



# THE SUDD INSTITUTE

RESEARCH FOR A PEACEFUL, JUST AND PROSPEROUS SOUTH SUDAN

P. O. Box 34, Juba, South Sudan • Tel: +211 (0)956 305 780  
Email: thesudd.institute@gmail.com • www.suddinstitute.org

## Policy Brief

May 3, 2016

### **The Level of Transparency and Accountability in South Sudan's Petroleum Industry<sup>1</sup>**

*Nhial Tiitmamer*

#### **Summary**

*Transparency and accountability have become international norms due to inherent range of social, economic and political benefits. These benefits include the reduction of corruption, minimization of conflict over natural resources, building of trust among government, extractive companies, and citizens, enabling of regulatory authorities to hold extractive companies, government institutions, and individuals to account, improvement of investment climate and promotion of economic and social development (Gillies, 2010, Moeller et al. 2006, Hale, 2008, EITI, 2016). This paper assesses the level of transparency and accountability in South Sudan's petroleum industry in line with the standards stipulated in the Petroleum Act, 2012 and Petroleum Revenue Management Act 2012. The paper includes a conceptual framework, which explains transparency and accountability as a five-level process that can be attained in three phases.*

*To determine transparency and accountability level, we conducted literature review and interviews with officials and staff of government and petroleum joint operating companies (JOCs). Disclosure and non-disclosure of information were quantified to measure the level of transparency and accountability. We find that only 42% of the information has been disclosed. While these disclosures are a positive step, they have limited publicity, scrutiny, analysis and accountability, which make full transparency and accountability a distant dream. Non-disclosure of information will continue to provide a fertile ground for illicit activities and mismanagement of the petroleum revenues as corruption can thrive in darkness. The same applies to the absence of strong transparency and accountability institutions. An independent administrative body stipulated in the Petroleum Act 2012, and whose task is to coordinate, verify and publish petroleum information in accordance with the principles of Extractive Industries Transparency Initiative (EITI), has not yet been established. Continuous delay to establish such institution dedicated to performing this important task is a major obstacle. We recommend establishment of a standalone institution or an institution attached to either Audit Chamber or Anti- Corruption Commission to coordinate, verify and publish information as required by the law. We also recommend a creation of an online information hub where this information can be assembled and widely disseminated. Such an initiative can take South Sudan a notch higher in the international transparency index.*

---

<sup>1</sup> We thank CORDAID for financial support to conduct this assessment.

## I. Introduction

Transparency and accountability have become not only international norms for guarding the reputation of public and corporate institutions, but are also tools for countries to prevent the so called resource curse that has ravaged many resource rich countries (Gillies, 2010). Transparency is considered “as a way to safeguard investors in one hand and prevent, or minimize, corruption in the other” (Moeller et al., 2006). Transparency emerged as an international norm because of effective advocacy by international NGOs coupled with reputation concern by international oil and gas corporations that have been worried of risks of losing investors and local social license<sup>2</sup> if they do not become transparent. Transparency enables regulatory authorities to hold corporations, government institutions and non-governmental organizations accountable by requiring them to disclose and publish a host of information including the level of environmental pollution, revenues accrued, contracts, procurement procedures, agreements, expenditures and decisions, among others (Hale, 2008). Having emerged as an effective tool for preventing the resource curse and promoting good governance, the government of South Sudan stipulated transparency and accountability in the Petroleum Act, 2012.

This paper assesses transparency and accountability in the South Sudan’s petroleum industry in line with the stipulations of the Petroleum Act, 2012 and Petroleum Revenue Management Act, 2012. While there are several standards available in the literature for assessing transparency and accountability, we use the standards stipulated in the Petroleum Act, 2012 and to some extent Petroleum Revenue Management Act, 2012 as these standards are more relevant to the context. Elements of transparency and accountability that the paper assesses include disclosure and publication of information about petroleum revenues, petroleum crude production, petroleum revenue expenditures, contracts, licenses, permits, agreements, policies, laws, regulations, local content, health, safety and environment as provided for in the Petroleum Act. The paper also assesses disclosure of information of about Future Generation Funds, Stabilization Account, 2% and 3% share of oil producing states and communities, respectively, as stipulated in the Petroleum Revenue Management Act, 2012. We first provide a conceptual framework. The framework defines and explains transparency and accountability, the link between both concepts, how both can lead to prevention or reduction of corruption and the various levels and phases they go through to reach internationally acceptable level of transparency and accountability. After the conceptual framework, we explain the method, results and give conclusions and recommendations.

---

<sup>2</sup> Social license, often referred to as social license to operate (SLO), is the general acceptance of a company by a community to extract minerals, oil and other forms of resources in its territory. In other words, it is a trust an extractive company gains in working in a mutually beneficial way with the community. Social license is as important as a license given by the government because if the community is not happy, the company can be confronted with violence by community members (Moffat & Zhang, 2013).

## II. Conceptual Framework

Transparency and accountability have become major international tools for combating the malaise of corruption, particularly in the public sector. In its short history as an independent country, South Sudan has been ranked among the top countries perceived to be corrupt by Transparency International since 2013. About 98% of the participants of a household survey conducted in 2010 say the country is really corrupt (Mayai, 2015). The President of the Republic wrote to 75 serving and former government officials asking them to return allegedly stolen 4 billion US dollars to an account the government had opened in Kenya<sup>3</sup>. Only 1.5% of this money has been returned (The Sentry, 2015). While there are widely known corruption incidences such as Dura Saga, there are many acts of corruption going on in the darkness “in both small and grand scales through bogus contracts, inflated prices during procurement, political patronage, hiring unqualified tribesmen, and other forms of abuse of power” (The Sentry, 2015, Tütamer and Awolich, 2014). These corruption incidences have both economic and political ramifications for the country. Some of the consequences include being labelled internationally as a failed state, an act that can lead to responsible investors withdrawing or postponing investing in the country. Owing to these consequences, most countries deliberately try to do better in their fight against corruption. Many experts believe that corruption can be reduced significantly when a country is both transparent and accountable. However, can transparency and accountability truly reduce corruption? Whether transparency and accountability can reduce corruption depends on the kinds of transparency and accountability and whether both of them are correctly applied.

