

# LAWS OF SOUTHERN SUDAN

## THE PETROLEUM BILL, 2011

# THE PETROLEUM BILL, 2011

## Arrangement of Sections

<b>CHAPTER I .....</b>	<b>6</b>
<b>PRELIMINARY PROVISIONS.....</b>	<b>6</b>
1. Title and Commencement.....	6
2. Repeal and Savings.....	6
3. Purpose.....	6
4. Authority and Application.....	6
5. Interpretations .....	7
6. Language requirements .....	8
<b>CHAPTER II.....</b>	<b>9</b>
<b>PRINCIPLES, OBJECTIVES AND OWNERSHIP OF PETROLEUM .....</b>	<b>9</b>
7. Principles and Objectives .....	9
8. Ownership of petroleum .....	9
<b>CHAPTER III .....</b>	<b>10</b>
<b>THE NATIONAL PETROLEUM COUNCIL .....</b>	<b>10</b>
9. Establishment .....	10
10. Composition .....	10
11. Functions and Powers .....	10
<b>CHAPTER IV.....</b>	<b>11</b>
<b>THE MINISTRY.....</b>	<b>11</b>
12. Powers and Functions .....	11
<b>CHAPTER V .....</b>	<b>12</b>
13. National Petroleum Corporation .....	12
<b>CHAPTER VI.....</b>	<b>13</b>
<b>MANAGEMENT OF AREAS .....</b>	<b>13</b>
14. Graticulation.....	13
15. Opening of Areas.....	13
16. Closure of Areas .....	13
<b>CHAPTER VII.....</b>	<b>13</b>
<b>RECONNAISSANCE .....</b>	<b>13</b>
17. Reconnaissance Licences. ....	13
<b>CHAPTER VIII .....</b>	<b>14</b>

<b>EXPLORATION AND PRODUCTION SHARING AGREEMENTS.....</b>	<b>14</b>
18. Tendering Procedure and Qualification Requirements.....	14
19. Petroleum Agreement .....	15
20. Incorporation and Organisation Requirements .....	15
21. Operator .....	15
22. Assignment.....	16
23. Pre-emption.....	16
24. Transfer of Assets.....	17
25. Term .....	17
<b>CHAPTER IX.....</b>	<b>18</b>
<b>EXPLORATION AND RELINQUISHMENT.....</b>	<b>18</b>
26. Exploration Period .....	18
27. Relinquishment of Contract Area.....	18
28. Exploration Drilling .....	19
29. Discovery and Appraisal.....	19
<b>CHAPTER X .....</b>	<b>20</b>
<b>DEVELOPMENT AND PRODUCTION .....</b>	<b>20</b>
30. Prudent Development and Production .....	20
31. Plan for Development and Operation.....	20
32. Production Permits .....	21
33. Restrictions on Flaring and Venting.....	21
34. Co-ordination of Petroleum Activities and Unitization. ....	21
35. Third Party Access to Production Facilities .....	22
36. Measurement of Petroleum .....	22
<b>CHAPTER XI.....</b>	<b>23</b>
<b>TRANSPORTATION, TREATMENT AND STORAGE.....</b>	<b>23</b>
37. License to Install and Operate Facilities for Transportation, Treatment and Storage.....	23
38. Third Party Access to Transportation, Treatment and Storage Facilities.....	24
<b>CHAPTER XII.....</b>	<b>24</b>
<b>CESSATION OF PETROLEUM ACTIVITIES.....</b>	<b>24</b>
39. Decommissioning Plan .....	24
40. Cessation decision.....	25
41. Decommissioning Fund.....	26
42. Plugging and Abandonment of Wells .....	26
43. Restoration of Affected Lands .....	27
44. Assignment and Responsibility for Decommissioning .....	27
45. Failure to carry out decommissioning .....	27
46. Liability .....	27

<b>CHAPTER XIII .....</b>	<b>27</b>
47. Acquisition of Rights to Land or Surface.....	28
48. Conduct of Petroleum Activities and Restoration.....	28
49. Dispute Resolution.....	29
<b>CHAPTER XIV .....</b>	<b>29</b>
<b>HEALTH AND SAFETY .....</b>	<b>29</b>
50. Safety Requirements .....	29
51. Competence and Qualifications .....	30
52. Health and Safety Management Plan .....	30
53. Safety Zones .....	31
54. Emergency Preparedness .....	31
55. Suspension of Petroleum Activities.....	32
56. Rehabilitation by Government.....	32
57. Security Measures for Deliberate Attacks .....	32
<b>CHAPTER XV .....</b>	<b>33</b>
<b>PROTECTION OF THE ENVIRONMENT .....</b>	<b>33</b>
58. Duties of the Licensee and Contractor .....	33
59. Environmental and Social Impact Assessments .....	33
60. Environmental Management Plan .....	34
61. Liability for Pollution Damage.....	35
62. Claims for Pollution Damage .....	36
<b>CHAPTER XVI.....</b>	<b>36</b>
<b>PROCUREMENT OF GOODS AND SERVICES AND LOCAL CONTENT.....</b>	<b>36</b>
63. Procurement of Goods and Services.....	36
64. National Goods and Services.....	36
65. Local Employment and Training.....	37
66. Knowledge Transfer.....	37
67. Local Content Plans and Reports .....	38
<b>CHAPTER XVII .....</b>	<b>38</b>
<b>FISCAL.....</b>	<b>38</b>
68. Fees .....	38
69. Royalties and Bonuses.....	38
70. Taxes and Customs.....	38
71. Production Sharing in Petroleum Agreements.....	38
72. Payment Procedure .....	39
73. Transactions.....	39
74. [Allocation of Revenues and Wealth Sharing]: to be discussed with Ministry of Finance .....	39

<b>CHAPTER XVIII.....</b>	<b>39</b>
<b>DATA AND INFORMATION, RECORD-KEEPING, REPORTING AND PUBLIC ACCESS TO INFORMATION .....</b>	<b>39</b>
75. Data and Information .....	39
76. Records, Reporting and Information .....	40
77. Public Access to Information .....	41
78. Disclosure and Publication of Payments .....	41
79. Petroleum Registry.....	42
<b>CHAPTER XIX.....</b>	<b>42</b>
<b>MISCELLANEOUS PROVISIONS.....</b>	<b>42</b>
80. Prudent Petroleum Operations .....	42
81. Community Development Plan and Fund.....	42
82. Compliance .....	43
83. Insurance.....	43
84. Domestic Supply of Produced Petroleum.....	43
85. Monitoring, Supervision and Inspections. ....	43
86. Accounts and Audit .....	44
87. Notification of Natural Resources other than Petroleum .....	45
88. Third Party Exploitation of Natural Resources other than Petroleum.....	45
89. International Treaties and Agreements .....	46
90. Security for Fulfilment of Obligations .....	46
91. Indemnification of the Government .....	46
92. Liability and Compensation for Damage and Loss.....	46
93. Offences and Penalties .....	47
<b>CHAPTER XXI.....</b>	<b>50</b>
<b>COMPETENCE AND DISCLOSURE OF INTERESTS .....</b>	<b>50</b>
94. Appointments and recruitments .....	50
95. Declaration of Assets.....	50
96. Disclosure of Interests .....	50
<b>CHAPTER XXI.....</b>	<b>51</b>
<b>REGULATIONS.....</b>	<b>51</b>
97. Right to issue Regulations and stipulate conditions .....	51
<b>CHAPTER 21.....</b>	<b>53</b>
<b>TRANSITIONAL MEASURES [THIS CHAPTER TO BE REVIEWED IN LIGHT OF ONGOING NEGOTIATIONS].....</b>	<b>53</b>
98. Existing Contracts.....	53

# **THE PETROLEUM BILL, 2011**

In accordance with the provisions of Article 59(2)(b) read together with Article 85(1) of the Interim Constitution of Southern Sudan, 2005; the Southern Sudan Legislative Assembly with the Assent of the President of the Government of Southern Sudan, hereby enacts the following-

## **CHAPTER I**

### **PRELIMINARY PROVISIONS**

#### **1. Title and Commencement**

This Bill shall be cited as “The Petroleum Bill, 2011” and shall come into force on the date of its signature by the President.

#### **2. Repeal and Savings**

- (1) Any legislation in force in the Republic of the Sudan, the subject matter of which is governed by this Bill, shall no longer be in force with respect to Southern Sudan.
- (2) Relevant authorisations issued by the Republic of Sudan before 9 July, 2011 shall remain in effect unless inconsistent with the provisions of this Bill.
- (3) All proceedings pending with respect to any existing agreement before July 9, 2011 shall remain in force and effect unless inconsistent with the provisions of this Bill.

#### **3. Purpose**

This Bill provides a regulatory framework for the development and management of petroleum activities and for the establishment of a National Petroleum Council.

#### **4. Authority and Application**

- (1) This Bill is drafted in accordance with Article 208(7) of the Interim Constitution of Southern Sudan, 2005, which grants the Government of Southern Sudan the authority over matters of petroleum development and management.

- (2) The provisions of this Bill shall apply to petroleum activities within the territory of Southern Sudan, including activities in, under and upon its land except as otherwise provided by a treaty entered into with another sovereign state.

