



global witness

Tangible Transparency

Ensuring a Transparent and Verifiable Oil Deal in Sudan

Annex: Suggested Transparency Language for a New Oil Deal

October 2010

1. Transparency Provisions

GUIDING PRINCIPLES FOR THE MANAGEMENT OF THE OIL SECTOR

The Parties agree that all relevant oil sector data and processes shall be made fully available to the public in a timely manner. This data shall include but not be limited to disaggregated oil production and revenue figures, disaggregated oil sale prices, disaggregated investment costs claimed back by companies, and disaggregated fees and royalties paid and received.

OIL SECTOR DATA DISSEMINATION

The Parties agree that oil production, sales and revenue figures shall be regularly published. Oil production figures will be disaggregated by individual oil field and by day, and will include gross and net oil volumes. Oil sales and revenue figures will be disaggregated by oil blend and day and will include sales made by or on behalf of the government(s) as well as sales made by state-owned oil companies. Figures should be given for the amount of revenue accruing to each government on a field-by-field basis. If the oil agreement reached requires payments to be made by one government to another, figures should be given of the amount of money owed and the dates and amounts of any payments that have been made. This data will be published a maximum of one month after it is generated.

The Parties agree to publish the percentage of oil belonging to the government(s) from each block, and the costs claimed back by each oil consortium. This data will be published a maximum of one month after it is generated.

The Parties agree that oil sector data shall be made publically through the following channels:

- a) on the websites of the Ministries of Finance and Petroleum/Energy of both parties, in Arabic and English. Data made available in this way will include all oil sector data referred to in this agreement and, where possible, will be disaggregated by oil field or oil block, whichever is the smaller;
- b) in monthly newspaper advertisements, in prominent Sudanese/South Sudanese Arabic-language and English-language newspapers. Data made available in this way will include oil production, sales and revenue figures disaggregated by oil block, and fees paid and received (such as management fees, pipeline fees, royalties and oil companies' costs), disaggregated by oil block;

- c) in monthly radio programs on prominent Arabic-language and English-language radio stations. Data made available in this way will include the total volumes of oil produced each month and the total oil revenues accrued to each government each month.

The Parties each agree to publish an annual report that will be made publically available detailing the processes overseeing:

- a) how oil revenues are managed, overseen, and redistributed;
- b) how the pipelines and pipeline fees are managed;
- c) revenues received from signature bonuses and production level bonuses;
- d) how oil volume is tracked from point of entry into the pipeline to refinery and to point of export;
- e) the verification processes used by the government(s) to determine oil volume, oil price, and the costs claimed back by the oil companies;
- f) the royalty, tax and customs duties payment systems;
- g) the allocation and development of new oil blocks and contracts.

OIL SECTOR CONTRACTS

The Parties agree that all existing and future oil sector contracts shall be publically available. The Parties agree that the definition of "oil sector contracts" as set forth in this agreement includes contracts for seismic tests, exploration and production, as well as pipeline contracts and any other oil-related contracts.

OIL AUDITS

The Parties agree to allow a full, independent audit of the wealth sharing agreement of the Comprehensive Peace Agreement as implemented from 2005 to 2011. The audit will be carried out by a credible, mutually agreed third party with international experience of auditing. The audit will be conducted in accordance with international standards, and examine engineering, technical, and financial flows, with all reports made publically available in a timely manner.

The Parties agree to recruit an Independent Auditing Company that will conduct a full, independent audit of the oil sector, to be completed on an annual basis by a credible, mutually agreed third party with international experience of auditing. The audits will be conducted in accordance with international standards, and will examine engineering, technical, and financial flows, including any revenues from signature bonuses and production level bonuses. The Auditing Company should work with the Oil Volume Monitoring Company and the Independent Monitoring Board described below to ensure that the financial and volume audits complement each other. All reports of the Auditing Company will be made publically available in a timely manner.