Transparency and accountability are different, but applying one is meaningless without the other (Armstrong, 2005). In other words, having transparency would not automatically translate to having accountability (Fox, 2007, Lindstedt and Naurin, 2005). The application of transparency and accountability has the same impact on corruption as the light on the street exposes potential criminals. Although the mere presence of light cannot prevent theft and other illegal activities on the street, policemen and regulatory authorities can more easily detect and apprehend criminals on a lighted street than in darkness. In other words, if there is transparency, accountability institutions such as Anti-Corruption Commission can easily detect, apprehend and prosecute the wrongdoers. In this case, the wrongdoers can fear being detected and therefore cannot venture into committing wrongdoing in the first place. For transparency and accountability to lead to prevention or minimization of corruption, transparency must happen throughout the process while accountability must happen after every stage of the process.

Transparency is defined by Extractive Industry Transparency Initiative (EITI) as “openness and public disclosure of activities.” Finel and Lord (1999) define it “as legal,

---

<sup>3</sup> See the soft copy of President Kiir’s letter on <http://paanluelwel.com/2012/06/01/letter-from-president-kiir-on-corruption-4-billion-dollars-stolen/>

political, and institutional structures that make information about the internal characteristics of a government and society available to actors both inside and outside of the domestic political system.” It is intended to make the public or those outside the system “discern a variety of important factors including relative capabilities, risk aversion or acceptance, interests, and intentions” (Oye, 1986; Mitchell, 1998:111). There are two forms of transparency namely proactive and demand driven (Fox, 2007). Proactive transparency is where the government makes required information readily available in public domain through newspapers, gazette and radios, while demand driven is achieved when the stakeholders demand disclosure of information, including doing it through courts and other legal means.

EITI defines accountability as “the obligation of an individual or organization to account for its activities, to accept responsibility for them, and to disclose the results in a transparent manner.” Accountability is one of the ingredients of social contract between the state (represented by the government) and the people of a country. In other words, the relationship is principal-agent relationships where the state (the agent), represented by government institutions, is obligated to account or explain to the principal (the people) what has been done. In line with social contract between the state and the people, accountability is supposed to be carried out publicly (Awolich & Akol, 2014). In other words, the essence of transparency is that any information and matter of public interest must be explained publicly. A true accountability can happen through independent institutions, which cannot be interfered with by those who are supposed to be asked to account. In line with this principle, what matters is not the mere presence of accountability institutions, but the capacity and independence of these institutions to discharge their responsibilities effectively.

For the purposes of this study, we define transparency as an act of disclosing, publishing, analyzing, disseminating and scrutinizing information about the petroleum industry. Transparency and accountability are not the ends in themselves but a means to an end, with an end being good governance and better management of petroleum resources. The information that is disclosed and published needs to be analyzed and broken down for the public to digest and use as evidence to advocate for change and for the policymakers to act on, otherwise it would be as good as information which has not been disclosed. We conceptualize how transparency and accountability system should work based on Deming’s cycle, which is modeled on continual improvement<sup>4</sup> of a system (see figure 1).

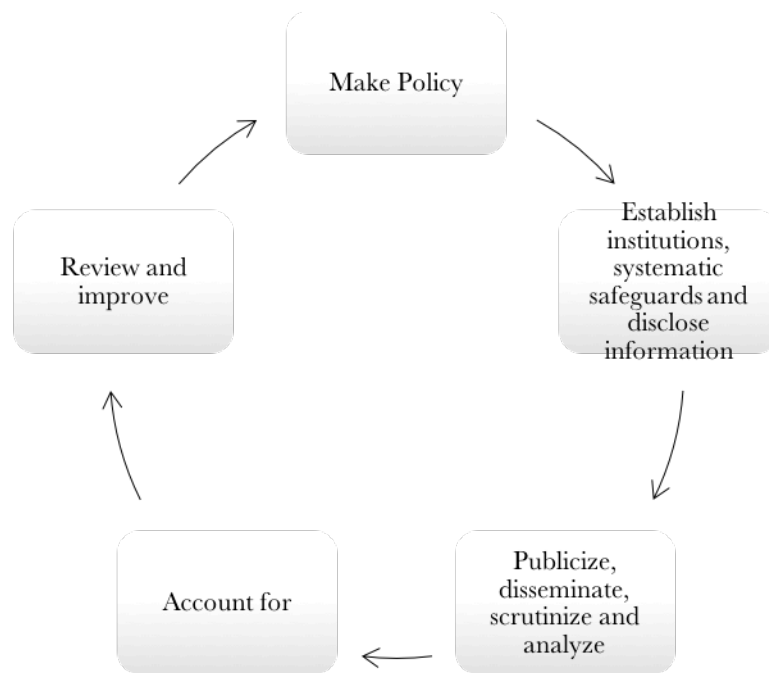
As illustrated in figure 1, we explain transparency and accountability as a process that has five levels that can be attained in three phases. The three phases include policy

---

<sup>4</sup> The phrase continual or continuous improvement process (CIP) is attributed to W. Edward Deming. It is widely used in quality management (e.g. products quality), business management, project management and environmental management system (EMS). It is the application of CIP to EMS that we have particularly adopted for use in this conceptual framework as we see transparency and EMS as similar in the sense that they are about improving the systems and processes rather than product quality.

development phase, implementation phase and review phase. While all the levels and phases are considered essential ingredients of transparency and accountability, level one and phase one represent the lowest level and level five and phase three represent the highest level, considering that all the essential requirements of each level and phase have been met. In other words, transparency and accountability can be considered fully met if all the five levels and phases have been completed.

**Figure 1: Five Levels of Transparency and Accountability (Source: the author)**



**Make Policy:** Level one starts with having a proper policy on transparency and accountability followed by an enabling legislation and enforcing regulations. We call this a policy development phase or phase one. Apart from initiating the policy followed by an enabling legislation and enforcement regulations, the government should also make sure it consults the stakeholders and incorporates their views into the final policy, legislation and regulations. In addition, the government should raise awareness about the new policy, legislation and regulations, prepare relevant institutions and stakeholders for the implementation phase which should come after a reasonable timeframe is issued. After the policy development phase, the next phase is the implementation phase, which involves three levels namely level two, three and four.