## 5. Interpretations

In this Bill, unless the context otherwise requires, the following words and expressions shall carry the meanings assigned to them respectively:–

“**abandon**” means, in relation to a well, to permanently plug or close a well;

“**affiliate**” means a shareholder of a contractor or licensee or subcontractor owning fifty per cent or more of the shares in the business of the contractor or sub-contractor or an entity which controls, is controlled by or is under common control with the contractor or sub-contractor;

“**Council**” means the National Petroleum Council established under section 9;

“**contractor**” means a company or group of companies that has entered into a petroleum agreement with the Government;

“**contract area**” means the area covered by the petroleum agreement in which a contractor is authorized to explore for, develop and produce petroleum;

“**work obligations**” means the commitments made by the contractor set out in its work programme under the petroleum agreement;

“**Council of Ministers**” means the Council of Ministers of the Government;

“**crude oil**” means oil in its natural state before it has been refined or treated (excluding water and other foreign substances);

“**decommissioning plan**” means the plan for shut-down of petroleum activities and continued use or removal of facilities relating to petroleum activities in accordance with section 39;

“**exploration**” means the search for petroleum by geological, geophysical and any other means, and drilling of exploration wells, including appraisal wells and any other activities in relation to the search for petroleum;

“**Government**” means the national government of Southern Sudan;

“**licensee**” means a person, firm, or other entity or a group of persons, firms or other entities that has been granted a reconnaissance licence or a licence to install and operate a transportation system, pursuant to this Bill;

“**local content**” means the elements of the local content plan required under section 67(2);

“**Minister**” means the Minister of Energy and Mining;

“**Ministry**” means the Ministry of Energy and Mining;

“**National Petroleum Corporation**” means the duly constituted national petroleum company established under the Company Laws 2003, as amended in 2009;

“**operator**” means a company appointed or approved as operator by the Ministry under section 20, and shall also include a dedicated petroleum operating company owned by the contractor;

**“petroleum”** means any naturally occurring;-

- (a) hydrocarbon;
- (b) mixture of hydrocarbons; or
- (c) mixture of one or more hydrocarbons and any other substance,

whether in gaseous, liquid or solid form, and includes petroleum which has been returned to a natural reservoir, and includes coal-bed methane;

**“petroleum activities”** mean all activities related to the reconnaissance or exploration for, the development, production, treatment, storage or transportation of petroleum including the planning, design, construction, installation, operation, use or decommissioning of any petroleum facility;

**“petroleum agreement”** means an agreement entered into between the Government and a contractor pursuant to this Bill for the exploration, development and production of petroleum;

**“petroleum facilities”** mean installations, plants and other equipment for petroleum activities, including production facilities and transportation systems, but does not include supply or support vehicles or ships that transport petroleum in bulk;

**“petroleum registry”** means the registry established under section 79;

**“petroleum sub-contract”** means a contract between a contractor and a third party for the provision of goods or services for petroleum activities but does not include a petroleum agreement;

**“transportation system”** means;

- (a) pipelines for the transportation of petroleum; and
- (b) between the delivery point and the redelivery point
  - (i) treatment and storage facilities,
  - (ii) pumping or compression stations,
  - (iii) intermediate delivery and redelivery points, and
  - (iv) terminal facilities;

**“production facilities”** means equipment for the production of petroleum including separation, treating and processing facilities, equipment and facilities used in support of production operations, landing areas, heliports, storage areas or tanks and dependent personnel accommodations;

**“President”** means the President of Southern Sudan; and

**“reconnaissance licence”** means the licence granted under section 17.

## **6. Language requirements**

The licensee, contractor and sub-contractor, including the operator, shall use the English language in all petroleum activities, including its business operations, correspondence and the fulfilment of its regulatory requirements.



## **CHAPTER II**

### **PRINCIPLES, OBJECTIVES AND OWNERSHIP OF PETROLEUM**

#### **7. Principles and Objectives**

The principles and objectives for petroleum development and management are as follows:-

- (1) Petroleum existing in its natural state in the subsoil of the territory of the Government shall be owned by the people of Southern Sudan and managed on their behalf by the Government.
- (2) The management of petroleum resources shall be strengthened in a manner that contributes fully to economic prosperity and human development.
- (3) Petroleum shall be managed in an ethical, fully efficient, transparent and accountable manner on the basis of environmentally, socially and economically sustainable principles.
- (4) The people of Southern Sudan shall benefit equitably from the revenues derived from petroleum activities.
- (5) The value of petroleum resources shall be maximized and its value shall be converted into lasting benefits for the current and future generations.
- (6) The use of best international practices and technology in petroleum activities shall ensure that damage to the environment is effectively eliminated or minimized.
- (7) There shall be an adequate domestic supply of petroleum to serve the needs of the people of Southern Sudan.
- (8) Fair competition shall be promoted to increase productivity and efficiency in the petroleum sector.

#### **8. Ownership of petroleum**

- (1) The entire property in and control over petroleum existing in its natural state in the subsoil of the territory of the Southern Sudan is hereby vested in the Government, and shall be developed and managed by the Government, on behalf of and for the benefit of the people of Southern Sudan.

- (2) No person shall carry on any petroleum activities except under and in accordance with a licence or a petroleum agreement as provided for under this Bill.

### **CHAPTER III**

#### **THE NATIONAL PETROLEUM COUNCIL**

##### **9. Establishment**

- (1) The National Petroleum Council of Southern Sudan is hereby established and will hereinafter be referred to as the Council.
- (2) The Council shall be a policy-making body and shall report to the Council of Ministers.

##### **10. Composition**

- (1) The Council shall consist of the following persons, institutions or their representatives:-
- (a) the Minister who shall be the chair;
  - (b) the minister responsible for finance and economic planning;
  - (c) the minister responsible for legal affairs;
  - (d) the minister responsible for investment;
  - (e) the minister responsible for commerce and industry;
  - (f) the minister responsible for the environment;
  - (g) the Central Bank of Southern Sudan;
  - (h) the Petroleum Authority of the Ministry
  - (i) the National Land Commission;
  - (j) the Anti Corruption Commission;
  - (k) the states where petroleum activities take place; and
  - (l) any other institution or entity that the Council of Ministers deems necessary for the proper functioning of the Council.
- (2) The rules governing the proceedings of the Council, shall be prescribed in its internal rules.

##### **11. Functions and Powers**

The Council shall: –

- (1) formulate policies and guidelines in relation to the development and management of the petroleum sector.
- (2) monitor and assess the implementation of the policies referred to in subsection by the relevant implementing institutions to ensure that they work in the best interests of the people of Southern Sudan and determine their impact on the communities located in the areas where petroleum activities take place.
- (3) approve strategies and programs for the petroleum sector.
- (4) approve all petroleum agreements to ensure that they are consistent with the principles and objectives set out in section 6 and the Council's policies and guidelines.
- (5) review the environmental and social impact of existing and future petroleum development in Southern Sudan.
- (6) ensure co-ordination among all levels of Government and states promote co-operation among the private sector, non-governmental organisations and other persons, institutions and organisations interested in petroleum activities.
- (7) establish a Secretariat as an expert body for technical and administrative assistance to the Council. The Secretariat shall consist of a professional cadre of persons from the Ministry, with competence and experience in petroleum activities including technical, economic, financial, legal, policy, social, environmental, health and safety expertise.
- (8) perform any other power, function or duty as may be prescribed by law.

## **CHAPTER IV**

### **THE MINISTRY**

#### **12. Powers and Functions**

- (1) The Ministry shall be in charge of the management of the petroleum sector in accordance with the provisions of this Bill.
- (2) The Ministry may establish a body to be known as the Petroleum Authority to oversee operation of petroleum activities and advise the Ministry.

- (3) The Ministry shall implement the policy established by the Council respecting the management and development of the petroleum sector and for those purposes shall –
- (a) negotiate petroleum agreements in accordance with the policy and guidelines established by the Council, the principles and objectives set out in section 6 and the rules and regulations;
  - (b) sign, manage and, if applicable, terminate the petroleum agreements on behalf of the Government after approval by the Council;
  - (c) perform petroleum resource management on behalf of the Government;
  - (d) manage the relationship between the Government and undertakings involved in or that are likely to become involved in petroleum activities;
  - (e) formulate strategies, plans and programmes for the development and management of the petroleum sector;
  - (f) develop the necessary technical capacity and competence;
  - (g) in consultation with affected communities, ensure that all petroleum projects are subject to environmental and social impact assessments;
  - (h) make rules and regulations, approved by the Council of Ministers, respecting the development and management of the petroleum sector pursuant to section 96; and
  - (i) perform any other functions as prescribed by law.

## **CHAPTER V**

### **NATIONAL PETROLEUM CORPORATION**

#### **13. National Petroleum Corporation**

- (1) The National Petroleum Corporation may undertake petroleum activities in accordance with this Bill.
- (2) This Bill shall apply to the National Petroleum Corporation to the same extent as this Bill is applicable to any other contractor or licensee, unless otherwise expressly prescribed by legislation.
- (3) The National Petroleum Corporation shall, on behalf of the Government, act as a commercial entity and safeguard the national interest in petroleum activities.
- (4) The public officials and employees of the National Petroleum Corporation shall not be appointed to service in the Council, the Secretariat or the Ministry.
- (5) No person shall be politically appointed to service in the National Petroleum Corporation.

- (6) The National Petroleum Corporation shall, in accordance with applicable petroleum policy, enjoy certain preferential rights in petroleum agreements including cost carry in the exploration phase.

## **CHAPTER VI**

### **MANAGEMENT OF AREAS**

#### **14. Graticulation**

- (1) For the purposes of this Bill, the land of Southern Sudan shall be divided into numbered, graticular sections as prescribed in the regulations and each such section shall constitute a block.
- (2) The Ministry shall prepare a reference map showing the blocks and make it available at the Ministry.

#### **15. Opening of Areas**

The Council of Ministers may open an area for petroleum activities after a Strategic Social and Environmental Assessment is carried out and a determination made by the Council of Ministers to open an the area in accordance with section 59(5).

#### **16. Closure of Areas**

The Ministry may close an area or a part of an area that has been opened for petroleum activities in accordance with section 15 provided that the area or part is not already covered by a petroleum agreement.

## **CHAPTER VII**

### **RECONNAISSANCE**

#### **17. Reconnaissance Licences.**

- (1) After an area is opened for petroleum activities in accordance with section 15, the Ministry may, subject to a social and environmental impact assessment being carried out and approved in accordance with section 59(2), grant a reconnaissance licence for a defined geographical area to a person with the requisite technical competence, sufficient experience, history of compliance and ethical conduct and financial capacity and any other requirements stipulated by the Ministry to adequately fulfil the requirements of the licence.

- (2) A reconnaissance licence grants a non-exclusive right to undertake data collection (including seismic surveying), processing, interpretation and evaluation of petroleum data in the area stipulated in the licence.
- (3) If deemed necessary to establish a commercial basis for a survey, the Ministry may decide to announce an open, transparent, non-discriminatory and competitive public tender for an exclusive reconnaissance licence in an area not already covered by a reconnaissance licence. Such tender shall be announced in the Gazette and by any other appropriate means to inform interested persons.
- (4) A reconnaissance licence shall be granted for a period not exceeding one year unless otherwise stipulated by the Ministry.
- (5) All data and information resulting from the activities performed in accordance with the reconnaissance licence shall be the property of the Government, notwithstanding the rights of the licensees, subject to consultation with the Ministry, to use such data and information in accordance with section 74.

## **CHAPTER VIII**

### **EXPLORATION AND PRODUCTION SHARING AGREEMENTS**

#### **18. Tendering Procedure and Qualification Requirements**

- (1) Exploration, development and production of petroleum shall be carried out in accordance with the terms of petroleum agreements, this Bill and any other applicable law.
- (2) Petroleum agreements shall be entered into following an open, transparent, non-discriminatory and competitive tender process.
- (3) The call for tenders shall define the relevant contract area and clearly state the applicable award criteria.
- (4) Petroleum agreements may only be entered into with a company or group of companies with the requisite technical competence, sufficient experience, history of compliance and ethical conduct and financial capacity to adequately fulfil all obligations of the petroleum agreements, applicable law and any other requirements stipulated by the Ministry.

