturbances. Although the roads have brought benefits to the people, like public transport, access to markets, and mobile network coverage but in the rainy season many roads effectively act as dams and prevent the natural flow of water, this had led to flooding in some areas and drought in others in addition to increase accidents on these roads.

IMPACT OF GEOLOGICAL SURVEYS

Many villages have been geologically surveyed, especially the areas which have seen less of

Figure 1.

Oil industry impact per payam (2011)



¹⁴³ ECOS, "Oil and the Future of Sudan", Conference Report, Juba 1-2 November 2006.



Huge holes are left after soil excavation, posing danger for people and animals

the other impacts. Especially in Goldora Payam it was reported that many villages (60%) had seen geological surveys. These are the villages that are inhabited with no problems because there seems to be no danger now. However, the big fear among the villagers is that in the future the company will reach them as it has done with other villages that have rigs now. They assume that there is oil in their villages and one day they will lose them like other villages which were lost by their owners.

CONCERNS OVER ENVIRONMENTAL DAMAGE

The communities witness impact on the environment, e.g. pollution of water, and encounter health issues that they relate to this pollution. Also, they are grieved over the lack of job opportunities and community development projects, which they should have had as a benefit of oil discovery in their areas.

Petrodar is always seen by the inhabitants as responsible for most of the environmental damage that is affecting the area. The most prominent of all is the open disposal of the production water, which mixes with the rains during the rainy season and over flood other areas, literally affecting all forms of life whether fauna or flora. The company uses to say that they have a plan for a waste water management system that is capable of handling the huge quantity of the production water disposed in the area but up to date these plans seem not to have materialized. Furthermore, the open ditches for waste water are the cause of serious concerns to the communities, as the immediate risks of the ditches include death of animals and persons. Among the most common complaints mentioned by the community members settled near the water ditches are premature births - claimed to be occurring more frequently since the establishment of the oil industry, and a frequent rate of abortion among the pregnant

women, skin rashes, nausea and headaches with no clear reasons.¹⁴⁴ However, medical research is needed to verify these claims.

At the time of this field study, the environmental laws and regulations in South Sudan had yet to be approved.¹⁴⁵ From the start of the petroleum industry development, the Sudanese government has not been monitoring the environmental performance for the oil industry well, even though most companies involved are known to apply very low, if any, environmental standards of their own.¹⁴⁶ Principle 4 of the Rio Declaration¹⁴⁷ states that 'in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and can not be in isolation of this' needs to be followed strictly by companies involved in oil operations. This has not been applied yet by the oil companies in South Sudan. Moreover, the local communities and other legitimate stakeholders have never been consulted, which is an essential element of good environmental management. The government neither had systems in place for damage control in case of a major environmental disaster along the pipeline, nor disaster management policies. This situation has been exploited by the companies such that the management systems, practices, technologies and procedures that can minimize environmental impact are not seriously followed. Since July 2012, when the Petroleum Act was signed into law, Environmental and Social Impact Assessments (ESIA) are legally required for new projects, including expansion of current activities.¹⁴⁸

THE ISSUE OF COMPENSATION

With the expansion of the oil industry, the rate at which villages, grazing and agricultural lands is being lost to the oil industry is becoming a matter of real concern. Moreover, the loss of these valuable assets of vulnerable people is seriously impacting negatively on their livelihood. The main complaints from the communities relating to oil activities in Melut Basin after the signing of the CPA, relate to compensation for the loss of their lands that was either occupied or encroached by the oil industry as a result of its expansion. For instance, the complains concentrated on lands occupied by Petrodar for its premises, resulting in loss of agricultural and cattle grazing areas.

The compensation was only done in some areas for agricultural damages, based on the value of crops for one season. There was no consideration about the sustainability of agricultural production that could have gone for generations assuming that the land would be owned by the owner. Furthermore, there is no talk about the other encroachments and occupations by the Oil Company, for instance, no compensation for the road construction, electricity and construction of the pipeline, which has a major share in encroachment to community lands.

¹⁴⁴ The same medical problems are reported in Unity State where oil exploitation is taking place.

¹⁴⁵ By end-2013 still no Environmental Bill was adopted into law yet.