**Establish institutions, systematic safeguards and disclose information:** Level two involves implementing the policy, the legislation and regulations by establishing transparency and accountability institutions and mechanisms for safeguards and controls and by starting to disclose information through appropriate public channels such as a government gazette, press releases, press conferences, monthly, quarterly or annual

reports and government websites. Mechanisms for safeguards and controls include putting internal and external transparency and accountability systems in place. Institutions established at this level include internal transparency and accountability units or directorates whose roles are to provide internal safeguards, controls, monitoring, evaluation and disclosure of information to the public and relevant government institutions. An example of a safeguard is having a procurement committee composed of members from various institutional backgrounds instead of having one person or people from the same department deciding it alone, having various people sign or approve the documents or decisions instead of one person, documenting every stage of a procurement process and decision making and keeping these records for disclosure, publicizing, analysis and scrutiny. External transparency and accountability institutions are also supposed to be established at this level. Such institutions include the Audit Chamber, Anti-Corruption Commission and South Sudan Fiscal & Financial Allocation and Monitoring Commission, whose roles can come into full play in level four.

Apart from government institutions playing these roles at this level, other stakeholders should play their parts (see table 5 in the appendices). For example, the media should publicize the information that the government has disclosed. The civil society can scrutinize the information; find discrepancies and demand for action. It can also demand for disclosure or establishment of strong transparency and accountability institutions if the government has not done so. The civil society can demand and scrutinize the government by citing the law or by filing a petition through relevant courts. The parliament can also do the same by summoning the responsible authorities to disclose information or establish institutions required by the law.

**Publicize, disseminate, scrutinize and analyze:** Level three includes publicizing, disseminating, analyzing and scrutinizing information that has been disclosed and the performance of institutions established. The role players here include the media, civil society organizations, academic and research policy think tanks, among others. It is important to note that these institutions also play the said roles throughout the levels and phases; however, this is the level they are the main actors.

**Account for:** Level four is where accountability is put into effect. In other words, this is where the accountability institutions perform their respective roles. For example, the Audit Chamber audits the accounts and management of the revenues and makes recommendation to the Parliament and the President. The Parliament plays its part by summoning and requesting the responsible institutions such as the executive to account and after scrutinizing the reports presented, recommends or takes actions. The media publicize the information, the academic and research institutions research, analyze and find the discrepancies and the civil society organizations scrutinize and demand for actions. The Anti-Corruption Commission investigates and prosecutes alleged malpractices and the President and responsible ministers take action against any malpractices. The Judiciary takes action by hearing the cases and passing sentences.

**Review and improve:** The final phase is a review where the government and stakeholders again sit, review and improve the transparency and accountability system that the policy and law have put in place. At this point, the review team is tasked to identify inadequacies and come up with appropriate measures to improve the system and these measures are recommended and incorporated into policies, laws and regulations and institutional set up.

### **III. Assessment and Results**

This section presents the methodology and analyzes the results of the assessment of transparency and accountability in South Sudan's petroleum industry.

#### **A. Methodology**

As mentioned early, the assessment was based on the standards stipulated in the Petroleum Act 2012, and to a certain extent, in Petroleum Revenue Management Act 2012. The assessment was conducted in 2015 using media information review, literature review and interviews with officials and staff of government, Nilepet, joint petroleum operating companies (JOCs) namely Dar Petroleum Operating Company (DPOC), Sudd Petroleum Operating Company (SPOC) and Greater Pioneer Operating Company (GPOC). Although accountability has been discussed early in the conceptual framework, the assessment focuses more on transparency aspects.

We group the assessment into four main categories that include:

1. Revenue and expenditure transparency;
2. Contracts transparency;
3. Regulatory transparency;
4. Health, safety and environment transparency;

We further characterize these main categories into sub-categories (see table 1 in the appendices). The items we have grouped under revenue and expenditure transparency are grouped together because they are related to each other or are particularly stemming from revenues. For example, production volume determines the amount of revenues, expenditure can reveal how revenues have been spent and profit oil determines how much revenue remains after subtracting operation expenses (e.g. the cost oil), among others. While contracts can be treated as a standalone category, it also includes licenses, permits and agreements, procurement of local goods and services, employment, training and scholarships. In addition, we use the phrase "regulatory transparency" as an umbrella for the items grouped under it because the chief role of the government is to regulate the petroleum industry, whether through a policy, legislation or regulations.

In short, the sub-categorization is based on the extent to which items are related to each other. All the items or categories, which have been assessed, are included on the basis of the Petroleum Act, (2012) and Petroleum Revenue Management Act, (2012) as mentioned previously. Lack of disclosure and publication of the said items was noted as "No" and coded as "2" while disclosure and publication was recorded as "Yes" and

coded “1”. This information was then quantified and analyzed using Excel. We also recorded the source of disclosure and publication.

## **B. Results**

We find that only 42% of the items required by the law for disclosure have been disclosed (See table 1 in the appendices). Based on this assessment, reporting practices have improved from a score of 17 out of 100 according to a report by the Natural Resource Governance Institute (NRGI) in 2013<sup>5</sup>. Factors responsible for this small improvement include publication of some of the required information in the petroleum marketing annual report and government websites. These information channels did not exist by the time the NRGI conducted its assessment in 2013. Revenue and expenditure category leads in disclosure followed by regulatory transparency (see figure 2). Contracts and HSE categories are the least transparent categories.

What are the specific items that have been disclosed? The specific items which have been disclosed include petroleum crude production data, petroleum prices, payments to government, government expenditure information, exploration and production sharing formulas, profit oil, cost oil, petroleum sales information, 2% and 3% share of the oil producing states and communities and information about stabilization account and future generation accounts. Disclosures in the revenue and expenditure category are attributed to key publications from the Ministries of Finance and Petroleum and Mining. For example, the Finance Ministry releases its revenue and expenditure data information through its Quarterly Macro-Fiscal Report and Monthly Budget Execution Tables and Annual Budgets. It also publishes this information on its website<sup>6</sup> while the Ministry of Petroleum and Mining publishes its information through annual marketing report and through press releases.