- (5) The Government is not obliged to enter into a petroleum agreement following a tender process.

## **19. Petroleum Agreement**

- (1) The Ministry shall negotiate a petroleum agreement and the agreement shall be concluded in accordance with sections 11(4) and 12(3)(a).
- (2) The area covered by a petroleum agreement shall be specified in the agreement and may comprise one or more blocks or parts of blocks.
- (3) A petroleum agreement shall grant the contractor an exclusive right to explore for petroleum and, in the event of a commercial discovery, to develop and produce petroleum in accordance with the provisions of this Bill, applicable law and the terms of the agreement.
- (4) Petroleum produced under a petroleum agreement shall be shared between the Government and the contractor in accordance with the terms of the agreement.

## **20. Incorporation and Organisation Requirements**

- (1) A person entering into a petroleum agreement shall be incorporated and registered as a company in Southern Sudan in accordance with the laws of Southern Sudan and shall be capable of managing petroleum activities at all times. Such company shall be incorporated as a single purpose company exclusively for petroleum activities in Southern Sudan.
- (2) A contractor shall maintain an office in Southern Sudan to carry out petroleum activities and shall have a representative in charge of the office with full authority to act and to enter into binding commitments on behalf of the contractor. The contractor shall open and maintain an account with a bank in Southern Sudan.
- (3) Specific requirements in respect of the contractor, including its capitalisation and management, may be prescribed in the Regulations.

## **21. Operator**

- (1) Where a contractor consists of more than one company, the Ministry may require that the contractor establish a petroleum operating company, owned jointly by these companies, to carry out the petroleum activities and to act as operator under the petroleum agreement.

- (2) Where the Ministry does not require the establishment of a petroleum operating company pursuant to subsection (1), the Ministry shall appoint or approve one of the companies as the operator prior to execution of a petroleum agreement.
- (3) The operator shall be a person having the requisite technical competence, sufficient experience, history of compliance and ethical conduct and financial capacity and any other requirements stipulated by the Ministry to adequately fulfil the duties of operator.

## **22. Assignment**

- (1) A contractor shall not directly or indirectly assign all or parts of the contractual rights and duties under a petroleum agreement to a third party, including an affiliate, without the prior written consent of the Ministry.
- (2) The assignee shall fulfil all applicable requirements under the laws of Southern Sudan and shall be a person with the requisite technical competence, sufficient experience, history of compliance and ethical conduct and financial capacity to adequately fulfil all obligations of the petroleum agreement and any other requirements stipulated by the Ministry.
- (3) Any transfer of ownership interests in a contractor which directly or indirectly results in a change of ownership control in the contractor shall be subject to the prior written approval of the Ministry. For the purpose of this section, direct or indirect ownership of 50 per cent or more of the shares, or a majority voting power, shall be deemed to entail control in the contractor.
- (4) Consent in accordance with sub-sections (1) and (3) shall not be unreasonably withheld.

## **23. Pre-emption**

- (1) Where a contractor decides to dispose of all or part of its interest under a petroleum agreement the National Petroleum Corporation shall have the right to acquire the interest on the same terms as agreed to with the potential buyer.
- (2) If the agreed consideration is not a monetary value, the National Petroleum Corporation shall have the right to pay the corresponding monetary value of the agreed consideration.



- (3) The National Petroleum Corporation's right of pre-emption shall lapse unless exercised within 60 days after receiving notice of the acquisition.

## **24. Transfer of Assets**

- (1) The Government shall become the owner of all assets acquired and owned by contractors in connection with the petroleum activities carried out under a petroleum agreement. An affixed asset that is used by a contractor in petroleum activities and financed as a capital or financial lease shall be treated as an acquired asset unless such asset is a type that is customarily leased for use in accordance with petroleum industry practice.
- (2) Land, including buildings and other structures affixed to the land shall become the property of the Government as soon as it is purchased or acquired.
- (3) Ownership of other affixed and movable assets shall be transferred from the contractor to the Government as set out in the petroleum agreement, provided that the Government finds these assets usable. Any liens, charges or encumbrances on the assets to be transferred shall lapse upon transfer to the Government.
- (4) A contractor shall be entitled to the full use of all affixed and movable assets within the contract area and any other area approved by the Ministry for the duration and for the purposes of a petroleum agreement. The contractor shall remain liable for maintenance, insurance and other costs associated with such use and for decommissioning in accordance with this Bill.

## **25. Term**

- (1) A petroleum agreement may be entered into for a period not exceeding twenty-five years.
- (2) If production from a field is projected to extend beyond the original term of the petroleum agreement, and the contractor has fulfilled all its obligations under the agreement, the Ministry may recommend approval of an extension of the agreement on similar or new terms for a period not exceeding ten years to ensure optimal production. The extension shall require the approval of the Council.

## **CHAPTER IX**

### **EXPLORATION AND RELINQUISHMENT**

#### **26. Exploration Period**

- (1) Petroleum agreements shall provide for an exploration period not exceeding six years from the effective date of the agreement.
- (2) The exploration period shall consist of a first commitment period and up to two optional commitment periods as determined in the petroleum agreement.
- (3) The petroleum agreement shall provide for the work obligations with a corresponding estimated expenditure amount to be fulfilled by a contractor during each commitment period of the exploration period.
- (4) Where the contractor has fulfilled the work and expenditure obligations for a commitment period in the manner stipulated in the agreement and has submitted to the Ministry a programme for the work obligations to be performed in the consecutive commitment period, the contractor shall have a right to enter that consecutive commitment period on the terms provided in the petroleum agreement.
- (5) Subject to the approval of the Council, the Ministry may terminate a petroleum agreement if a contractor fails to fulfil the work obligations within the time period stipulated in the agreement. In such cases, the Ministry may require that the contractor pay the Government an amount equivalent to the unfulfilled portion of the work programme, as prescribed in the Regulations.
- (6) The Ministry may impose by regulation any other requirement relating to the exploration period, including work and expenditure obligations.

#### **27. Relinquishment of Contract Area**

- (1) If the contractor elects to enter into the first optional commitment period under an exploration period, the contract area as of the effective date of the petroleum agreement shall be reduced by at least twenty-five per cent as proposed by the contractor and approved by the Ministry.
- (2) If, after giving written notice to the Ministry, the contractor elects to enter into a second optional commitment period under an exploration period, the retained

contract area shall be reduced by at least fifty per cent as proposed by the contractor and approved by the Ministry.

- (3) If a contractor has not submitted a declaration of commerciality for a contract area to the Ministry before the expiration of the exploration period, the whole contract area comprised by the exploration activities shall be relinquished.
- (4) The Government shall not bear any of the expenses incurred or paid by the contractor for contract areas that have been made subject to relinquishment.
- (5) The Ministry may impose by regulation any other requirement relating to the relinquishment of the contract area.

## **28. Exploration Drilling**

A contractor shall submit an application to the Ministry for a permit to undertake exploration drilling. The application shall contain a drilling programme and an environmental impact assessment that has been carried out and approved in accordance with section 59(2). Exploration drilling shall not commence before the contractor has received a drilling permit from the Ministry.

## **29. Discovery and Appraisal**

- (1) The contractor shall immediately notify the Ministry of any discovery of petroleum.
- (2) The contractor shall submit a written report to the Ministry within 90 days of discovery of petroleum, stating whether the discovery merits further appraisal. The part of the contract area comprising a geological structure that does not merit further appraisal shall be relinquished with immediate effect from the date of submission of the written report .
- (3) For discoveries that merit further appraisal, the contractor shall prepare an appraisal programme in accordance with best international practices and standards for approval by the Ministry.
- (4) The petroleum agreements shall provide the terms for appraisal, including the appraisal period that shall not exceed 24 months.
- (5) Upon completion of appraisal activities, the contractor shall submit to the Ministry a report of the activities and in the event that the discovery is found to be

commercial, a written declaration of commerciality shall be submitted to the Ministry with the report.

## **CHAPTER X**

### **DEVELOPMENT AND PRODUCTION**

#### **30. Prudent Development and Production**

Development and production of petroleum shall be carried out in a manner that will ensure maximum recovery of petroleum in place and in accordance with section 80.

#### **31. Plan for Development and Operation**

- (1) If a declaration of commerciality is made, the contractor shall submit to the Ministry a plan for development and operation of the discovery for approval.
- (2) The plan for development and operation shall contain a description of the development and the production programme and any other requirements, as prescribed in the Regulations.
- (3) The description required in subsection (2) shall comprise detailed information on all relevant issues concerning the proposed development, including information on reserves as well as on economic, technical, operational, safety related, commercial, local content and environmental aspects of the project.
- (4) An environmental and social impact assessment shall be carried out and approved in accordance with section 59(2) before the contractor submits a plan for development and operation. The approved environmental and social impact assessment shall be submitted as part of the plan for development and operation.
- (5) In evaluating the plan for development and operation, the Ministry shall consider safety related aspects, the environmental and social impact assessment and the technical competence, experience, history of compliance and ethical conduct and financial capacity of the contractor.
- (6) Unless otherwise determined by the Ministry, a contractor shall not enter into contracts of significant value or commence construction works until the plan for development and operation has been approved by the Ministry.

- (7) The Ministry may set a time limit for the submission of a plan for development and operation. If a contractor does not submit the plan within the time limit set by the Ministry, the area comprised by the declaration of commerciality shall be relinquished.

### **32. Production Permits**

- (1) Upon application by the contractor, the Ministry may issue an annual production permit for production and injection of petroleum. The form and content of the production permit shall be as prescribed in regulations. The production permit shall be based on the production schedule described in the production programme approved pursuant to section 31 and any other relevant information that may require modification in the production schedule.
- (2) No petroleum shall be produced or injected except in accordance with the production permit.
- (3) The Ministry may direct a contractor to take the necessary and practical steps to increase or reduce petroleum production to a rate that will enhance optimum recovery of petroleum from the deposit without exceeding the capacity of existing production facilities.

### **33. Restrictions on Flaring and Venting**

- (1) Contractors shall plan and construct production facilities so as to avoid any flaring or venting of petroleum under normal operating conditions.
- (2) Flaring or venting of petroleum is prohibited unless authorised by the Ministry in writing. The authorisation shall only be granted if necessary in the interest of normal operational safety or in order to comply with a requirement in accordance with this Bill.
- (3) In the event of an emergency, a contractor may vent or flare without the prior written authorization of the Ministry provided that there is insufficient time to request an authorisation. The flaring or venting shall be kept at the lowest possible level. The contractor shall inform the Ministry of the event as soon as practicably possible and submit a full report describing the event and its consequences.