¹⁴⁶ See for example a study on CNPC's environmental practices in Southwest Chad: Geo212, "Analyse de la situation environnementale dans le permis Bongor West opéré par la CNPC (Sud Ouest Tchad)", September 2013.

¹⁴⁷ Rio Declaration on Environment and Development, UN 1992; <http://www.unep.org/Documents/Multilingual/Default.asp?documentid=78&articleid=1163>.

¹⁴⁸ South Sudan Petroleum Act 2012; <http://mpmisouthsudan.org/PolicyLaws.html>.



Basin with polluted water, Adar, Upper Nile State, June 2010

This is contrary to article 4.5 of the Comprehensive Peace Agreement (CPA)¹⁴⁹ which reads: *“Persons whose rights have been violated by oil contracts are entitled to compensation. On the establishment of these violations through due legal process the Parties to the oil contracts shall be liable to compensate the affected persons to the extent of the damage caused.”* However, as most of the communities are unaware of these provisions, it has been taken as an advantage by the companies and Sudanese government to ignore the community rights for compensations. The mechanism for implementation of the compensation rights should have been established through legal process. But the legal system in Upper Nile is characterized by insufficient functioning courts, and unavailability of lawyers or public prosecutors. In addition, most of the citizens are ignorant of their rights, which created confusion in the way the companies dealt with compensation.¹⁵⁰

Sometimes one-time compensation is given to those affected by the oil industry. However, the process of achieving the compensation is not only tedious, but very complicated; the affected member of the community, individually reports any oil activity on his piece of land to the Compensation Committee at Payam level, which in turn reports the issue to a Committee at County level. These committees then follow up till the amount is paid to the County Committee. After the payment, 30% of the amount is taken by the County Committee, and 30% is taken by the Payam Committee and the remaining 40% is given to the concerned individual. So, the

¹⁴⁹ Comprehensive Peace Agreement, 2005; <http://unmis.unmissions.org/Portals/UNMIS/Documents/General/cpa-en.pdf>.

¹⁵⁰ See also: ECOS, “International arbitration for victims of Sudanese oil contracts”, May 2011.

¹⁵¹ Here, sections of the Memo are presented; full text available with ECOS.

¹⁵² The set up of the NPC was an obligation under the CPA, to monitor petroleum development and make policy proposals.

Box 1.

Memo of Protest on the Petroleum Activities in Maluth, March 2010

This Memo was written by the Communities of Melut County and addressed to President Kiir. It was signed by the Paramount Chief of Dinka Melut, a representative of native administration, the speaker of the local legislative, a representative of the SPLM Secretariat, a Women representative and a Youth representative. In it, they articulate their rights under the CPA (Wealth Sharing Protocol) and present their major problems:

No community consultation¹⁵¹

“Three years now after the implementation of the CPA the local communities were not consulted especially those in the areas where the development of the petroleum resources are, even in the simple issues regarding their participation.”

Continuous drilling

“The Companies are still continuing the drilling and refinery which causes astonishment reflecting total greediness without considering the negative effects that will emerge from this works especially on the future of the area on the geological part of it. Based on the CPA provisions, we request the immediate stopping the drilling process, we are afraid of its effects on the future of the next generation.”

Employment opportunities

As the communities have lost their lands and livelihoods, they feel “this would have meant the enrolment of the sons and daughters of the area in some key positions within the oil industry to compensate what they have lost.”

The National Petroleum Commission (NPC)¹⁵²

“The absence of the activity of this commission has negative impact. Its absence led to the absence of the related communities. Therefore, we called for the reactivation of the commission because of its importance and the effectiveness on these issues.”

Protection of the Environment

“.. there is clear inhalation of environment which its effects are beginning to emerge especially if you visit those places exposed to the irresponsible usage. (...) The way this company [Petrodar] conducts its operations is very regrettable. Without doubt these areas [Adar and Fluj] are seriously subjected to destruction if there is no pressure on these companies to reconsider in their unscientific work.”

individual receives very little. In addition to that, the individual community members are deprived from rights of owning the land forever, making it even more difficult for their coming generation. This study found that only one person was compensated in Jibker, two persons in Aleek twelve persons in Meryok. The amount given to each person was ranging from 1,200.00 to 10,000.00 South Sudanese Pounds. However, the company has never shown true compassion with the victims, no proper assessment has been made to assess the level of effect that resulted from the expansion of oil activities, the suffering and destruction that has been inflicted upon these people whose areas were affected by these operations. Moreover, the companies have failed to win the support among the populations in the oil areas because it has chosen to perpetuate the injustices it has inflicted rather than to support the principle of compensation that the constitution of the country calls for to the extent that the locals viewed the oil as curse rather than blessings.

