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Oil and Sustainable Peace in South Sudan

A Strategy for Civil Society

Contents

Summary

The core elements of this strategy were developed at a policy dialogue on oil and sustainable peace held in Juba, South Sudan from 3-4 March 2015. The dialogue brought together 18 South Sudanese and international experts for two days of deliberations on how oil issues might feature into the agenda of a transitional government in South Sudan. The objective of the strategy is to provide a series of concrete and actionable recommendations to help transform South Sudan's natural resource wealth into a driver of peace, rather than a spoil of war.

The strategy uses existing petroleum sector legislation as a starting point. Shortly after independence, the National Legislative Assembly enacted two important pieces of legislation: Petroleum Act (2012) and Petroleum Revenue Management Act (2013). These two laws are widely considered to represent good industry practice. If fully implemented, the laws could set the foundation for a vibrant and sustainable petroleum sector.

Unfortunately, several years after being enacted, the laws remain little more than words on a page. The first step for the government and oil companies is therefore to immediately begin implementing the existing laws in letter and spirit. While some provisions may require considerable human or financial resources to implement, others—such as the comprehensive social and environmental audit and the reporting requirements of the Petroleum Act—only require political will. These provisions should be implemented without delay as the government works towards a more comprehensive implementation plan.

Implementation of existing laws, however, is not sufficient to transform South Sudan's oil wealth into a driver of peace. With the devastation and suffering caused by the conflict that erupted in December 2013, more drastic measures must be considered to minimize the destabilizing impact of oil revenue in the hands of a political and military leadership at odds with itself. This strategy proposes three key measures to prevent further damage to the petroleum sector and the broader economy:

- First, put in place a moratorium on all new petroleum sector contracts, including contracts for service delivery.
- Second, place the two percent of oil revenue designated for oil producing states and the three percent of oil revenue designated for communities in oil-producing areas in an independently monitored bank account until a transparent and accountable system for distributing this revenue is in place.
- Third, consider depositing the remaining oil revenue in an escrow account at a reputable international bank and placing restrictions on the account that would restrict security sector spending and prioritize investments in agriculture, infrastructure, health, education and other priority sectors.

Current discussions among the warring parties suggest that the transitional government is likely to be established with a timeframe of 30 months, preceded by a six-month pre-transitional period. In this time, the transitional government will be responsible for establishing law and order, returning and resettling displaced populations, ensuring humanitarian access, preparing for elections, initiating a constitutional development process, and facilitating justice and reconciliation efforts.

By limiting the discretion that the transitional government has over contracting and the distribution of petroleum revenue, the three measures listed above could help to create a more conducive environment for the government to deliver on its many objectives. Meanwhile, the

Ministry of Petroleum and Mining could oversee efforts to repair the damage caused to oil facilities and assess the longer-term negative impacts that oil production has had on the people and environment since oil first started flowing some 15 years ago.

These reforms require decisive action and visionary leadership, but if South Sudan is to regain the hope of peace and prosperity that accompanied independence, the nation must find a way of correcting the structural inequalities that create conditions conducive to conflict.

Comprehensive Social and Environmental Audit

Since Sudan first starting producing oil in commercial quantities around the turn of the millennium, communities living in oil-producing areas have had to live with a host of harmful social and environmental impacts. These impacts have accrued over time, making life unbearable for many affected communities. According to a recently published study, for example, at least 180,000 and perhaps as many as half a million people could be affected by oil-contaminated drinking water in Unity State.[1]

In recognition of the costs that have been placed on communities residing near oil fields, and the need to remedy the damage that has been done thus far and to mitigate or avoid future impacts, the Petroleum Act calls for a comprehensive social and environmental audit to be carried out for existing projects. According to article 100(8):

> When a project involved 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.

The article makes clear that the costs of the audit are to be carried by the oil companies. The Ministry of Petroleum and Mining would be responsible for oversight and ensuring that an independent and reputable firm is contracted to carry out the assignment.