### **34. Co-ordination of Petroleum Activities and Unitization.**

- (1) The Ministry may direct that one or more petroleum accumulations that extend beyond a contract area, or accumulations located in different contract areas, shall be

developed and produced in a coordinated manner in order to ensure efficient petroleum activities.

- (2) Following a direction by the Ministry under subsection (1), the contractors concerned shall enter into a unitization agreement for the development and production of the petroleum accumulation or accumulations as a single development unit with a single operator.
- (3) The unitization agreement shall be submitted to the Ministry for approval. In the event that the contractors fail to reach an agreement, the Ministry may direct the contractors to enter into a unitization agreement.
- (4) Where a petroleum accumulation extends beyond the jurisdiction of Southern Sudan, the Government shall endeavour to reach an agreement with the other country with a view to ensure the correct apportionment of the accumulation and the most efficient co-ordination of petroleum activities.

### **35. Third Party Access to Production Facilities**

- (1) The Ministry may direct that production facilities owned by a contractor may be used by others if necessary in the interest of efficient operations, provided that the use by others would not unreasonably interfere with that of the contractor or any other person already granted a right of use.
- (2) Following a direction by the Minister under subsection (1), the contractor and the person seeking access to the facilities shall enter into an agreement for the use of the facilities that shall be submitted to the Ministry for approval. The Ministry may amend the tariffs and other terms agreed between the parties. If no agreement is reached, the Ministry may stipulate the terms of the agreement having due regard to prudent resource management while allowing the owner a reasonable profit.
- (3) The Ministry may alter the conditions of an already approved agreement to ensure that implementation of any project covered by the agreement is carried out. In stipulating new conditions, the Ministry shall have due regard to prudent resource management while allowing the owner a reasonable profit.

### **36. Measurement of Petroleum**

- (1) The Ministry shall direct that measuring or calibrating equipment be tested or examined by the relevant Government institution at the intervals and by the means prescribed in regulations.

- (2) A contractor shall measure the petroleum produced from a field by a method customarily used in best international practices and standards. The Ministry shall on a regular basis approve the methods and equipment used.
- (3) A contractor shall not alter the method of measurement or calibration or any equipment used for that purpose without the written consent of the Ministry.

## **CHAPTER XI**

### **TRANSPORTATION, TREATMENT AND STORAGE**

#### **37. License to Install and Operate Transportation Systems**

- (1) Transportation systems shall not be installed or operated without a license granted by the Ministry unless the rights to undertake such activities follow from the approval of a plan for development and operation.
- (2) An application for a license pursuant to subsection (1) shall contain
  - (a) a description of the facilities;
  - (b) an environmental and social impact assessment carried out and approved in accordance with section 59(2); and
  - (c) detailed information on all relevant issues concerning the proposed installation and operation, including economic, technical, operational, safety related, commercial, local content, land use and environmental aspects of the project.
- (3) The Ministry shall grant a licence on the basis of an evaluation of the application, including the environmental and social impact assessment, and the technical competence, experience, history of compliance and ethical conduct and financial capacity of the applicant and the contractor, as well as safety related aspects.
- (4) The Ministry may stipulate conditions for the granting of a license, including conditions for the ownership, location and technical description of the facility as well as for the landing point, routing, dimension and capacity of pipelines.
- (5) The Ministry may stipulate the tariffs for the use of the facilities and may direct the tie-in of the facility to another facility if required in the interest of prudent resource management, while allowing the owner a reasonable profit.

### **38. Third Party Access to Transportation Systems**

- (1) Owners and operators of transportation systems shall provide access to third parties to such facilities on fair, transparent non-discriminatory and competitive terms as prescribed in the Regulations. Such access shall not be to the detriment of the needs of the owner, operator or other persons who have already been granted a right of use.
- (2) The owner or operator of a petroleum pipeline may charge a transportation tariff for the use of the pipeline by other persons. The tariff shall be based on the principle that the total tariff income for all pipeline transportation, including the transportation of the pipeline owner, shall cover the owner's capital and operational costs for the pipeline and related facilities, including a reasonable rate of return on the investment. The tariff shall be calculated in relation to the user share of the total petroleum transported in the pipeline.
- (3) An agreement for the use of transportation, treatment and storage facilities shall be submitted to the Ministry for approval. The Ministry may change the tariffs and other conditions agreed to between the parties, having due regard to prudent resource management while allowing the owner a reasonable profit. Where no agreement for use is reached within a reasonable period of time, the Ministry may stipulate the tariffs or other conditions for such use, having regard to prudent resource management while allowing the owner a reasonable profit.

## **CHAPTER XII**

### **CESSATION OF PETROLEUM ACTIVITIES**

### **39. Decommissioning Plan**

- (1) A contractor or licensee who owns or operates a petroleum facility shall submit a decommissioning plan for the facilities, including wells, to the Ministry before the applicable petroleum agreement or licence expires or is terminated or before use of the facility ceases permanently.
- (2) The decommissioning plan shall contain a detailed proposal for at least one of the following alternatives:
  - (a) further use of the facilities for petroleum activities;
  - (b) shutdown of the petroleum activities and continued use of the facilities for other activities; or
  - (c) shutdown of the petroleum activities and removal of the facilities.



- (3) The decommissioning plan may include different proposals for different parts of the facility or for different facilities comprised by the plan.
- (4) The decommissioning plan shall contain the information and evaluations necessary for the Ministry to make a decision relating to cessation, including information on costs and finances, management system, cessation alternatives and an assessment of the social and environmental impact of the alternatives, carried out and approved pursuant to section 59(2).
- (5) A plan for shutdown of petroleum activities pursuant to section 2 (b) or (c) shall contain a detailed proposal for the restoration of lands and waste management, including the removal of causes of damage or danger to the environment and communities.
- (6) Unless the Ministry determines otherwise, the decommissioning plan shall be submitted at least two years prior to the date on which use of a facility is expected to permanently cease or a licence or a petroleum agreement will expire, whichever comes earlier.
- (7) The Ministry shall be notified immediately if the use of a facility is expected to cease before the expiry of a petroleum agreement or license. A decommissioning plan shall be prepared and submitted as soon as practicably possible and the Ministry may set a time limit for submitting the plan. The same shall apply if a petroleum agreement or a license is terminated earlier than its expiration date.
- (8) The Ministry shall give notice of the decommissioning plan in the Gazette and by any other appropriate means to ensure that interested persons are informed and allowed a period of time of not less than ninety days from the date of publication to present their views.

#### **40. Cessation decision**

- (1) The Ministry shall issue a cessation decision for the facilities comprised by the decommissioning plan, and shall set a time limit for the implementation of the decision.
- (2) The Ministry shall consult other relevant Ministries and institutions prior to the adoption of a cessation decision. Interested persons and any other person likely to be affected by the cessation shall be given the opportunity to present their views to the Ministry prior to the adoption of a cessation decision.

- (3) In adopting the decision, the Ministry shall consider all interests involved, including the actual and potential impact of the decision on local communities, agriculture and other affected interests and the environmental, safety, technical and economic consequences of the cessation alternatives.
- (4) The Ministry may stipulate specific conditions respecting the cessation decision.
- (5) The contractor or licensee shall ensure that the cessation decision is implemented in accordance with its terms and conditions and shall submit a report to the Ministry on the work carried out.
- (6) If a cessation decision provides for the further use of the facilities for petroleum activities, the contractor or licensee shall be required to submit a new decommissioning plan before the use of the facilities ceases and comply with the provisions of this Chapter.
- (7) The cessation decision and any obligations imposed on the contractor or licensee by the cessation decision shall survive the expiration or termination of the applicable petroleum agreement or license.

#### **41. Decommissioning Fund**

The contractors and the licensee shall establish a decommissioning fund immediately after the approval of a plan for development and operation or the granting of a license for transportation, treatment and storage, as prescribed in the Regulations. The decommissioning fund shall be sufficient to cover the full costs of decommissioning.

#### **42. Plugging and Abandonment of Wells**

- (1) The contractor shall submit to the Ministry immediate notice of any decision to abandon a well.
- (2) The abandonment or plugging of a well shall only be carried out with the prior written consent of the Ministry and in the manner approved by the Ministry.
- (3) The contractor shall conduct surveys of plugged and abandoned wells as prescribed in the Regulations.

#### **43. Restoration of Affected Lands**

After the termination of petroleum activities in a contract area, the contractor or the licensee who operates petroleum facilities affecting the area shall restore the affected areas and remove the causes of damage or danger to the environment and the neighbouring communities.

#### **44. Assignment and Responsibility for Decommissioning**

- (1) If the contractor or the licensee assigns or transfers its share of a participating interest in a petroleum agreement or a licence in whole or in part, the assignor and the assignee are jointly liable for financial obligations and the cost of carrying out the cessation decision.
- (2) The financial obligation of the assignor shall be limited to costs related to facilities, including wells, that existed at the time of the assignment, calculated on the basis of the size of the participating interest assigned.

#### **45. Failure to carry out decommissioning**

If a decommissioning plan is not submitted or a cessation decision is not implemented within the stipulated time limit and in accordance with the terms and conditions of the decision stipulated pursuant to section 40, the Ministry may take the necessary remedial measures for and on behalf of the contractor or licensee responsible for cessation, including the engagement of subcontractors for the carrying out of the cessation decision at the expense and risk of the contractor or licensee. The Minister may use the decommissioning fund for this purpose. The Minister shall give notice within a reasonable period of time of his intent to take the measures referred to in this section and shall grant a reasonable period of time to the contractor or licensee to undertake its own remedial measures.

#### **46. Liability**

A contractor or licensee who is under an obligation to implement a cessation decision is subject to strict liability to the Government for any loss or damage, howsoever caused, in connection with decommissioning of the facility or other implementation of the decision.

### **CHAPTER XIII**

### **USE OF LAND AND SURFACE RIGHTS**

#### **47. Acquisition of Rights to Land or Surface**

- (1) A contractor or licensee who requires the use of land or surface rights for purposes of conducting petroleum activities shall, following consultation with the affected local communities and interested parties, enter into an agreement with the landowner to obtain:
  - (a) a leasehold interest;
  - (b) an easement;
  - (c) any interest analogous to the rights set out in paragraphs (a) and (b); or
  - (d) if the contractor is a citizen of Southern Sudan, a freehold interest.
- (3) The requirements governing the interests set out in subsection (1), including the acquisition of, the conducting of petroleum activities under and the rights and obligations following the expiry of the interests, shall be governed by the *Land Act 2009*.
- (4) Compensation under an agreement relating to an interest under this section shall be prompt, full and just. The contractor or licensee shall also compensate according to the same principles any holder of access or other rights, if these rights are disrupted or otherwise interfered with as a result of petroleum activities.
- (5) If no agreement is reached between the contractor or the licensee and the landowner under subsection (1), the contractor or licensee may, by application to the Minister, request the Government to expropriate the land that is required for petroleum activities.
- (6) 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 in accordance with the *Land Act 2009*.
- (7) Requirements for consultation and notification and other issues relating to the usage rights shall be prescribed in regulations.