Based on the disclosed information, petroleum crude production amounted to a total of 34.7 millions of barrels from June 2014 to May 2015 (see table 3a). In addition, the price for Dated Brent (an equivalent of South Sudan’s Dar Blend) ranged from 111.65 US dollars (the highest) to 47.86 US dollars (the lowest) between June 2014 and May 2015 (see table 2). Besides, the government of the Republic of South Sudan received total revenues of \$1, 549, 975, 212 in the same period after the sales of petroleum crude (see

---

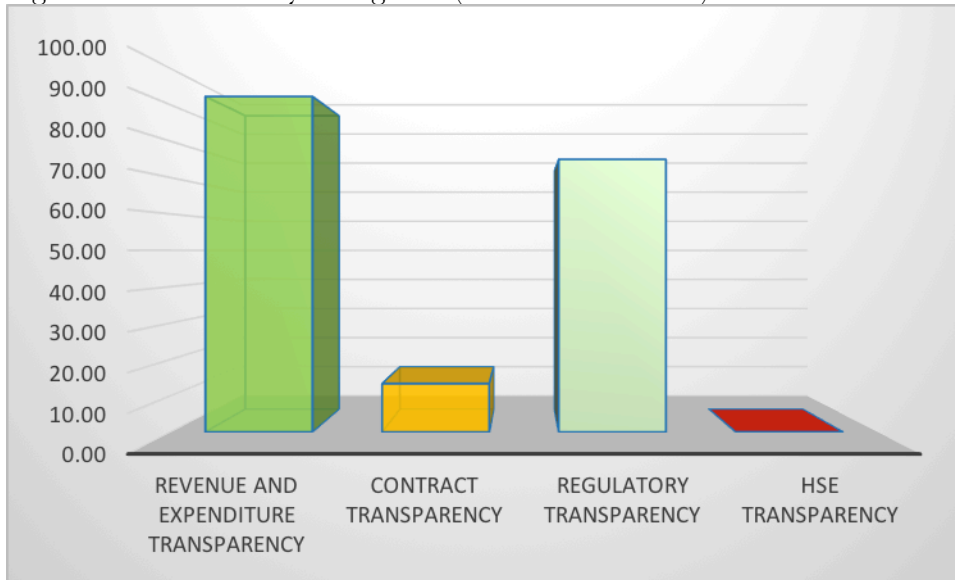
<sup>5</sup> While the Natural Resource Governance Institute measured other parameters (e.g. institutional and legal setting, enabling environment, safe guards and quality controls), our assessment mainly focuses on the reporting practices (e.g. information disclosure) and it is this aspect that we compare. <http://www.resourcegovernance.org/our-work/country/south-sudan>.

<sup>6</sup> Oil related revenues and expenditure information can be found at the Ministry of Finance and Economic Planning’s website: <http://www.grss-mof.org>. The website contains approved annual budget books, quarterly macro-fiscal reports as well as monthly budget execution tables covering most of the years since 2012. Publishing this information on this website is commendable as this improves transparency although more needs to be done in terms of breaking the information down to minute details to allow for better scrutiny.



table 3a and also table 3b in the appendices). From this total revenues, \$836, 266, 988 was subtracted as payment to Sudan for transitional assistance, transit, transportation and processing fees. Apart from that subtraction, \$338, 035, 291 was deducted for loans repayment. Nile Petroleum Corporation, the commercial arm of the government, was given petroleum crude worth \$123, 143, 346 as its equity share as well as petroleum crude worth \$104, 366, 051 as sale reallocation. There was no sufficient explanation for the sale reallocation.

Figure 2: Disclosure by Categories (Source: the author)



The Ministry of Finance and Economic Planning has published expenditure information under different publication categories namely Quarterly Macro-Fiscal Report and Monthly Budget Execution Tables. These reports explain the expenditures against the budget, among other things. There are a few things to note. First, the Ministry of Finance has a website that it has used to publish most of the budgets and expenditures since 2005. However, the expenditures published are in bulk numbers and are not broken down to understand where the money actually got spent. For example, the records show expenditures on salaries, capital and block transfers to the states as well as overspending, which reaches up to 61% of the budget in some cases. Second, there is no mention of how the 3% money for the oil producing communities has been spent. In addition, the expenditure reports from the ministry of finance do not provide breakdown of expenditures.

The formulas used to share costs and profits as per the terms of the Exploration and Production Sharing Agreements (EPSA) were published in the MPM’s marketing report (see table 4). While this meets the requirement for the disclosure, no procedures of how the revenues were calculated were provided on the basis of this published formula.

Oil producing states and communities were allocated 80 million SSPs in the 2015/2016 budgets, which was a reduction from 468 Million SSP in the 2014/2015 budgets. For example, in the Quarterly Macro-Fiscal Report for 2015/2016, there was a mention of 20 Million SSPs transferred to oil producing states. However, the amount for the oil producing communities was not specified. There is no sufficient explanation provided for the reduction and lack of specification of the portion for oil producing communities. We could assume the reduction in the amount could be attributed to the reduction in the oil revenues due to the recent fall in oil production and prices. There was also no mention of the things on which this money was spent.

Transfers to Future Generation Funds and Stabilization Account as provided for in the Petroleum Revenue Management Act 2012 has been mentioned in the budgets for 2014/2015 and 2015/2016. However, there were no amounts allocated in the columns against those items. Despite lack of allocations to these accounts, we still consider this information as disclosed because the public can know that there were no allocations to these accounts.

Apart from the disclosure and publication previously mentioned, pieces of legislation and regulations have been disclosed and published. These include the Petroleum Act 2012, Petroleum Health, Safety and Environmental Management Systems and Plans Regulations, 2015, OHS requirements respecting petroleum activities (draft) and Ministerial Order on Oil Resumption<sup>7</sup>. The Petroleum Revenue Management Act 2012 and draft petroleum policy have not been published on the MPM's website. However, these documents can be considered as disclosed because they have been put through public consultations and media coverage and analysis (Savage, 2013). Such disclosures and publications are positive steps in the right direction. However, there are a number of issues worth noting.