OTHER CONCERNS

The population in oil areas is extremely poor. In appreciation of the discovery of the Paloich oil fields as one of its greatest achievement of 2003, the Chinese National petroleum Corporation (CNPC) stated that “the discovery cost per barrel is much lower than that for big international oil corporations, yielding both high exploration and social benefits.” All available evidence, however, indicate that the development of the oil-rich Melut Basin has brought no substantial social benefits and in fact has taken large parts of the Dinka population backwards.

Only one primary school was built in Melut County. The consortium built a large clinic which is well equipped, but it is inaccessible for most of the local population. Despite the influx of thousands of displaced since 2006, there is still only one small school in Paloich. Furthermore, the absence of safe drinking water is a major health hazard. 75% of drinking water is taken directly from the Nile and its tributaries. The village chiefs claimed that they are not aware of a single bore hole having been drilled in the areas where the consortium operates since 2001. Moreover, production areas have electricity, but nearest places such as rural settlements and camps for displaced have none.

Moreover, the Community Development programmes do not even seem to be primarily designed to serve the needs of the local people. For instance, the company has built a police station, a mosque for its workers who came from the north (although the vast majority of the indigenous people are non-Muslim), a school and a clinic in Beny (New Paloich) and one school in Melut. The company has not put efforts to do community project to other five Payams that are also affected by the expansion activities in the area.

The oil consortium does provide water for people from time to time from their tankers or water pipelines at certain key installations, including Paloich airport, and along the dusty road between Paloich and Melut, but the supply is not consistent as it is interrupted by logistics and when there is any problem with the local community.



Village near Petrodar OBC, 2011

South Sudanese legislation and international standards

The Transitional Constitution for South Sudan, effective from Independence, lays down the basic principles for land ownership, governance and petroleum industry management. The relevant articles are listed in the text box on page 112. The Petroleum Act 2012 further details the way the sector should operate.

LAND IN THE SOUTH SUDAN PETROLEUM ACT 2012

Below, the observed community concerns have been put next to the most relevant sections in the Petroleum Act 2012, effective from 6 July 2012, which provide guidance on how to deal with preventing or solving the issues. Where relevant, reference is made to international standards which could function as supplementing the national legislation.

Issue: Land rights and compensation

On acquisition of rights to land or Surface, the act states in section 47: “Following consultations carried out by the Government with the affected local communities and interested parties, the Government may acquire land or an interest in land on behalf of a licensee or contractor who requires the use of land or surface rights for purposes of conducting petroleum activities. The Government shall enter into an agreement with the landowner or person holding an interest in the land to obtain, as applicable: (a) a rental agreement; (b) an easement; or (c) any arrangement analogous to those set out in paragraphs (a) and (b).” In this process, the requirements of the Land Act, 2009 shall be followed and “compensation shall be prompt, full and just”. The involved company shall reimburse the Government to the extent that it has provided any compensation to

the landowner or other person holding an interest in the land. In case no agreement is reached, the Government may expropriate the land that is required for petroleum activities, but any expropriation of land or surface rights for the purposes of petroleum activities shall be in the public interest, and in consideration for prompt, full and just compensation, in money or otherwise, pursuant to applicable law. If resettlement is used as compensation, the expropriated party shall be placed in a situation similar to or better than the party's current situation.¹⁵³

It should be noted that in addition to government consultations with communities, the companies should inform the communities about their plans before any activity starts, following the principles of Free, Prior and Informed Consent (FPIC). The directive of the Economic Community of West African States (ECOWAS), designed for the mining sector, can provide guidance.¹⁵⁴ It emphasizes the state obligation to protect human rights throughout the entire project, and the company obligation to obtain free, prior, and informed consent of local communities before exploration begins and prior to each subsequent phase of operations.