Though the Ministry has made some efforts to recruit a firm to carry out the audit, a more sustained effort is required. This strategy recommends that the Ministry work with civil society organizations to ensure that the audit is conducted without further delay. The Ministry could facilitate civil society oversight by affording a group of civil society representatives official status to inspect petroleum activities. Article 86(3) of the Petroleum Act allows for such inspections:

> The Ministry may authorise any person to inspect petroleum activities to ensure that the petroleum activities are carried out in accordance with this Act and in accordance with the terms and conditions of any applicable petroleum agreement, petroleum sub-contract or licence.

By working together with civil society actors, the Ministry would be better able to carry out its function of overseeing oil activities and ensuring that oil companies are abiding by their legal obligations.

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[1] Hella Rueskamp *et al.*, *Effect of oil exploration and production on the salinity of a marginally permeable aquifer system in the Thar Jath-, Mala- and Unity Oilfields, Southern Sudan*, Zbl, Geol. Palaönt. Teil I (Nov. 2014), *available at* http://www.hoffnungszeichen.de/fileadmin/redaktion/SoH_Africa/ZGPI_2014_-_Effect_of_oil_exploration_and_production_in_South_Sudan_-_Rueskamp__Ariki__Stieglitz__Treskatis.pdf.

Regular Reporting on Rates of Production, Revenue and Local Content

Since independence in 2011, the Ministry of Petroleum and Mining has done sporadic reporting on levels of production and revenue generated from oil, but it has not reported with the consistency and specificity required by the Petroleum Act. Chapter XVII of the Petroleum Act stipulates the legal requirements for reporting and public access to information about petroleum activities. According to article 77(1):

> Information about petroleum activities contained in Government records shall be public in accordance with applicable law. Any person may demand access to public documents. Access to information shall be free, if made available for examination at the Ministry's premises, or for a fee to recover the cost of copying the applicable document.

The Ministry is obliged to make a range of data on the petroleum sector available to the public, including:

- Oil sector production, revenue, and expenditure data;
- Petroleum agreements and licenses;
- Justification for the award of petroleum contracts; and
- Beneficial ownership information, proof of technical competence, and ethical conduct and financial capacity of oil companies.

Article 78(1) also places an obligation on oil companies to annually disclose information on any payment made to government agencies. This disclosure requirement supersedes any confidentiality requirements laid out in existing contracts. According to article 78(3):

> Confidentiality clauses or other clauses in a petroleum agreement that prevent disclosure of information on any payments made and revenues received in connection with petroleum activities conducted in the Republic shall be void to the extent required for disclosure of such information as set out in subsection (1) of this Section.

In addition, companies are required to develop local content plans consisting of the following:

- A plan for procurement of national goods and services
- A detailed plan and programme for local recruitment, employment and training, including post-graduate training and scholarships; and
- A plan for the transfer of skills, knowledge, competence and know-how.

Each year, oil companies are required to publish a report describing their initiatives regarding local content taken in the previous year and their results.

Like the social and environmental audit discussed above, these reporting requirements carry little or no financial cost for the government of South Sudan and there is no reason why they could not be implemented immediately. By providing this information to the public, the Ministry would facilitate more robust oversight over the sector and a more accountable petroleum industry.

Moratorium on Future Oil Contracts

Due to the complexity of the political landscape and the uncertainty that will characterize the transitional period, there is a high risk that the transitional government will find itself entering into long-term commitments on unfavorable terms with unreliable partners in the petroleum sector. Such partnerships threaten to plunge the country further into a self-destructive cycle, in which oil revenue feeds corruption and inequality and does little to consolidate peace or raise the living standards of the South Sudanese people.

This strategy recommends that the government put in place a three-year moratorium on future oil contracts, including contracts for service delivery. The moratorium would prevent the government from entering into additional obligations with private sector actors, but it would not apply to existing agreements. Without the responsibility of negotiating additional agreements, the Ministry of Petroleum and Mining could focus on bringing the oil fields back to full production and implementing the existing laws. Meanwhile, the moratorium would send a signal to international capital that South Sudan is committed to putting its house in order, and creating an environment that appeals to serious businesses interested in socially responsible investments. The moratorium would also demonstrate to the people of South Sudan that the transitional government is committed to breaking with the corrupt and inefficient practices of the past.