First, the data of the items disclosed are not disaggregated to a level that ordinary members of the public can easily consume it. Given the fact that the information is not disaggregated, it is difficult to know if there are discrepancies. Second, the data have a limited media coverage and analysis. This makes these kinds of disclosures less useful in influencing accountability. One of the best practices to attain a proper level of transparency is to have sufficient media coverage of such disclosures with the intention of providing more analysis and proper scrutiny beyond what has been reported. Without a sufficient media coverage, analysis and civil society scrutiny, the disclosure is as good as no disclosure. Our survey of the media coverage during the release of the MPM's report in 2015 shows that the information reported is not available beyond the pages of the report with the exception of some few international industry reports by Platts and African

---

<sup>7</sup> Check Ministry of Petroleum and Mining's website:  
<http://mpmisouthsudan.org/PolicyLaws.html>

Energy, which were limited, as such sources are not within the reach of South Sudanese audience.

Third, despite the availability of the Ministry's website, the report was not published on it. Publication of such information on the Ministry's website can help reach wider public, as analysts, researchers, media and other stakeholders can easily access and provide analytical rigor and scrutiny. Another way the information can reach wider audience and receive better coverage is by launching it through a press conference, something which did not happen when the MPM's marketing report was released. By producing a few hard copies, the report risks ending up not reaching the wider audience it might have been intended for.

Fourth and most importantly, using our conceptual framework explained earlier, we make some important observations. First, transparency and accountability process in South Sudan's petroleum industry is still at level one and two with some serious inadequacies at both levels. For example, while there are important pieces of legislation, such as Petroleum Act, 2012 and Petroleum Revenue Management Act, 2012, petroleum policy is still at a drafting stage and there are no regulations to enforce transparency and accountability provisions stipulated in both pieces of legislation. While some disclosures, have been made at level two, these disclosures have limited publicity, scrutiny, analysis and accountability. Besides, there are still no strong institutions of transparency and accountability. For example, an independent administrative body stipulated in the Petroleum Act, 2012, and whose task is to coordinate, verify and publish petroleum information, in accordance with the principles of Extractive Industries Transparency Initiative (EITI), has not been established. To achieve transparency and accountability, the EITI mandates government publication of revenues it receives from oil companies, companies' publication of revenues they pay to the government, verification and publication of these disclosures by an independent administrative body and scrutiny and monitoring by civil society. As will be seen later, transparency and accountability institutions are riddled with huge challenges that limit their ability to perform their roles. The fact that we still have limited publicity, scrutiny, analysis and accountability demonstrates that there is a long way to go in terms of realizing full transparency and accountability in South Sudan.

What are the specific items that have not been disclosed? First, contract information has not been disclosed and this includes (1) terms of current petroleum licenses, permits and agreements, (2) notices of the termination of petroleum licenses and agreements, (3) summary of the sale or transfer of petroleum license, (4) annual production permits, (5) the beneficial ownership information for the petroleum sector contractors, (6) documented proof of the requisite technical competence, (7) sufficient experience of petroleum sector contractors, (8) history of compliance and ethical conduct of the petroleum sector contractors, (9) local content plan, (10) local content reports, (11) procedures and processes of procurement of local goods and services, (12) local recruitment, employment and training, including post-graduate training and scholarships,

(13) transfer of skills, knowledge, competence and know-how in the petroleum sector. Second, information on health, safety and environment has not also been disclosed and this includes (1) environmental and social impact assessment (ESIA) report, (2) environmental management system (EMS), (3) occupational health and safety management system, (4) environmental management plan, (5) comprehensive environmental baseline study, (6) health and safety management plan, (7) strategic environmental assessment (SEA), and (8) oil leakage and spills reports.

Non-disclosure has a number of implications. First, it paints the government institutions and its agencies in bad light. It smears them in bad light because failing to disclose information, which is required by law to be disclosed, generates suspicion that one is hiding something even though this may not be the case. In other words, it creates mistrust between the citizens and the government and between the citizens and the companies. Second, not only would people suspect someone as hiding something for not disclosing public information, non-disclosure of public information also promotes the perception that the government does not care about implementing its own laws and policies.

Third, failing to make information available to the public continues to provide a fertile ground for corruption and mismanagement of the petroleum industry, as corruption can thrive in darkness. Contract information, which the government and the companies have completely failed to disclose, is one of the top items that are so crucial for disclosure because a lot of corruption usually happens through inflation of contract prices and kickbacks. The full picture of transparency and accountability is not revealed until the public knows the tendering process of the contracts, the beneficial ownership information, documented proof of the requisite technical competence, sufficient experience of petroleum sector, history of compliance and ethical conduct of the contractors given the petroleum contracts. Knowing the owners of various firms awarded contracts and their professional and financial competence and capacity as well as history of compliance and ethical conduct is important in weeding out corruption and mismanagement in the petroleum industry.

As mentioned in the previous section, a simple presence of light on a street prevents or minimizes theft or break-in on that particular street, particularly if there are policemen around to act. In the same vein, disclosure of information and presence of institutions to hold wrong doers to account does the same as those who may think of stealing funds, getting kickbacks or inflating contract prices can be afraid of being revealed and caught if the system is transparent. So the continuous lack of transparency or disclosure of information as required by the law will continue to make the ground fertile for corruption and mismanagement of the petroleum industry.

With the low transparency and accountability level as demonstrated by the score of 42%, the next logical question is: what is hindering transparency and accountability in South Sudan? Based on key informant interviews during this study and drawing from previous studies carried out by the Sudd Institute, we found a number of challenges affecting the

progress of transparency and accountability in South Sudan in general and in the petroleum industry in particular. These challenges include (1) inadequate mechanisms for coordination of the activities of the accountability institutions, (2) lack of adequate conducive environment for whistle blowers to alert authorities on possible malpractices, (3) lack of existence of transparency and accountability institution at the sub-national levels, (4) inadequate political will in empowering transparency and accountability institutions, (5) Financial and staff constraints, and (6) civil war since 2013.

With regards to financial constraints, transparency and accountability institutions are gravely underfunded in comparison to other institutions. Inadequate financial capacity prevents these institutions from getting the capable human resources to carry out their work effectively. Civil war since 2013 and the austerity measures due to the shutdown of oil operations in 2012 had also hampered the progress of transparency and accountability. Little resources, including the political will during these difficult periods, have been channeled to key competing priorities of the government. As a result, some highly trained personnel who can perform highly technical work left the transparency and accountability institutions due to lack of better compensation because of lack of adequate funds.