OIL VOLUME MONITORING

The Parties agree to recruit an Oil Volume Monitoring Company. This company will be independent of either party and will have experience in providing such services elsewhere. The Oil Volume Monitoring Company will verify the volumes of oil at the wellheads, field processing facilities, central processing facility, branch points of the pipelines and at the final point of export. The data will be disaggregated by block. The Oil Volume Monitoring Company will make assessments of the quality of the oil from each block and of the accuracy of oil measurement calibrations. The Oil Volume Monitoring Company will publish monthly reports of their findings. Such reports will be made publically available.

INDEPENDENT MONITORING BOARD

An Independent Monitoring Board shall be set up to oversee the management of the oil sector and produce regular and timely reports. The Board shall be composed of x international oil experts, x local civil society representatives from north Sudan and x local civil society representatives from south Sudan, such that there are equal numbers of civil society representatives from north and south. The Board shall produce quarterly reports that shall include an assessment of the overall management of the sector and recommendations based on any systemic weaknesses and oversight challenges identified. The quarterly reports will be made publically available. The Parties agree to grant the Monitoring Board the authority, resources, and access necessary to meet these responsibilities.

COMPANIES PUBLISH WHAT THEY PAY

The Parties agree to enact timely legislation requiring all oil companies operating in the country to publish all relevant oil sector data in accordance with international extractive industries transparency best practice. The disclosure required shall include all payments, in whatever kind (oil, money or other) made to the government, gross oil production volumes from wellheads and field processing facilities, net oil production volumes from the central processing facility, volumes at the point of import into each refinery and point of export at Port Sudan, and disaggregated costs claimed back by the oil companies.

PUBLIC INFORMATION OFFICES

Public Information Offices shall be created in Khartoum and Juba. The Offices shall have the rights to copies of a wide range of oil-related documents. Failure to deposit public contracts with the Public Information Offices shall be construed as a violation of the contract. The Offices shall have a legal obligation to appear before the Legislative Assembly of Sudan/Legislative Assembly of Southern Sudan on an annual basis to testify about the compliance of the authorities of Sudan/Southern Sudan with these information disclosure provisions. Any citizen or resident of Sudan or Southern Sudan shall be able to request and receive the production of any information required to be made public.

2. Additional Transparency Provisions Required by Specific Types of Oil Deal

Option A) Service/fee Arrangement

The Government of Southern Sudan will pay the Government of Sudan service fees as follows:

- a) \$X per barrel for the transport of oil through north Sudan to a local refinery or the point of export via the Nile or Dar pipeline;
- b) \$X per barrel for refining;
- c) \$X per barrel for the use of export facilities at Port Sudan.

Option B) Percentage-Split Arrangement

ADDITIONAL OIL SECTOR DATA DISSEMINATION

The Parties agree to collect and publish the following data:

- a) The price of each individual shipment of oil sold by the government(s) and by the state-owned oil companies, including information on the blend of oil, volume of oil bought, date of sale, date of lifting, and name of purchaser;
- b) Costs claimed back by the oil companies, disaggregated by company and by budget line
- c) The percentage split of oil between government and oil company for each consortium. This figure will be affected by the split specified in the Exploration and Production Sharing Agreements and by the costs claimed back by the oil companies.

ADDITIONAL OIL AUDITS

The Parties agree that the Independent Auditing Company described above will also verify the price of all government sales of oil and will publish monthly reports of their findings, with data disaggregated by blend of oil and date of export. The Auditing Company will also verify the costs claimed back by the oil companies. All such reports will be made publically available. The Parties agree to provide the Auditing Company with all necessary access to oil sales contracts, bank account(s) into which the oil revenues were deposited, the details of costs claimed back by the oil companies and any other information reasonably requested by the Company.

3. Dispute Resolution Mechanism

Should a dispute over the distribution of wealth described within this agreement arise, any level of Government may initiate formal mediation. If agreement cannot be reached in mediation, the persons involved shall seek relief through arbitration by binding decision of a neutral third party. The Parties agree that the Court of Arbitration to be used in these circumstances will be x.