#### **48. Conduct of Petroleum Activities and Restoration**

- (1) Petroleum activities on land or the surface acquired under section 47(1) shall be conducted in a manner that will ensure waste prevention, safety and protection of the environment and with due regard to the rights of neighboring landowners and communities and occupants and others who have certain rights to peaceably enjoy their properties or other interests in land.

- (2) In addition to the requirement set out in subsection (1), petroleum activities on land or the surface acquired by lease, easement or an interest analogous to these rights shall be conducted with due regard to the landowner's residual interest in the land.
- (3) At the expiry of the interest referred to in subsection (2), 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.

#### **49. Dispute Resolution**

- (1) If there are dispute resolution provisions in an agreement for the acquisition of an interest referred to in section 47, the dispute resolution process provided in the agreement shall prevail.
- (2) A party dissatisfied under the dispute resolution process provided for in the agreement may, for a resolution of the dispute, appeal to the County Land Authority, or in case more than one county is affected, to the State Government.
- (3) If no agreement governs the acquisition of an interest referred to in section 47 or if the dispute relates to the ownership of the land or interest in land, the landowner, the contractor or the person claiming ownership of the interest, as the case may be, may request resolution of the dispute by the Land Commission and may appeal that decision to the National Petroleum Council.
- (4) Despite availing itself of any of the processes referred to in subsections (1) to (4), no person is barred from seeking redress in the local courts regarding any dispute relating to land or surface rights under this Chapter.

### **CHAPTER XIV**

#### **HEALTH AND SAFETY**

#### **50. Safety Requirements**

- (1) Petroleum activities shall be conducted in such manner as to ensure that a high level of safety is achieved, maintained and further developed in accordance with technological developments, best international practice and applicable law on health, safety and labour. Any person conducting petroleum activities shall ensure active compliance with legislation on health and safety in the working environment.

- (2) For the purposes of sub-section (1), the Ministry may make regulations to achieve the high level of health and safety referred to in subsection (1), to ensure the systematic implementation of measures to comply with safety requirements and meet the safety goals set out in this Bill and other applicable legislation and in the working environment and to further develop and improve the level of health, safety and environmental protection.

## **51. Competence and Qualifications**

- (1) A licensee, a contractor and other persons engaged in petroleum activities shall possess the necessary competence and qualifications to perform the work in a prudent manner. A licensee or contractor shall ensure that persons engaged in petroleum activities obtain safety training to the extent necessary in accordance with best international practices.
- (2) A licensee or a contractor shall ensure that anyone carrying out work for him complies with subsection (1).

## **52. Health and Safety Management Plan**

- (1) Prior to the commencement of petroleum activities, a licensee or a contractor shall prepare a health and safety management plan adequate for the systematic implementation of health and safety requirements pertaining to the petroleum activities to be conducted, the facilities to be used and the site.
- (2) The health and safety management plan shall be maintained and continuously developed and shall set out the safety objectives, the system by which these objectives are to be achieved, the performance standards that are to be met and the means by which adherence to these standards is to be monitored demonstrating that the management system of the licensee or the contractor and that of any installation or site are adequate to ensure that:
  - (a) the design and operation of any installation or site and its equipment are safe;
  - (b) a risk assessment has been performed that identifies the potential major hazards and risks to personnel on the installation, site or equipment, as well as the hazards that could be transferred off site to the general public, and that provides for the appropriate measures and controls to avoid or lessen the hazards and risks; and
  - (c) emergency preparedness measures are planned.

- (3) The health and safety management plan and any other documents for its implementation that the licensee or the contractor may hold shall be submitted to the Ministry, the minister responsible for health and the minister responsible for labour for review.

### **53. Safety Zones**

- (1) There shall be established a safety zone surrounding each petroleum facility, well or transportation system including abandoned facilities, or parts of these facilities. In the event of an accident or emergency, the Ministry may decide that a safety zone shall be established or extended.
- (2) Unauthorised vehicles or other objects, persons or animals must not be present in the safety zones.
- (3) The Ministry may issue such regulations as are considered necessary with respect to establishment of safety zones, including any measures, such as fencing, to enforce the safety zones.

### **54. Emergency Preparedness**

- (1) The licensee, the contractor and the other participants in the petroleum activities shall at all times maintain efficient emergency preparedness for dealing with accidents and emergencies which may lead to loss of human lives or personal injuries, pollution or major damage to property or animals. Licensees and contractors shall ensure that necessary measures are taken to prevent or minimise harmful effects, including necessary coordination measures with any public plans, the measures required in order, to the extent possible, to promptly return the environment to the condition it had before the accident occurred. The licensee, the contractor and the other participants shall ensure that they possess the resources to adequately carry out any such emergency measures.
- (2) The Ministry may issue regulations concerning emergency preparedness and emergency measures, and may in this connection order co-operation between several contractors and licensees.
- (3) In the event of accidents and emergencies, the Ministry may decide that other persons shall make available necessary contingency resources at the expense of the licensee or the contractor. The Ministry may also at the expense of the licensee or the contractor take measures to obtain the necessary additional resources.

**55. Suspension of Petroleum Activities,**

- (1) Where an accident or emergency may lead to or has resulted in loss of life or personal injury, pollution or major damage to property or animals, the licensee, contractor, sub-contractor or operator shall, to the extent necessary, suspend the petroleum activities until the situation is rectified or resolved.
- (2) In the event of emergencies or accidents as mentioned in subsection (1), the Ministry may direct that petroleum activities be suspended to the extent necessary, or may impose particular conditions to allow continuation of the activities.
- (3) If there are any delays in operations resulting from a suspension pursuant to subsection (2), the costs associated with these delays shall be borne by the contractor, licensee or other entity carrying out the suspended petroleum activities

**56. Rehabilitation by Government**

- (1) Where a licensee, contractor or other person engaged in petroleum activities fails to conduct such activities in a safe manner in accordance with applicable legislation and best international practices, the Ministry may take the necessary measures to ensure safety and may recover the associated costs and expenses from the licensee, contractor or such other person engaged in the petroleum activities.
- (2) The Ministry may take measures pursuant to subsection (1) only after giving the contractor or other person prior notice.

**57. Security Measures for Deliberate Attacks**

- (1) A licensee or a contractor shall initiate and maintain appropriate security measures to contribute to avoiding deliberate attacks against facilities and shall at all times have contingency plans to deal with such attacks. A plan for security measures shall be submitted for approval by the applicable ministry in charge of security at oil fields, after consultation with the Ministry and the applicable State Government.
- (2) A licensee or a contractor shall place facilities at the disposal of public authorities for security exercises and shall participate in such exercises to the extent this is necessary.
- (3) The Ministry may order implementation of such measures as referred to in subsection (1).



## **CHAPTER XV**

### **PROTECTION OF THE ENVIRONMENT**

#### **58. Duties of the Licensee and Contractor**

- (1) The licensee and contractor shall take all necessary measures to ensure that petroleum activities are conducted in a manner that
  - (a) ensures waste prevention, safety and protection of the environment, in compliance with this Bill and applicable environmental laws and standards;
  - (b) avoids, prevents, reduces and manages environmental hazards and risks; and
  - (c) uses the best available technology to fulfil the duties referred to in (a) and (b).
- (2) The measures referred to in subsection (1) shall correspond to the size, nature and complexity of the petroleum activities and hazards and risks associated with the activities.
- (3) The licensee and contractor shall be responsible for
  - (a) the costs of avoiding, preventing, reducing and managing pollution; and
  - (b) the costs resulting from pollution damage.
- (4) The licensee and contractor shall ensure compliance with the environmental management plan required under section 60.

#### **59. Environmental and Social Impact Assessments**

- (1) The Minister shall initiate and coordinate a Strategic Environmental and Social Impact Assessment that shall be undertaken by the licensee or contractor prior to the opening of a new area pursuant to section 15.
- (2) In addition to the assessment referred to in subsection (1), the Minister shall coordinate an Environmental and Social Impact Assessment that shall be initiated and undertaken by the licensee or contractor and linked to the Strategic Social and Environmental Assessment, prior to conducting the following activities:
  - (a) reconnaissance activities pursuant to section 17;
  - (b) exploration drilling pursuant to section 28;
  - (c) development and production pursuant to section 31;
  - (d) construction of transportation system pursuant to section 37;

- (e) decommissioning pursuant to section 39; and
  - (f) in any other case that petroleum activities are likely to have a significant social or environmental impact.
- (3) The assessments referred to in subsection (1) and (2) shall
  - (a) be appropriate to the scale and possible effects of the petroleum activities subject to the assessments;
  - (b) evaluate the preliminary geological, geophysical and geochemical data and the actual and potential impact of petroleum activities on various interests in the relevant area, including local communities, the environment, sites of historical importance, trade, and agriculture and other industries; and
  - (c) be in the form and containing the information prescribed in the Regulations.
- (4) Notice of the assessments referred to in subsections (1) and (2) shall be given in the Gazette and by any other appropriate means to inform interested persons as determined by the Minister. The notice shall specify the area or contract area proposed for the petroleum activities and the nature and extent of the activities. Interested persons shall be given a period of at least [ninety] days from publication in the Gazette to present their views to the Ministry.
- (5) The Ministry shall present the assessment under subsection (1) along with the views of interested persons to the Petroleum Council which shall make a report of the assessment to the Council of Ministers. The Council of Ministers, having taken due consideration of the assessment and the views of interested persons, shall determine whether or not to open the relevant area for petroleum activities.
- (6) The Ministry, in consultation with the Ministry of the Environment and any other relevant agencies, shall, after considering the assessment under subsection (2), and the views of interested persons, decide to approve or not approve the assessment. The Minister shall publish the decision in the Gazette and by any other appropriate means as determined by the Minister.