Besides, there is inadequate coordination of activities of transparency and accountability between the institutions, which makes information sharing difficult. For example, petroleum companies report directly to the Ministry of Petroleum and Mining and refuse to report the same information directly to the public and other transparency and accountability institutions. The public and other transparency and accountability institutions do not often have the same information. This undermines the principle of EITI, which requires disclosure of information by all concerned to an independent body, that then makes a comparison to discover any discrepancies.

#### **IV. Conclusion and Recommendations**

This report has looked at transparency and accountability in the petroleum industry as enshrined in the Petroleum Act, 2012 and Petroleum Revenue Management Act, 2012. We find that only 42% of the information has been disclosed. Revenue and expenditure category leads in disclosure while contracts and HSE categories are the least transparent ones. Most of the disclosed information is about aggregate number of petroleum crude production data, revenues, expenditures, production sharing formulas and some documents such as policy, legislation and regulations. On the basis of the conceptual framework provided in this paper, transparency and accountability process in South Sudan's petroleum industry is still at level one and two with some serious inadequacies at both levels. For example, petroleum policy is still at a drafting stage and there are no regulations to enforce transparency and accountability provisions stipulated in both pieces of legislation. The low transparency score of 42%, coupled with inadequate publicity, dissemination and scrutiny, demonstrates more work needs to be done to achieve a transparent and accountable petroleum sector. A number of challenges have been

highlighted as the hindrance to transparency and accountability. Some of these challenges include inadequate political will, technical and financial capacity for transparency and accountability institutions.

We recommend the following in order to overcome these challenges:

1. The top political leadership of the country should exert effort in directing the implementation of the transparency and accountability provisions of the Petroleum Act, 2012 and Petroleum Revenue Management Act, 2012. The stability that is promised by the signing of the Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCISS) should be used as a window of opportunity to establish transparency and accountability institutions and systems.
2. The President of the Republic in collaboration with the National Legislative Assembly should initiate a law to establish an independent administrative body to coordinate, disclose, verify and publish petroleum sector's information in accordance with the principles of EITI. An initiative from the President in collaboration with the National Legislature will demonstrate a high political will needed by the public institutions to promote transparency and accountability effort. Such a move can go a long way in pushing the country a notch higher on the international transparency index.
3. The same law should establish transparency and accountability units within the Petroleum Ministry, Finance Ministry, NilePet and Joint Operating Companies charged with the task to coordinate and gather the required information internally and submit it on a monthly basis to an independent body created by the President and National Legislature.
4. Information as required by the Petroleum Act 2012 and Petroleum Revenue Management Act 2012 should be disseminated monthly in the newspapers, radios, SSTV. Information dissemination offices should be established in the state capitals to disseminate information both in English and local Languages through medium such radios and newspapers.
5. Civil society organizations should create awareness of the information available, how to access it, and to answer any citizen's questions about the management of the sector.
6. The government should allocate sufficient financial resources to the transparency and accountability institutions to be able to carry out their work effectively.
7. The government should also establish a website that can be a hub for disclosing relevant information that is supposed to be disclosed and published under the two Acts.

8. The civil society organizations should take advantage of these pieces of legislation and use appropriate legal means to demand for disclosure and publication of information as provided in these laws.
9. The media houses should be empowered through industry's oriented reporting and analysis trainings so that they can publicize and analyze. In addition, the academic and research institutions should do their parts by researching and analysing to produce evidence on which the civil society should base their advocacy.

## References

- Amstrong, E. (2005). Integrity, transparency and accountability in public administration: recent trends, regional and international developments and emerging issues. United Nations.
- Awolich, A.A. & Akol. Z.D. 2014. Assessment of Accountability Institutions in South Sudan December 9, 2014. Draft Report submitted to The Sudd Institute's partners.
- Deming, W.E. (1986). *Out of the crisis*. MIT Center for Advanced Engineering Study.
- Finel, B. & Lord, K.M. (1999). The surprising logic of transparency. *International Studies Quarterly* (1999) 43, 315–339.
- Fox, J. (2007). The uncertain relationship between transparency and accountability. *Development in Practice*, Vol. 17, No. 4/5 (Aug., 2007), pp. 663-671.
- Gillies. A. (2010). Reputational concerns and the emergence of oil sector transparency as an international norm. *International Studies Quarterly*:54, 103–126.
- Hale, T.N. (2008). Transparency, accountability, and global governance. *Global Governance*, Vol. 14, No. 1 (January–March 2008), pp. 73-94.
- Lindstedt, C. & Naurin, D. (2005). Transparency and corruption: the conditional significance of a free press. *QOG Working Paper Series 2005:5*.
- Mayai, A.T. (2015). Assessing anti-corruption, accountability, and transparency measures in South Sudan. Policy Brief, The Sudd Institute, Juba, South Sudan. <http://www.suddinstitute.org/assets/Publications/accountabiityMayai.pdf>.
- Mitchell, R. B. (1998). Sources of transparency: information systems in international regimes. *International Studies Quarterly* 42(1):109–130.
- Moffat, K. & Zhang, A. (2013). The paths to social license to operate: An integrative model explaining community acceptance of mining: <http://www.sciencedirect.com/science/article/pii/S0301420713001141>.
- Oye, K.A. (1986). Explaining cooperation under anarchy: hypotheses and strategies. in *cooperation under anarchy*, Ed(s). K. A. Oye. Princeton, NJ: Princeton University Press.
- Savage, E. (2013). South Sudan's Petroleum Revenue Management Act . The Sudd Institute. <http://www.suddinstitute.org/publications/show/south-sudan-s-petroleum-revenue-management-act/>

Smith, D. (2012). South Sudan President accuses officials of stealing \$4bn of money. The Guardian <http://www.theguardian.com/world/2012/jun/05/south-sudan-president-accuses-officials-stealing>.

The Sentry. (2015). The Nexus of Corruption and Conflict in South Sudan.

<https://thesentry.org/reports/south-sudan/>

Tiitmamer, N & Awolich, A. (2014). South Sudan's anti-corruption efforts and poor global ranking. Policy Brief, The Sudd Institute, Juba, South Sudan.