In case a dispute would follow, Petroleum Act section 49 guarantees that "A person may seek redress either in the local courts or through the dispute resolution mechanism under Section 94 of the Petroleum Act regarding any dispute relating to land or surface rights." All this applies to projects started from independence. To deal with the legacy of impacts inflicted pre-Independence, the Act obliges the contractor or licensee of projects involving "existing petroleum activities" to "carry out and pay for an independent social and environmental audit, in compliance with international standards to determine any present environmental and social damage, establish the costs of repair and compensation and determine any other areas of concern."¹⁵⁵

The UN Basic Principles and Guidelines on Development-Based Evictions and Displacement specifically address "the human rights implications of development linked evictions and related displacement in urban and/or rural areas". They "apply to acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection."¹⁵⁶ Although the big displacements happened during war-time, these guidelines could provide a reference as to how to deal with these impacts.

Issue: Petroleum waste and land restoration

The Act includes clear sections on dealing with petroleum waste: "Petroleum activities shall be conducted in a manner that will prevent waste of petroleum resources and promote the safety and protection of the environment, with due regard to the rights of neighbouring landowners, communities, occupants and others who have certain rights to peaceably enjoy their properties or other interests in land." In addition, petroleum activities on land or the surface acquired by lease, easement or an analogous arrangement shall be conducted with due regard to the landowner's residual interest in the land. When such arrangement expires, the contractor shall

restore the land or the surface to the condition it was in prior to the acquisition of the interest, including the removal of any structures, buildings or facilities on the land or surface that the landowner has not agreed to purchase.¹⁵⁷

Section 58 further stipulates: "The licensee and contractor shall take the measures necessary to ensure that petroleum activities are conducted in a manner that: (a) prevents waste of petroleum resources and promotes the safety and protection of the environment in compliance with this Act and applicable environmental laws and standards; (b) avoids, prevents, reduces or manages environmental hazards and risks; and (c) uses the best available technology to fulfil the duties referred to in (a) and (b)."

Issue: Environmental concerns

Prior to the opening of a new area for petroleum activities, "The Ministry, in consultation with the ministry responsible for the environment, shall initiate and coordinate a strategic environmental assessment prior to the opening of a new area".¹⁵⁸ Such assessment shall be made publicly available, including in the area where petroleum activities are planned, as soon as notice is published in the Gazette.¹⁵⁹ Next to this, the licensee or contractor shall – prior to the commencement of petroleum activities – "prepare an environmental management plan for the systematic implementation of the environmental requirements for the petroleum activities". The licensee or contractor shall disclose the environment management plan to the affected communities and shall report to the communities periodically on any changes to the plan.¹⁶⁰ The IFC Performance Standards on Social and Environmental Risks, as referred to in Chapter 1, provide further guidance on how best to deal with the environmental concerns.

Issue: Benefits of oil exploitation for local communities

To guarantee relevant benefits to local communities, the Act in section 82 stipulates that "the Ministry shall provide a community development plan, after consultation with local communities in the contract area; the community development plan shall set out strategies to improve the quality of life of local communities in the contract area. The plan shall include programmes for activities such as construction of roads, hospitals, schools and water and sanitation facilities; a licensee or contractor shall establish a fund called the Community Development Fund to finance the plan. As also described in Chapter 2, the companies are required to develop a Local Content Plan, entailing "a detailed plan and programme for local recruitment, employment and training, including post-graduate training and scholarships."¹⁶¹

Issue: Dealing with grievances

The Act obliges the companies to establish "a dispute resolution mechanism in accordance with the regulations, open to all persons or groups who are affected by or may affect petroleum activities, and that address grievances against the licensee, its contractors, and subcontractors. The mechanisms shall comply with the highest international standards."¹⁶²

¹⁵⁷ Section 48(1)-48(3).

¹⁵⁸ Section 59(1).

¹⁵⁹ Section 59 (4.f).

¹⁶⁰ Section 60(1) and 60(4).

¹⁶¹ section 67 (2b).

¹⁶² Section 94.

¹⁵³ See Petroleum Act section 47(1) – 47(7).

¹⁵⁴ See article 16, ECOWAS 'Directive C/DIR.3/05/09 on the Harmonization of Guiding Principles and Policies in the Mining Sector', 26-27 May 2009;

www.comm.ecowas.int

¹⁵⁵ section 100 on Prior Contracts, subsection 8.