## **60. Environmental Management Plan**

- (1) Prior to the commencement of petroleum activities, a licensee or a contractor shall prepare an environmental management plan for the systematic implementation of the environmental requirements for the petroleum activities.
- (2) The environmental management plan shall
  - (a) be based on the relevant environmental and social impact assessments for the area;

- (b) provide a summary of the studies undertaken to identify environmental hazards and to evaluate environmental risks relating to the proposed activity;
  - (c) provide a description of the hazards that were identified and the results of the risk evaluation;
  - (d) provide details of the activity and measures that will be implemented to manage the hazards and risks identified and described under paragraphs (b) and (c) and measures for mitigating and remedying any pollution and pollution damage including measures for environmental protection and compensation of any affected persons;
  - (e) provide a list of all structures, facilities, equipment and systems critical to environmental protection and a summary of the system in place for their inspection, testing and maintenance;
- (3) establish and implement effective and safe systems for disposal and treatment of waste and prevention of pollution resulting from petroleum activities in accordance with best petroleum industry practice;
  - (4) establish a system to track the source, transport and destination of potential hazardous waste from petroleum activities; and
  - (5) establish review and audit systems to assess the state of the environment at intervals of time specified in the plan and institute the necessary remedial and improvement measures as a result of the review or audit.
  - (6) The environmental management plan shall be submitted to the Ministry and the ministry responsible for environment for review.

## **61. Liability for Pollution Damage**

- (1) The licensee or the contractor is liable for pollution damage without regard to fault.
- (2) Contractors under the petroleum agreement are jointly and severally liable for pollution damage. This principle applies correspondingly for licensees where there are several holders of a licence.
- (3) If it is demonstrated that an inevitable event of nature, act of war, exercise of public authority or a similar force majeure event has contributed to a considerable degree to the damage or its extent under circumstances which are beyond the control of the liable party, the liability may be reduced to an extent reasonable, with particular consideration to the scope of the petroleum activity.

- (4) If pollution damage occurs in a petroleum activity and the activity has been conducted without a licence or a contract, the party that has conducted the petroleum activity shall be liable for the damage regardless of fault. The same liability rests on others who have taken part in the petroleum activity and who knew, or should have known, that the activity was conducted without a licence or a contract.

## **62. Claims for Pollution Damage**

- (1) If pollution damage has been caused by a party other than the licensee or contractor, the licensee or the contractor may only claim recourse against the other party in the case of gross negligence or wilful misconduct.
- (2) The operator shall without undue delay, by public notice in the Gazette and by any other appropriate means, provide contact information regarding the party to whom claims for compensation for pollution damage shall be directed.
- (3) Legal action for compensation for pollution damage shall be brought before the local court where the pollution has taken place or where pollution damage has been caused.

## **CHAPTER XVI**

### **PROCUREMENT OF GOODS AND SERVICES AND LOCAL CONTENT**

## **63. Procurement of Goods and Services**

Subject to the provisions in this chapter of the Bill, contractors and licensees shall procure goods and services that exceed a certain threshold value on the basis of open, transparent, non-discriminatory and competitive tendering procedures as prescribed in regulations.

## **64. National Goods and Services**

- (1) A licensee, contractor or sub-contractor and other entities or persons that cooperate with the licensee, contractor or sub-contractor shall:
  - (a) acquire materials, equipment, machinery and consumer goods of national production of the same or approximately the same quality as foreign materials, equipment, machinery and consumer goods and that are available for sale and delivery in a timely manner at prices that are no more than ten per cent higher than the price for imported items; and
  - (b) acquire national services to the extent that the services are similar to those available on the international market and their prices, when subject to the same tax charges, are no more than ten per cent higher than the prices charged internationally for similar services.

## **65. Local Employment and Training**

- (1) A licensee, contractor or sub-contractor shall ensure that opportunities are given for the employment of Southern Sudanese who have the requisite expertise or qualifications at the various levels of petroleum activities.
- (2) Unskilled labour shall not be contracted to non-Southern Sudanese.
- (3) The Ministry may issue regulations respecting the employment of Southern-Sudanese in the carrying out of petroleum activities in specified categories and functions.
- (4) Subject to subsection (1) and (2), 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.
- (5) A person carrying out petroleum activities shall prepare and implement plans and programmes to train citizens in job classifications and in all aspects of petroleum activities in consultation with the Ministry.
- (6) The Ministry may issue regulations relating to a licensee's or a contractor's obligation to undertake training of public servants.

## **66. Knowledge Transfer**

- (1) In order to enable service and supply entities indigenous to Southern Sudan to compete with their international counterparts a licensee or contractor shall encourage and facilitate the transfer of skills, knowledge, competence and know-how to the Government by the formation of joint ventures, partnering and the development of licensing agreements with service and supply entities indigenous to Southern Sudan. To make this transfer effective, the licensee or contractor shall make its business understandable and accessible to the service and supply entities indigenous to Southern Sudan in relevant matters, including language.
- (2) This section shall not be interpreted to prevent the licensee or contractor from protecting proprietary rights to immaterial assets including technology and know-how from copyright infringement.

## **67. Local Content Plans and Reports**

- (1) A licensee or contractor shall prepare and implement annual local content plans as prescribed. The annual local content plan shall be submitted to the Ministry.
- (2) The local content plan shall comprise:
  - (a) a plan for procurement of national goods and services;
  - (b) a plan for the transfer of skills, knowledge, competence and know-how;
  - (c) a detailed programme for local recruitment, employment and training;  
and
  - (d) a plan for post-graduate training and scholarships.
- (3) The licensee or contractor shall submit an annual report describing the initiatives regarding local content taken in the preceding year and their results.

## **CHAPTER XVII**

### **FISCAL**

## **68. Fees**

- (1) A contractor shall pay surface rental fees for the contract area retained under a petroleum agreement as prescribed in regulations.
- (2) A licensee, a contractor or sub-contractor shall pay cost-based fees for particular services as prescribed in the Regulations or determined by the Ministry of Finance.

## **69. Royalties and Bonuses**

A contractor shall pay such bonuses or royalties as may be prescribed in regulations or as agreed in a petroleum agreement.

## **70. Taxes and Customs**

A person conducting petroleum activities in Southern Sudan shall pay taxes and customs duties in accordance with the applicable law.

## **71. Production Sharing in Petroleum Agreements**

Production sharing shall be as agreed in a petroleum agreement. The Ministry shall develop a Model Exploration and Production Sharing Agreement in cooperation with the Ministry of Finance and Economic Planning.

**72. Payment Procedure**

All taxes, royalties, surface rental fees and other fees payable by a licensee or a contractor under this Bill any regulations, any licence issued under this Bill or under any petroleum agreement shall be exclusively paid to the National Revenue Fund.

**73. Transactions**

Subject to the provisions of this Bill any transaction between a licensee, contractor or sub-contractor and an affiliate in relation to petroleum activities to be carried out under this Bill shall be on the basis of prevailing international competitive prices and on such other terms and conditions that would be fair and reasonable if the transaction had taken place between the licensee, contractor or sub-contractor and a non-affiliate on an arm's-length basis and shall be notified in advance to the Ministry of Finance and Economic Planning. The Ministry of Finance and Economic Planning may request further information concerning a notified transaction, and may require a particular agreement to be amended to reflect arm's-length terms between the parties.

**74. [Allocation of Revenues and Wealth Sharing]: to be discussed with Ministry of Finance**

**CHAPTER XVIII**

**DATA AND INFORMATION, RECORD-KEEPING, REPORTING AND PUBLIC ACCESS TO INFORMATION**

**75. Data and Information**

- (1) All data and information, including geological and reservoir samples, whether raw, derived, processed, interpreted or analysed, that are obtained during the conduct of petroleum activities in Southern Sudan are the property of the Government, notwithstanding the rights of the licensee, contractor or sub-contractor to use the data and information.
- (2) A licensee, contractor or sub-contractor shall provide to the Ministry all data and information referred to in subsection (1) as well as any reports, studies, interpretations and analyses relating to the data and information.
- (3) The Ministry may authorize a licensee holding a reconnaissance license to sell or transfer the data and information referred to in subsection (1). In the event that a licensee sells or transfers the data and information, the net proceeds from the sale or transfer shall be shared equitably between the Government and the licensee.
- (4) A licensee, contractor or sub-contractor shall maintain complete and accurate records in Southern Sudan of the data and information referred to in this section

and shall also complete and keep accurate books of account, records and registers relating to this data and information.

- (5) A licensee, contractor or sub-contractor shall not retain or export or permit the retention or export of geological and reservoir samples (including cuttings, cores, liquid and gas samples) without the prior written approval of the Ministry and shall return the samples to the Ministry immediately at the written request of the Ministry.
- (6) Where any interpretation or analysis is done outside Southern Sudan, copies of the reports shall immediately be forwarded to the Ministry by the licensee, contractor or sub-contractor responsible for them.
- (7) A licensee, contractor or sub-contractor shall keep the data acquired and any existing technical data released by the Ministry to the licensee, contractor or sub-contractor confidential and shall not disclose the data to a third party without permission from the Ministry except as may be provided in accordance with the terms of a petroleum agreement.
- (8) Subsection (7) shall not be applicable if the data referred to in that subsection is required by law to be provided to other entities in Southern Sudan or to another country.

## **76. Records, Reporting and Information**

- (1) In this section, information shall include materials and records in connection with the planning or implementation of petroleum activities pursuant to this Bill.
- (2) A contractor and a licensee shall maintain information in respect of planning and implementation of petroleum activities, and shall submit reports to the Ministry pursuant to this Bill as further prescribed in the Regulations.
- (3) The contractor or licensee shall ensure that:
  - (a) all processes are in place and implemented to identify, generate, control and retain records necessary to meet operational and regulatory requirements,
  - (b) the information is readily accessible to the Ministry, free of charge, in Southern Sudan; and
  - (c) records are submitted to the Ministry as prescribed in the Regulations.
- (4) The Ministry may request any person conducting petroleum activities to provide information relevant for petroleum activities. Such information shall be submitted to the Ministry or other relevant agency as designated by the Ministry, within the specified period.



- (5) Information received pursuant to this section may be used exclusively for the purposes requested.

## **77. Public Access to Information**

- (1) Information about petroleum activities contained in Government records shall be public unless an exception is made by or pursuant to statute. Any person may demand access to publicly disclosable documents in a specific case. 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.
- (2) The Ministry shall publish, in the Gazette and by any other appropriate means to inform interested persons:
  - (a) calls to tender under section 18;
  - (b) notice of the grant of licenses and petroleum agreements, and a summary of the terms of such licenses and agreements;
  - (c) a summary of the plan for development and operation; and
  - (d) notice of the termination of licenses and petroleum agreements.
- (3) The Ministry shall make available to the public copies of all treaties pertaining to petroleum activities, licenses, petroleum agreements including unitization agreements and amendments whether or not the treaties, licenses or agreements are terminated.