Moratoriums have already been used to good effect in other business sectors in South Sudan. When the regionally autonomous government of Southern Sudan was established in 2005, it put in place a moratorium on forest concessions so that it could review concessions entered into during the war and clarify the existing forest law. The National Legislative Assembly also put in place a moratorium on mining concessions in 2010 pending the passage of a Mining Act. When the Act was passed in 2013, the Ministry lifted the moratorium. A strong petroleum sector is the key to sustainable peace and long-term prosperity, but South Sudan cannot build such a sector if it enters into long-term obligations based on the short-term demands with which the transitional government will be confronted.

Protection of State and Community Oil Revenue

In recognition of the harm that has been done to communities in oil-producing areas, the Petroleum Revenue Management Act requires that two percent of oil revenue be allocated to oil-producing states and three percent to local government councils in oil-producing states. Currently, these funds are being distributed in lump sum cash payments to local authorities with little or no transparency or accountability.

There is an urgent need for some sort of formal structure to manage these funds effectively. The use of community trust models may provide opportunities, in this regard. In a community trust, oil revenue is vested in the community in its collective capacity. A group of trustees is designated to make decisions about the use of the resources for the benefit of local populations. Trustees are bound by a fiduciary relationship and are legally obligated to act solely in the community's best interest. Proceeds are invested back into the community through direct payments to community members or through the financing of development projects designed to meet the particular needs of the community.

In time, institutional mechanisms such community trusts may help to promote more equitable distribution of resources at the state and local level. In the meantime, however, there is a need for urgent measures to be put in place to ensure that revenue is not misappropriated or wasted. This strategy recommends that the five percent of oil revenue that goes to oil-producing states and communities be deposited in an internationally audited bank account until measures are put in place to distribute the funds more effectively.

Allocation of Oil Revenue to Priority Sectors

Lastly, this strategy recommends that the warring parties consider placing a restriction on the use of oil revenue that would limit the amount of resources that are wasted on consumption and increase investments in priority sectors such as infrastructure, agriculture, health and education. Currently, the government allocates approximately 40 percent of its annual budget to security sector spending and another 40 percent to government salaries. Only 0.12 percent of the budget is allocated towards agriculture. This pattern of spending, when coupled with the fact that rates of oil production are projected to decline steadily over the next few decades, could very well condemn South Sudan to a future of increasing poverty and social inequality. The country must urgently find ways of channeling oil revenue towards investments in non-oil sectors so as to counteract declining oil revenue, spur longer-term development, and diversify the economy.

This strategy recommends that the warring parties consider placing the oil revenue that goes to the national government in an internationally audited escrow account that would set strict limits on the amount of funds that could be disbursed for security sector spending and salaries. This would encourage the transitional government to invest more seriously in priority sectors such as agriculture and infrastructure, which could help to spur economic development and thereby contribute to the consolidation of peace. The percentage of annual revenue allocated towards priority sectors could be progressively increased so as to avoid the destabilizing impact that channeling revenue away from civil service salaries could have on the population in the short-term. As investments in priority sectors are increased, the spillover benefits for local economies could help to counteract any losses that people incur by losing access to government jobs.

Concluding Remarks

For South Sudan to emerge from this conflict and set itself on a path to long-term and sustainable peace, it must part ways with the corrupt and inefficient policies and practices of the past. The social, political and economic transformation of South Sudanese society requires bold decision-making and visionary leadership that is able to think beyond short-term political calculations to prioritize the benefit of the people, both those now living as well as future generations. Oil is by far the most important commodity produced in South Sudan. If used effectively, it could spur broader economic growth and propel South Sudan into a period of accelerated economic development and prosperity. For this to happen, tough choices must be made now.

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