¹⁵⁶ UN Basic Principles and Guidelines on Development-Based Evictions and Displacement; www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf

Box 2.

Relevant Articles in the Transitional Constitution of the Republic of South Sudan, 2011

Bill of Rights: Right to Own Property

28 (1) Every person shall have the right to acquire or own property as regulated by law.¹⁶³ (2) No private property may be expropriated save by law in the public interest and in consideration for prompt and fair compensation. No private property shall be confiscated save by an order of a court of law.

Land Ownership

170 (1) All land in South Sudan is owned by the people of South Sudan and its usage shall be regulated by the government in accordance with the provisions of this Constitution and the law.

(2) Notwithstanding sub-Article (1) above, and the provisions of Article 28 of this Constitution, the government at all levels, may expropriate land in the public interest as shall be prescribed by law.

Land Tenure

171 (1) The regulation of land tenure, usage and exercise of rights thereon shall be governed by this Constitution and the law. (2) Without prejudice to sub-Article (4) below, the land tenure system in South Sudan shall consist of: (a) public land; (b) community land; and (c) private land. (3) Public land shall include, but not be limited to: (a) all land owned, held or otherwise acquired by any level of government as defined by law; and (b) all land which is not otherwise classified as community or private. (4) Regardless of the classification of the land in question, rights over all subterranean and other natural resources throughout South Sudan, including petroleum and gas resources and solid minerals, shall belong to the National Government and shall be regulated by law. (5) Community land shall include all lands traditionally and historically held or used by local communities or their members. They shall be defined, held, managed and protected by law. (6) Private land shall include: (a) registered land held by any person under leasehold tenure in accordance with the law; (b) investment land acquired under lease from the Government or community for purposes of social and economic development in accordance with the law; and (c) any other land designated as private land by law. (7) Rights in land and resources owned, held or otherwise acquired by the Government shall be exercised through the appropriate or designated level of government which shall recognize customary land rights under customary land law. (8) All levels of government shall institute a process to progressively develop and amend the relevant laws to incorporate customary rights and practices and local heritage. (9) Communities and persons enjoying rights in land shall be

consulted in decisions that may affect their rights in lands and resources. (10) Communities and persons enjoying rights in land shall be entitled to prompt and equitable compensation on just terms arising from acquisition or development of land in their areas in the public interest.

Guiding Principles for Petroleum and Gas Development and Management

173. (1) Ownership of petroleum and gas shall be vested in the people of South Sudan and shall be developed and managed by the National Government on behalf of and for the benefit of the people. (2) Petroleum and gas development and management shall be guided by the following principles: ... (i) protecting the environment and biodiversity; ... (n) ensuring accountability for violations of human rights and degradation to the environment caused by petroleum and gas-related operations; and ... (o) ensuring restoration of land and resources affected by development and management. Regulation of land tenure, usage and exercise of rights in land is concurrent power of national and State governments.

¹⁶³ The Land Act (2009) is still in the process of redefinition; a new land policy was developed during 2010-2013, but no new Act is in place yet.

Conclusions and Recommendations

The findings show that Oil Company occupied or encroached on land used for accommodation (villages), agriculture and cattle grazing areas. The villages that were lost to oil industry development as a result of oil discovery and expansions were 37 villages, the total villages that were affected due to the presence of the rigs, pipelines, and roads were 96 villages, the villages that were affected as a result of soil excavation, roads and electricity were 48 villages and the villages that were geologically surveyed were 195 villages. Assuming that on average a village consists of 100 people, this means that the lives of about 38,000 people have been affected by oil industry development in some way or another in Melut County.

The compensation procedure was done in the absence of serious involvement of the government as it was between the company and the local citizens. It was only for land which the company found with established crops and was calculated based on only one season's harvest. Moreover, while the acquisition of farmland by oil companies deprives both men and women off their plots, men have an advantage over women as the little compensation is given to men. The local communities complain of health impacts, especially those who are residing near the disposed water, of which they do not know the cause but which were not there before the oil exploitation.