## **78. Disclosure and Publication of Payments**

- (1) Licensees, contractors and sub-contractors shall annually disclose information on all payments made to Government agencies, monetary or in kind in connection with petroleum activities. The Ministry of Finance and Economic Planning or other applicable recipient, shall disclose the revenues received in connection with petroleum activities without regard to any provisions of confidentiality.
- (2) All disclosures under this subsection shall be reported to an independent administrative body and shall be published and verified in accordance with the principles of the Extractive Industries Transparency Initiative as prescribed in the Regulations.
- (3) Confidentiality clauses or other clauses in a petroleum agreement that prevents disclosure of information on any payments made and revenues received in connection with petroleum activities conducted in Southern Sudan shall be void to the extent required for disclosure of such information as set out in subsection (1).

- (4) The Ministry may issue regulations respecting all matters relating to disclosure and publication of information under this section, including orders to administrative agencies requiring them to provide information relating to payments and revenues

## **79. Petroleum Registry**

- (1) The Ministry shall establish and maintain a registry of petroleum agreements, licences and authorisations. The registry shall be open for public access, and the information registered in the registry is public except as otherwise provided by law.
- (2) Each petroleum agreement and each licence shall be given a separate sheet in the registry. The Ministry shall keep a journal of documents to be registered. The Ministry may issue regulations respecting the register, including fees that may be levied.

## **CHAPTER XIX**

### **MISCELLANEOUS PROVISIONS**

## **80. Prudent Petroleum Operations**

- (1) Petroleum activities shall be conducted in a prudent manner to ensure waste prevention, safety and protection of the environment, in accordance with this Bill, applicable legislation, best international practices and sound economic principles and shall include reasonable steps to:
  - (a) optimize the ultimate recovery of petroleum from a petroleum field;
  - (b) ensure that the sustainability of the reserves and the environment is maintained;
  - (c) secure the health, safety and welfare of persons engaged in the petroleum activities and of persons, communities and animals in the operational area;
  - (d) protect the petroleum reservoir; and
  - (e) avoid, prevent, reduce and manage environmental hazards and risk using the best available technology.
- (3) A contractor and a licensee shall continuously evaluate their production strategies and the technical solutions used and shall take any measures necessary to improve results and update strategies or solutions, taking into account the requirements set out in subsection (1).

## **81. Community Development Plan and Fund**

- (1) A contractor or licensee shall establish a fund called the Community Development Fund to finance the plan referred to in subsection (2).

- (2) A contractor or licensee shall submit to the Ministry for approval a community development plan setting out its strategies to improve the quality of life of communities in the contract area. The plan shall include programmes for activities such as construction of roads, hospitals, schools and water and sanitation facilities.

## **82. Compliance**

A licensee and a contractor shall ensure that anyone performing work for him, either personally, through employees or through contractors or subcontractors, shall comply with this Bill.

## **83. Insurance**

Petroleum activities conducted pursuant to a license or a petroleum agreement shall be covered by insurance at all times. Such insurance shall adequately cover the risks in connection with or in relation to the petroleum activities as may be required by applicable law and best international practices during the term of the licence or agreement, including such coverage as prescribed in the Regulations. Licensees or contractors shall avoid any double insurance or overinsurance providing coverage beyond what is necessary to adequately cover the risks related to the petroleum activities.

## **84. Domestic Supply of Produced Petroleum**

- (1) The Council of Ministers may decide that the contractor shall make deliveries based on fair market prices and other terms from its production to cover national requirements.
- (2) The Council of Ministers may further decide to whom such petroleum shall be delivered. The Ministry may issue regulations respecting the particulars of domestic supply of petroleum, including fair supply requirements on all petroleum producers in Southern Sudan.
- (3) In the event of war, threat of war or other national emergency or extraordinary crisis, the Council of Ministers may decide that a licensee shall place petroleum at the disposal of the Government. The market price requirement of subsection (1) shall apply correspondingly unless the particular situation warrants otherwise.

## **85. Monitoring, Supervision and Inspections.**

- (1) The Ministry shall carry out regulatory supervision to ensure that the provisions of this Bill and its regulations are complied with by all who carry out petroleum activities. The Ministry may issue orders for the implementation of the provisions of this Bill.

- (2) The Ministry may require that the costs related to the regulatory supervision and inspection be borne by the licensee or contractor.
- (3) The Ministry may authorize any person to inspect petroleum activities to ensure that the petroleum activities are carried out in accordance with this Bill and in accordance with the terms and conditions of any applicable petroleum agreement, petroleum sub-contract or licence.
- (4) The authorized person has the right at reasonable times to
  - (a) enter any area, structure, platform, vehicles, installation, vessel, aircraft, facilities, offices or buildings used by a licensee, contractor or sub-contractor in connection with petroleum activities;
  - (b) inspect, test and audit, as appropriate, the works, equipment, operations and financial books of account, records and registers of a licensee, contractor or sub-contractor related to or used in petroleum activities;
  - (c) take and remove petroleum, water or other substance for the purposes of analysis or testing the sample;
  - (d) inspect, take extracts from, and make copies of any document relating to the petroleum activities; and
  - (e) make such examinations and inquiries that are necessary to ensure that the provisions of this Bill, regulations, the petroleum agreement, licence or other authorization are being complied with.
- (5) A licensee, contractor or subcontractor shall provide the authorized person with reasonable facilities and assistance to enable the effective and timely performance of the supervisory and inspection functions under this section.

## **86. Accounts and Audit**

- (1) A licensee and a contractor shall maintain complete, accurate current and systematic financial records of their petroleum activities in accordance with good and sound accounting standards and norms, and in accordance with applicable law and regulations.
- (2) An auditor appointed by the Ministry or any person authorised by the Ministry has the right at any reasonable time to inspect, test and audit the works, equipment, operations and financial books of account, records and registers related to petroleum activities performed by a licensee, contractor or a sub-contractor and to make abstracts or copies of any document pertaining to the operations of the Ministry. The audit shall be made in accordance with international auditing standards.

## **87. Notification of Natural Resources other than Petroleum**

A contractor or licensee shall immediately notify the Ministry if during the course of conducting petroleum activities, it discovers natural resources other than petroleum.

## **88. Third Party Exploitation of Natural Resources other than Petroleum**

- (1) A petroleum agreement or licence shall not preclude the granting to a person other than the contractor or licensee the right to undertake exploration for and production of natural resources other than petroleum provided it does not cause unreasonable inconvenience to the petroleum activities conducted by a contractor or licensee. The same applies to scientific research.
- (2) Where natural resources other than petroleum have been discovered in a contract area and the continued activities in relation to other natural resources cannot take place without causing unreasonable inconvenience to the petroleum activities conducted by the contractor or licensee under the reconnaissance licence or petroleum agreement, the Ministry shall in consultation with the relevant authorities decide the extent to which any of the activities shall be postponed.
- (3) When postponing an activity referred to in subsection (2), the Ministry shall take into account
  - (a) the nature of the discovery made;
  - (b) the investments undertaken;
  - (c) the stage that the activities have reached; or
  - (d) the duration and extent of the activities and their economic and social impact, in relation to the activities conducted in accordance with the petroleum agreement.
- (4) A contractor or licensee whose activities have been postponed under subsection (2) may apply for extension of the petroleum agreement or licence for a period of time corresponding to the postponement.
- (5) If the postponement only applies to a limited part of the activities that may be conducted in accordance with the petroleum agreement or licence, the Ministry may
  - (a) stipulate a shorter period for the extension;
  - (b) refuse the extension; or
  - (c) grant the extension for only part of the area to which the petroleum agreement or licence applies.
- (6) Where the postponement referred to in subsection (2) renders the work obligation imposed under the petroleum agreement or licence impossible to accomplish within the stipulated time limit, the time limit shall be extended.

- (7) If petroleum activities are postponed, the surface rental fee for the extension may be waived or reduced but any fee paid in advance shall not be refunded.
- (8) Where the postponement under subsection (2) is of a particularly long duration, the relevant agreement may be terminated or the licence revoked.
- (9) The Ministry may direct that the party authorised to maintain activities shall wholly or partly refund to the party that has to postpone or curtail activities, the costs incurred and, to a reasonable extent, cover other losses.

## **89. International Treaties and Agreements**

- (1) The Ministry of Foreign Affairs may, in consultation with the Ministry and other affected ministries negotiate and enter into international agreements respecting cross-border petroleum activities, including cross-boundary reservoirs, facilities extending across international borders and international production and transportation matters.
- (2) Petroleum activities that are the subject of an international treaty shall be governed by the treaty and no person shall carry on petroleum activities in any land covered by the treaty except in accordance with the treaty.

## **90. Security for Fulfilment of Obligations**

- (1) A licensee or a contractor shall furnish the Ministry with any performance bond or guarantee required by the Ministry for the fulfilment of the obligations undertaken by the licensee or contractor and for possible liabilities arising out of the petroleum activities undertaken under the license or petroleum agreement.
- (2) The Ministry shall determine the amount and the form of security in accordance with the regulations and in accordance with the conditions of a licence granted or the terms of a petroleum agreement entered into, under this Bill.

## **91. Indemnification of the Government**

A licensee, contractor or sub-contractor shall keep the Government indemnified against claims arising from the operations of the licensee, contractor or subcontractor brought by third parties.

## **92. Liability and Compensation for Damage and Loss**

- (1) If more than one person constitute the contractor, those persons shall be jointly and severally liable to the Government for financial and other obligations and liabilities towards the Government arising out of the petroleum activities.

- (2) If more than one person hold a licence, those persons shall be jointly and severally liable to the Government for financial and other obligations and liabilities towards the Government arising out of the petroleum activities.
- (3) Where third party liability is incurred by a person who undertakes a task for a licensee, contractor or sub-contractor, the licensee, contractor and sub-contractor is liable for damages to the same extent as, and jointly and severally with the person undertaking the task and if applicable, the employer of such person.