<http://www.suddinstitute.org/publications/show/south-sudan-s-anti-corruption-efforts-and-poor-global-ranking/>

## Appendices

**Table 1: Key elements of transparency and accountability in South Sudan's petroleum industry**

Main categories	Sub-categories	Disclosure/non-disclosure	Responsible authority for disclosure	Source of disclosure
Revenues and expenditure transparency	Revenues	√	MPM	MPM marketing report
	Profit oil (profit)	√	MPM	MPM marketing report
	Cost oil (operation expenses)	√	MPM	MPM marketing report
	Production sharing formulas	√	MPM	MPM marketing report
	Mechanisms for bonus, taxes, fees and royalties and any exemptions	X	MoF	NAP
	Expenditure information	√	MoF	MoF: <a href="http://www.grss-mof.org">http://www.grss-mof.org</a>
	Production data (production volume)	√	MPM	MPM marketing report
	Oil price	√	MPM	MPM marketing report
	Stabilization account	√	MoF	MoF: <a href="http://www.grss-">http://www.grss-</a>



				mof.org
	Future generation funds	√	MoF	MoF: <a href="http://www.grss-mof.org">http://www.grss-mof.org</a>
	Oil producing communities 3%	√	MoF	MoF: <a href="http://www.grss-mof.org">http://www.grss-mof.org</a>
	Oil producing states 2%	√	MoF	MoF: <a href="http://www.grss-mof.org">http://www.grss-mof.org</a>
	Oil sale data	√	MPM	MPM marketing report
Contracts transparency	Notices for grant of licenses and agreements	√	MPM	MPM press release
	Grounds for grants of licenses and agreements	√	MPM	MPM press release
	summary of terms of licenses and agreements	X	MPM	NAP
	Notice of the termination of licenses and petroleum agreements	X	MPM	NAP
	Summary of the sale or transfer license	X	MPM	NAP
	Annual production permits,	X	MPM	NAP
	The beneficial ownership information for the contractor	X	MPM	NAP
	Documented proof of the requisite technical competence, sufficient experience of petroleum sector contractor,	X	MPM	NAP
	History of compliance and ethical conduct of the petroleum sector contractor,	X	MPM	NAP
	Financial capacity of the contractor,	X	MPM	NAP
	Local content plan	X	MPM	NAP
	Local content annual report	X	MPM	NAP
	Procurement of local goods and services	X	MPM	NAP

	Local employment and training, including post-graduate training and scholarship	X	MPM	NAP
	Transfer of skills, knowledge, competence and know-how in the petroleum sector	X	MPM	NAP
Regulatory transparency	Policies	√	MPM	workshop and consultation
	Legislation	√	MPM	MPM's website
	Regulations	√	MPM	MPM's website
	Guidelines	X	MPM	NAP
Health, safety and environment transparency	Environmental and social impact assessment (ESIA) report,	X	MPM and MoE	NAP
	Environmental Management System (EMS),	X	MPM and MoE	NAP
	Occupational Health and Safety Management System,	X	MPM and MoE	NAP
	Environmental Management Plan,	X	MPM and MoE	NAP
	Comprehensive Environmental Baseline study,	X	MPM and MoE	NAP
	Health and safety management plan,	X	MPM and MoE	NAP
	Strategic Environmental Assessment (SEA),	X	MPM and MoE	NAP
	Oil leakage and spills reports.	X	MPM and MoE	NAP

√ = disclosed, X = Not disclosed, NAP = not available publicly, MoE = Ministry of Environment, MPM = Ministry of Petroleum and Mining, MoF = Ministry of Finance.

**Table 2: Prices for Dated Brent (Dar Blend) and ICP Minas Actual Crude (Source: MPM's Marketing Report 2014 -2015)**

2014	June	July	August	Sept	Oct	Nov	Dec
------	------	------	--------	------	-----	-----	-----

<b>Dated Brent (Dar Blend)</b>	111.65	106.64	101.61	97.30	87.40	78.39	62.53
<b>ICP Minas (Nile blend)</b>	111.61	105.06	100.00	95.66	84.46	76.33	60.00
<b>2015</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Average</b>	
<b>Dated Brent (Dar blend)</b>	47.86	58.13	55.92	59.76	64.32	<b>79.49</b>	
<b>ICP Minas</b>	45.56	54.11	54.24	59.92	62.70	<b>75.80</b>	

**Table 3a: Petroleum Crude Production and Revenues from June 2014 to May 2015 (Source: MPM's Marketing Report)**

	# of cargoes	Petroleum Crude Production volume	Revenues in USD	Revenues in SSPs	Percent
Total crude oil sale	54	34, 700, 235	2, 386, 242, 200	7, 158, 726, 600	100%
Payable to Sudan			836, 266, 988	2, 508, 800, 963	35%
Sales allocated for loans repayment	15	3, 796, 743	338, 035, 291	1, 014, 105, 873	14%
	Jun-14	Jul-14			
Republic of South Sudan's (RSS) Gross sales	372.9	338.3			
Payments to Sudan	87.2	85.3			
Loans repayment	99	83.9			
Nilepet sales	15.7	10.7			
Nilepet allocations	62.8				
RSS' net sales	108.2	158.4			
Nile Petroleum Sales	1	1, 937, 338	123, 143, 346	369, 430, 038	5%
Sales reallocated to Nile	3	1, 198, 862	104, 366, 051	313, 098,	4%

Petroleum				154	
-----------	--	--	--	-----	--

**Table 3b: South Sudan's Crude Oil Revenues by Month from June 2014 to May 2015**

	Jun-14	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Jan-15	Feb-15	Mar-15	Apr-15	May-15	total
Republic of South Sudan's (RSS) Gross sales	372.9	338.3	312.4	184.9	293.7	120.2	148.6	141.9	130.9	101	119	122.4	2386.2
Payments to Sudan	87.2	85.3	84.8	53.4	94.6	41.7	67.9	93.1	68.5	52	32.1	75.7	836.3
Loans repayment	99	83.9		94.5	60.7								338
Nilepet sales	15.7	10.7	11.8	10.3	9.5	9.9	7.5	4.8	9.1	14	9.2	10.6	123.1
Nilepet allocations	62.8					41.5							104.4
RSS' net sales	108.2	158.4	215.8	26.7	129	27.1	73.2	44	53.3	35	77.7	36	984.4