RECOMMENDATIONS

The Republic of South Sudan designed an elaborative Petroleum Act, guiding the oil industry to perform according to international standards. Regulations are being designed at the moment. The industry will have to change its mode of operating to prevent any bad impact on the local communities. Therefore the following recommendations are made:

1. The method of compensation followed by the companies in dealing with compensation issues was inappropriate and was deepening the grievances among the victims and therefore, should be revised in a way that restores the dignity of the affected communities and make them feel that oil is also extracted for their benefit.
2. Previous unplanned resettlement and internal migration of villagers that made their life more difficult should still be compensated appropriately. Future resettlement can only be done in consultation with the affected communities and should be compensated appropriately.
3. Those who were compensated should be recompensated fully and fairly for the value of the land, taking into account possible development and rehabilitation, because the compensation was only 1,000 to 100,000 SSP for the whole clan and was for one season only and did not include all affected persons.
4. The compensation should be divided in to three categories; compensation for occupied land, encroached lands including agricultural and pastoral lands and environmental impact on the local populations and their animals.

5. The Government should have the Companies to follow up with section 100(8) of the Petroleum Act to carry out an Environmental and Social Audit. This audit will define the nature and extent of past and current environmental degradation in the oilfield complexes; determine the impact of this degradation on the quality of life in human habitations in and around those complexes; and assess the environmental impact of those operations on fauna and flora, including livestock, wildlife, water, and aquatic resources. This could also be the process by which all past damage and related compensation is to be settled with the affected populations.
6. The companies should ensure that the communities are given access to independent information throughout all phases of operation, in a way understandable to them, and ensure consultation with communities is free from force, manipulation or pressure.
7. The Rio declaration of 1992 should be strictly followed by the oil companies in South Sudan to avert the environmental impact that is seriously being experienced by the local communities in and around the oil fields.
8. There is need for the Government of the Republic of South Sudan to implement in spirit all sections in the new Petroleum Act that relate to community rights, especially 47/ 48/ 49/ 58/ 59/ 60/ 82/ 94, and make it a precondition to the new companies that need approval to operate in South Sudan's oil industry.

Annex: Chiefs of Melut County

The chiefs interviewed for
Chapter 3

Ageer Bai (Melut Payam)

Ajang Deng, General Chief
Achol Angok Awet; in charge of Ayei Wal
Dok Diing Ngor; Kil
Dok Lua Aguet; Jong Yom

Ageer Rer (Paloich Payam)

Kon Chan, General Chief
Aouch Majok & Kur Deng Ngor; Peedhii
Ayiek Monydhod & Bol Ayiek Padiet; Joh

Aboya (Gomochok Payam)

Padiet Akuem & Ajang Deng; Anyakuei
Akueng Adeer & Kaman Akol; Rawan
Deng Kau & Deng Chan Malek; Rom

Beer (Goldora Payam)

Kejok Nyok, General Chief
Tor Chol Kwai, Nyok Ayong & Anen Abang; Dut
Reyang Ajiing & Arop Gal; Kuach
Adop & Thon; Akuel Nyop

Ramba (Thiangrial Payam)

Thouch Diing, General Chief
Monyluak Abang & Aouch Ajowong; Won Rer
Ajeboh Kon & Deng Akwai; Won Tor

Boueng (Panomdriet) Payam

Lual Lueth, General Chief
Monychol Yong & Meyoth Deng Longnyang; Laie
Manychol Nyok, Deng Akur & Deng Bebi; Meyoth
Kur Deng & Deng Thong; Bagak

Adora (Won Amum Payam)

Dheiu Ngor, General Chief
Chol Kon & Wal Deng Ayuel; Pakur and Auech
Thon Ajowod & Padiet Nyok Ayuel; Adombok

Bibliography

Ahmed, E., "The Implementation of the CPA
Wealth Sharing Agreement: The Oil Issue and
Transition Process in Sudan", Netherlands
Institute of International Relations, 2006.

Adeyoju, S.K., 1991. *Land tenure problems
in tropical areas*. Paris: 10th World Forestry
Congress

Ayoub, M., 2006. *Land and conflict in Sudan*.
Conciliation Resources, London

Comprehensive Peace Agreement (CPA), 2005

ECOS, "Oil Development in northern Upper
Nile Sudan: A preliminary investigation by the
European Coalition on Oil in Sudan", May 2006

ECOS, "Oil and the Future of Sudan",
Conference Report, Juba 1-2 November 2006

ECOS, "Facts Sheet II: The Economy of
Sudan's Oil Industry", October 2007

ECOS/ Fatal Transactions: "Sudan Oil
Industry- Whose Oil? Facts and Analysis",
April 2008

ECOS/OSI, "Preliminary Report: Oil and Peace
in Sudan", June 2010, *unpublished document*.