### **93. Offences and Penalties**

- (1) A person is guilty of an offence who-
  - (a) knowingly makes any false entry or statement in any report, record or document required by this Bill or the regulations or by any order, directive or stipulation made by the Ministry pursuant to this Bill or the Regulations;
  - (b) knowingly destroys, mutilates or falsifies any report or other document required by this Act or the regulations or by any order, directive or stipulation made by the Ministry pursuant to this Bill or the Regulations; or
  - (c) places or deposits, or is accessory to the placing or depositing of, any petroleum or substance in any place with the intention of misleading any other person as to the possibility of a reservoir existing in that place.
- (2) Every person is guilty of an offence who
  - (a) contravenes this Bill, the Regulations, the licence or any other authorization issued pursuant to this Bill or the Regulations or any order, directive or stipulation of the Ministry;
  - (b) undertakes or carries on a petroleum activity without a petroleum agreement, licence or any other authorization issued pursuant to this Bill or without complying with the terms or conditions of the licence or authorization.
- (3) Any person commits an offence who-
  - (a) without reasonable excuse, obstructs, molests or hinders an employee of the Ministry or an authorised officer in the exercise of his or her powers under this Bill; or
  - (b) knowingly or recklessly makes a statement or produces a document that is false or misleading in a material particular to an employee of the Ministry or an authorised officer engaged in carrying out his or her duties and functions under this Bill,
- (4) Any person who, without reasonable excuse, obstructs, molests, hinders or prevents a contractor or licensee in or from the doing of any act that the contractor or licensee is authorised to do by this Bill or the Regulations, the licence or any other

authorization issued pursuant to this Bill or any order, directive or stipulation made by the Ministry pursuant to this Bill or the Regulations commits an offence.

- (5) An officer in the public service, engaged in the implementation of this Act shall not, in his or her private capacity, knowingly, directly or indirectly, acquire, attempt to acquire or hold-
  - (a) a licence or an interest in a petroleum agreement, a licence or any other authorization issued pursuant to this Bill or the Regulations;
  - (b) a direct or indirect economic interest, participation interest or share in an entity that is entitled under this Act to carry on petroleum activities in Southern Sudan; or
  - (c) a direct or indirect economic interest, participation interest or share in a body corporate that is providing goods or services to a contractor or licensee under this Bill.
- (6) A person who contravenes subsection (5) commits an offence.
- (7) In proceedings for a prosecution for an offence under this section of acquiring or maintaining an interest of a kind referred to in subsection (5), it shall be a sufficient defence if the person charged proves that-
  - (a) the interest was acquired by operation of law; and
  - (b) all reasonable steps necessary to dispose of the interest have been and are continuing to be taken.
- (8) Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he or she, as well as the body corporate, commits that offence and is liable to be prosecuted and punished accordingly.
- (9) Where a person is convicted of an offence under this Bill, the court may in addition to any other penalty imposed, make-
  - (a) an order for the forfeiture of any funds, money instruments, documents, facilities, vehicles, crafts, vessels or equipment used in the commission of the offence; and
  - (b) an order-
    - (i) for the forfeiture of petroleum obtained or recovered in the course of the commission of the offence;



- (ii) for the payment by that person to the Government of an amount equal to the proceeds received of the sale of petroleum so obtained or recovered; or
  - (iii) for the payment by that person to the Government of the value at the wellhead, assessed by the court in respect of the quantity recovered or for the payment of such a part of that amount as the court, having regard to all the circumstances, thinks fit.
- (10) If the court is satisfied that an order made under subsection (9)(b)(i) cannot for any reason be enforced, the court may, upon the application of the person by whom the proceedings were brought, set aside the order and make an order referred to in subsection (9)(b)(ii) and (iii).
- (11) The court may, before making an order under this section, require notice to be given to, and to hear any person as the court thinks fit.
- (12) If a person is guilty of an offence under this Bill, the court may, in addition to any other punishment it may impose, order that person to comply with the provisions of this Bill, the regulations, any order, directive or stipulation of the Ministry and the terms or conditions of the licence or other authorization issued pursuant to this Bill for the contravention of which he has been convicted.
- (13) If an individual is guilty of an offence under this Bill that results in pollution, the person is liable-
  - (a) on summary conviction, to a fine not exceeding five hundred thousand US dollars or to imprisonment for a term not exceeding one year or both; or
  - (b) on conviction on indictment, to a fine not exceeding one million US dollars or to imprisonment for a term not exceeding five years, or to both.
- (14) If a body corporate is guilty of an offence under this Bill that results in pollution, the person is liable on summary conviction to a fine not exceeding five hundred thousand US dollars or on conviction on indictment, to a fine not exceeding one million US dollars.
- (15) If an offence under this Bill is committed on more than one day or is continued for more than one day, it shall be deemed to be a separate offence for each day on which the offence is committed or continued.
- (16) Any person who in or outside Southern Sudan, public or private commits an offence who-

- (a) for himself or other persons requests or receives an improper advantage or accepts an offer thereof in connection with any position , office or assignment, whether private or public;
- (b) for himself or other person requests or receives an improper advantage or accepts an offer thereof in return for influencing the conduct of any position, office or assignment, whether private or public;
- (c) gives or offers any person an improper advantage in connection with his or her position, office or assignment; or
- (d) gives or offers any person an improper advantage in return for influencing the conduct of a position, office or assignment.

## **CHAPTER XXI**

### **COMPETENCE AND DISCLOSURE OF INTERESTS**

#### **94. Appointments and recruitments**

Any appointment of a public servant, official or employee, including members of the Secretariat shall be subject to an open, public, transparent and competitive tender process as prescribed by law.

#### **95. Declaration of Assets**

- (1) Members of the Council, members of the Secretariat, and any senior public service officials employed in the governing of petroleum activities shall, upon assumption of their offices and annually, make confidential declaration of their assets and liabilities including those of their spouses, children and other persons in their domestic relations to the Anti- Corruption Commission and the Audit Chamber in accordance with the applicable law.
- (2) The requirement to make a declaration includes assets and liabilities inside Southern Sudan and in foreign countries or territories. This provision shall apply similarly with respect to the Chairperson, the members of the board of directors and senior employees of the National Petroleum Corporation.

#### **96. Disclosure of Interests**

- (1) Any public official including a member of the Council, an employee of the Ministry, a member or an employee of the Secretariat, whether engaged in fulltime or part time functions or as a an external agent, who has or is likely to have a direct, or indirect interest, in a subject matter submitted before him or her for

consideration, shall disclose in writing, to his or her superior official, the nature of such interest, as may connect him or her to the subject matter put before him or her.

- (2) If the superior official is disqualified, the matter may not be decided by any directly subordinate official in the same public body.
- (3) A person who is subject to disclosure of interest under subsection (1) above, shall not take part in any deliberation or decision to be taken with respect to the subject matter.
- (4) The rules governing disqualification in sub-section (3) shall not apply if it is apparent that a connection of the person who is subject to disclosure of interest under subsection (1) with the subject matter will not influence his or her decision and it is apparent that neither public nor private interests indicate that he or she should be disqualified from taking part in any deliberation or decision on the subject matter.

## **CHAPTER XXI**

### **REGULATIONS**

#### **97. Right to issue Regulations and stipulate conditions**

- (1) The Minister, subject to the approval of the Council of Ministers, may issue regulations for the efficient and effective implementation of the provisions of this Bill, and in particular, without restricting the generality of the foregoing, regulations respecting:-
  - (a) incorporation and organizational requirements of the contractor, including requirements respecting the contractor's capitalization and management;
  - (b) requirements relating to the exploration period, including work and expenditure obligations;
  - (c) requirements relating to the relinquishment of the contract area;
  - (d) petroleum measurement, including calibration, testing and compensation in cases of mismeasurement;
  - (e) production permits, including their form and content;
  - (f) licenses to install and operate facilities for transportation, treatment and storage;
  - (g) third party access to facilities for the transportation, treatment and storage of petroleum, including the terms upon which the access is granted;
  - (h) matters relating to decommissioning, including the establishment of and criteria relating to a decommissioning fund;

- (i) the content and conduct of surveys relating to plugging and abandonment of wells;
- (j) the acquisition of rights to land or surface for the conducting of petroleum activities, including the requirements for consultation and notification;
- (k) all matters relating to safety, environmental and waste management and prevention, including the establishment of safety zones and any other measures to enforce safety zones, emergency preparedness and related emergency measures and the form, content and other requirements relating to environmental and social impact assessments;
- (l) surface rental fees and other fees, bonuses and royalties, including prescribing the amounts or criteria for their calculation, their collection and the classification of persons subject to such fees, bonuses and royalties;
- (m) records, reports and information, including requirements as to their content, submission and retention;
- (n) public disclosure and verification of any records, reports or information submitted to the Ministry, including the form, content and timing of the disclosure and requirements by administrative agencies to provide information relating to payments and revenues;
- (o) the petroleum registry, including the amount or manner of calculation of fees that may be levied;
- (p) insurance requirements, including the type and amount of coverage and criteria related to its adequacy; and
- (q) any other matter that the Ministry deems necessary to give effect to the provisions of this Bill.

(2) The Council may issue internal rules governing its proceedings.

(3) Other conditions than those mentioned in this Bill may be stipulated in connection with individual administrative decisions provided that such conditions are naturally linked with the measures or the activities to which the individual administrative decision relates.

(4) Unless otherwise provided in this Bill, regulations made under subsection (1) may incorporate by reference the standards or specifications of any government, person or organization either as they read at a fixed time or as amended from time to time.

## CHAPTER 21

### TRANSITIONAL MEASURES [THIS CHAPTER TO BE REVIEWED IN LIGHT OF ONGOING NEGOTIATIONS]

#### 98. Existing Contracts

- (1) The provisions of existing agreements insofar as they apply to petroleum activities in the territory of Southern Sudan shall, as of July 9, 2011, be honored and their continuation acknowledged and shall remain in effect with such modifications as the circumstances require. The Government shall however, review the contracts in light of the principles reflected in this Bill and will require addenda made to the contracts to address any area where there is lack of compliance between existing framework and the policy principles.
- (2) For greater clarity, references in the agreements to
  - (a) the Government or the Republic of Sudan shall be read as the Government of Southern Sudan, as applicable;
  - (b) Sudapet shall be read as the National Petroleum Corporation ;
  - (c) the Bank of Sudan shall be read as the Bank of Southern Sudan;
  - (d) Khartoum shall be read as Juba;
  - (e) the dinar shall be read as the currency in effect in Southern Sudan on July 9, 2011; and
  - (f) any other term referring to institutions or circumstances in effect in or applicable to the Republic of Sudan before July 9, 2011 shall be read as the equivalent term in Southern Sudan.
- (3) Any rights, roles or functions under the existing agreements that applied to the Government of Sudan before July 9, 2011 shall apply, with such modifications as the circumstances require, to the same extent to the Government of Southern Sudan as a sovereign nation as of July 9, 2011.
- (4) Any loan incurred by the Government of Sudan under an existing agreement using oil as collateral shall not entail the responsibility of the Government of Southern Sudan.
- (5) The Minister may re-designate those blocks that straddle the border between the Republic of Sudan and Southern Sudan and the existing agreements shall be read to reflect these new designations.