**Table 4: Exploration and Production Sharing Formula for various Operators and Concession Blocks (Source: MPM's marketing report)**

<b>GPOC EPSA Fiscal Terms for Block 1a and 1b (Development)</b>	
Operation costs	Recovered in the year incurred
Capital costs	Recovered over four years
Cost oil maximum	40%
Excess cost oil	100% (Republic of South Sudan or RSS)
Profit oil	60%
Profit oil sharing	RSS   Contractor
<25,000 bbls/day	61.5%   38.5%
>25,000 bbls/day; <50,000 bbls/day	71.0%   29%
>50,000 bbls/day	80.0%   20.0%

<b>GPOC EPSA Fiscal Terms for Block 1a, 2a and 4 (Exploration)</b>	
Operation costs	Recovered in the year incurred
Capital costs	Recovered over four years
Cost oil maximum	45%
Excess cost oil	100% (RSS)

Profit oil	55%	
Profit oil sharing	RSS	Contractor
<25,000 bbls/day	60%	40%
>25,000 bbls/day;<50,000 bbls/day	70%	30%
>50,000 bbls/day	80%	20%

<b>SPOC EPSA fiscal terms for Block 5a</b>		
Operating expenses	Recovered in year incurred	
Exploration expenses	20% per financial year	
Development expenses	20% per financial year	
Cost oil maximum	40%	
Excess oil cost	Shared as per profit oil	
Profit oil	60%	
Profit oil sharing	RSS	Contractor
<25,000 bbls/day	71.5%	28.5%
>25,000 bbls/day;<50,000 bbls/day	72.5%	27.5%
>50,000 bbls/day; <100,000 bbla/day	76.25%	23.75%
>100, 000 bbls/day	81.25%	18.75%

<b>DPOC EPSA Formula for Block 3d</b>		
Operation expenses	Recovered in the year incurred	
Exploration expenditures	25% per financial year	
Development expenditures	25% per financial year	
Cost oil maximum	50%	
Excess cost oil	Shared as per profit oil	
Profit oil	50%	
Profit oil sharing	RSS	Contractor
<10,000 bbls/day	64%	36%
>10,000 bbla/day;<15,000 bbls/day	67%	33%
>15,000 bbls/day; <20,000 bbls/day	77%	23%
>20,000 bbls/day	80%	20%

<b>DPOC EPSA Formula for Block 3E (Exploration)</b>		
Operating expenses	Recovered in year incurred	
Exploration expenditures	25% per financial year	
Development expenditures	25% per financial year	
Cost oil maximum	45%	
Excess cost oil	Shared as per profit oil	
Profit oil	55%	
Profit oil sharing	RSS	Contractor
<25,000 bbls/day	70%	30%
>25,000 bbls/day;<50,000 bbls/day	73%	27%

>50,000 bbls/day; <75,000 bbla/day	75%	25%
>75, 000 bbls/day	80%	20%
<b>DPOC EPSA Formula for Block 7E (Exploration)</b>		
Operating expenses	Recovered in year incurred	
Exploration expenditures	25% per financial year	
Development expenditures	25% per financial year	
Cost oil maximum	45%	
Excess cost oil	Shared as per profit oil	
Profit oil	55%	
Profit oil sharing	RSS	Contractor
<25,000 bbls/day	70%	30%
>25,000 bbls/day;<50,000 bbls/day	72%	28%
>50,000 bbls/day; <75,000 bbla/day	74%	26%
>75, 000 bbls/day	80%	20%

**Table 5: Transparency and Accountability Institutional Frameworks in South Sudan**

<b>Transparency and Accountability Institutions</b>	<b>Roles</b>
President and cabinet	Act in response to recommendation given by Audit Chamber, Anti-Corruption Commission and Parliament and can also take proactive measures to ensure transparency and accountability.
Audit Chamber	Performs auditing, finds discrepancies and recommends for action
Anti- Corruption Commission	Puts down safeguards to prevent corruption and investigates alleged discrepancies, malpractices and Prosecutes
South Sudan Fiscal & Financial Allocation & Monitoring Commission	Performs monitoring of financial allocations
Media	Publicize, scrutinize and conduct investigative in-depth reporting
Academic institutions and Policy Think Tanks	Research, analyze and recommend
Civil society	Request information disclosure, scrutinize and advocate for establishment of transparency and accountability system
Ministry of Petroleum and Mining	Discloses and publishes information about contracts, permits, agreements, revenues, HSE, local content, production data and petroleum sharing formula on the website and gazette
Ministry of Finance and Economic Planning	Discloses and publishes information about revenues, expenditure and taxes
Judiciary	Hears and decides cases related to corruption as well as petitions for disclosure of public information
National Bureau of	Collects and documents information and provides analysis

Statistics	
Parliament	Enacts transparency and accountability laws, summons and orders for the disclosure of information in accordance with the law
Police	Investigates alleged discrepancies, Makes arrests related to corruption
Oil producing communities	Demand for disclosure of information and action in case of discrepancies

---

### **About Sudd Institute**

The Sudd Institute is an independent research organization that conducts and facilitates policy relevant research and training to inform public policy and practice, to create opportunities for discussion and debate, and to improve analytical capacity in South Sudan. The Sudd Institute’s intention is to significantly improve the quality, impact, and accountability of local, national, and international policy- and decision-making in South Sudan in order to promote a more peaceful, just and prosperous society.

### **About the Author**

**Nhial Tiitmamer** is Programme Manager for environmental, energy and natural resources research and as well the Institute’s Focal Point on Building Resilience and Adaptation to Climate Extremes and Disasters (BRACED), a climate change resilience programme being implemented in South Sudan by a consortium composed of The Sudd Institute and five international organizations. Nhial holds a Bachelor and a Master of Science in Environmental Studies and Sustainable Energy from the Universities of Alberta and Calgary in Canada where he spent stints as an environmental consultant and research associate in environmental studies. Nhial is the co-founder of the NewSudanVision.com and has extensively commented and written on issues about South Sudan.