ECOS, "Sudan's Oil Industry on the Eve of the
Referendum", December 2010.

ECOS, "Post-Referendum Arrangements
for Sudan's Oil Industry: How to Separate
Siamese Twins", December 2010.

ECOS, "Sudan's Oil Industry after the
Referendum", Conference Report, March 2011.

ECOS, "International arbitration for victims of
Sudanese oil contracts", May 2011.

ECOWAS 'Directive C/DIR.3/05/09 on the
Harmonization of Guiding Principles and
Policies in the Mining Sector', 26-27 May
2009; www.comm.ecowas.int.

- E&P Forum / UNEP (1997), "Environmental Management in Oil and Gas Exploration and production", E&P Forum technical paper report no.37.
- Fajana, Sola, "Industrial Relations in Oil Industry in Nigeria", Working Paper No. 237, ILO Geneva, 2005.
- Franco, Leonardo, "Report on the Situation of Human Rights in Sudan", New York, Un General Assembly (A/54/467), 1999.
- Greater Nile Petroleum, "Unified Resources Policy Manual.
- Human Rights Watch, *Sudan, Oil and Human Rights*, Washington DC: Human Rights Watch/Africa, 2003.
- International Labour Office (ILO) , "Declaration on Fundamental Principles on Rights at Work and its Follow-up", 1998.
- ILO, "Working Out of Poverty", Report of the Director-General, International Labour Conference 91st Session, Geneva, 2003.
- Interim National Constitution of the Republic of Sudan, 2005.
- International Convention on the Elimination of All Forms of Racial Discrimination, 1969.
- International Covenant on Economic, Social and Cultural Rights, 1976.
- Johnson, Douglas H., *The Root Causes of Sudan's Civil Wars*, Oxford: James Currey, 2003.
- Maluth County, "Memo of Protest on Petroleum Activities in Maluth", 2009; available from ECOS. Miller, Shirely and Tanya Van Meelis, "Industrial Relations in Oil Industry in South Africa, Working Paper No. 238, ILO Geneva, 2005.
- Moro, Leben Nelson, "Sudan: Old Habits Die Hard", *Fahamu*, 2 August 2007.
- Moro, Leben Nelson, "Oil, Conflict and Displacement in Sudan", doctoral thesis, Oxford, Linacre College, July 2008.
- Moyo, S., O'Keefe, P., Sill, M., 1993. *The Southern African Environment: profiles of the SADC countries*. Earthscan Publications Ltd, London.
- Petroleum Act, July 2012 – Laws of South Sudan; <http://mpmisouthsudan.org/PolicyLaws.html>
- Rahhal, S., Abdel Salam, A.H., 2006. Land Rights, Natural Resources Tenure and Land Reform. http://www.justiceafrica.org/wpcontent/uploads/2006/07/CivilProjectIssue PaperE2_Land.pdf
- Report of Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises in relation to Guiding Principles on Business and Human Rights and Implementing the United Nations "Protect, Respect and Remedy" Framework to the UN Human Rights Council, March 2011.
- Rio Declaration on Environment and Development, UN 1992; <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>
- Scroggins, Deborah, *Emma's War: Love, Betrayal, and Death in the Sudan*, London: HarperCollins, 2002.
- Shankleman, Jill, "Oil and State Building in South Sudan, Special Report 282", United States Institute of Peace (USIP), July 2011.
- SPLM/A, "SPLA Scores Major Victory in Oilfields" Press Release, 20 November 2001. Available from: <<http://www.sudan.net>>.
- Southern Sudan Centre for Census Statistics and Evaluation, Statistical Yearbook for Southern Sudan 2009.
- Sudan Labour Code, 1997.
- Transitional Constitution of the Republic of South Sudan, 2011.
- UN Basic Principles and Guidelines on Development-Based Evictions and Displacement; www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf



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