

THE PETROLEUM ACT, 2012  
Arrangement of Sections

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## **THE PETROLEUM ACT, 2012**

**In accordance with the provisions of Articles 55(3)(b), 110(n) and 85(1) of the Transitional Constitution of the Republic of South Sudan, 2011, the National Legislative Assembly, with the assent of the President of the Republic of South Sudan, hereby enacts the following:**

### **CHAPTER I**

#### **PRELIMINARY PROVISIONS**

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

This Act shall be cited as “The Petroleum Act, 2012” and shall come into force on the date of its signature by the President.

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

- (1) Any provision of existing legislation, the subject matter of which is governed by this Act is hereby repealed to the extent that it conflicts with any provision of this Act.
- (2) The same principle set out in subsection (1) of this Section, with such modifications as the circumstances require, shall apply to existing proceedings, orders and regulations.

##### **3. Purpose**

This Act provides a regulatory framework for the development and management of petroleum activities and other ancillary matters related to petroleum activities in the Republic in conformity with the Transitional Constitution, and for the establishment of a National Petroleum and Gas Commission.

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

- (1) This Act is drafted in accordance with Article 52, Part Twelve Chapter III, and Schedule A paragraph (17) of the Transitional Constitution, which grant the Government the authority over matters of petroleum development and management of natural resources.
- (2) The provisions of this Act shall apply to all petroleum activities within the territory of the Republic of South Sudan, including activities in, under and upon its land, except as otherwise provided by a validly ratified treaty entered into with another sovereign state with respect to the exploitation and unitization of natural resources across national borders or the transportation of petroleum across national borders.

## 5. Interpretations

In this Act, unless the context otherwise requires:

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

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

“**applicable law**” means legislation of the Government enacted by the National Legislature and assented to by the President and any regulations made under it;

“**Commission**” means the National Petroleum and Gas Commission established under Section 9 of this Act;

“**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 authorised to explore for, develop and produce petroleum;

“**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 of this Act;

“entity” means a company or any other business or enterprise;

“**environment**” means the physical factors of the surroundings of human beings, including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics, and includes both the natural and the man-made environment;

“**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 South 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 Act;

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

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

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

“**National Petroleum and Gas Corporation**” means the duly constituted national petroleum company established in Section 13 of this Act;

“**operator**” means a company appointed or approved as operator by the Ministry under Section 21 of this Act, 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 coal-bed methane;

“**petroleum activities**” mean all activities related to the reconnaissance or exploration for, the appraisal and 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 Act 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 80 of this Act;

“**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;

“**prior contracts**” mean contracts concluded prior to July 9, 2011 related to petroleum activities within the territory that has now become the Republic;

“**production facilities**” mean 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 the Republic;

“**reconnaissance licence**” means the licence granted under Section 17 of this Act;

“**Republic**” means the Republic of South Sudan;

“**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;

“**Transitional Constitution**” means the Transitional Constitution of the Republic of South Sudan, 2011; and

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

## 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 Republic shall be owned by the people of South Sudan and managed on their behalf by the Government.
- (2) The management of petroleum resources shall be conducted in a manner that contributes fully to economic prosperity and human development.
- (3) Petroleum shall be managed in an ethical, efficient, transparent and accountable manner on the basis of environmentally, socially and economically sustainable principles.
- (4) The people of South Sudan shall benefit equitably from the revenues derived from petroleum activities.
- (5) The value of petroleum resources shall be maximised and its value shall be converted into lasting benefits for current and future generations.
- (6) Best international practices and technology in petroleum activities shall be used to eliminate or minimise damage to the environment.
- (7) There shall be an adequate domestic supply of petroleum to serve the needs of the people of South Sudan.
- (8) Fair competition shall be promoted to increase productivity and efficiency in the petroleum sector.

#### **8. Ownership of Petroleum**

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



## CHAPTER III

### THE NATIONAL PETROLEUM AND GAS COMMISSION

#### 9. Establishment

- (1) The National Petroleum and Gas Commission of South Sudan is hereby established and will hereinafter be referred to as the Commission.
- (2) The Commission shall be a policy-making body and shall report to the President, the National Legislative Assembly and the Council of States.

#### 10. Composition

- (1) The Commission shall consist of 11 members, 3 of whom shall be the Chairperson, the Deputy Chairperson and the Secretary. The remaining 9 members shall be from relevant national ministries, institutions and the oil producing states who shall be selected as follows:
  - (a) a member from the Land Commission;
  - (b) a member from the Ministry;
  - (c) a member from the Ministry of Finance and Economic Planning;
  - (d) a member from the ministry responsible for the environment;
  - (e) a member from a recognized university in the Republic specialized in the earth sciences; and
  - (f) a member from each of the three oil producing states.
- (2) The Secretary shall be the Chief Executive officer responsible for the day-to-day operations of the Commission.
- (3) No Minister of the Government shall be a member of the Commission. The Chairperson, the Deputy Chairperson and the Secretary shall not be appointed from any of the relevant national ministries or institutions.
- (4) No fewer than three of the members shall be women.
- (5) Members of the Commission shall be appointed based on integrity, competence and ethnic and regional diversity.
- (6) The Chairperson and Deputy Chairperson shall have experience and expertise in the petroleum sector.
- (7) The Commission shall be appointed by the President with the approval of the National Legislative Assembly by a simple majority.

- (8) The Chairperson, Deputy Chairperson and the Secretary shall be full-time and be paid such remunerations and allowances in accordance with the Civil Service Act; other members shall be paid such remunerations as determined by the National Council of Ministers, on the recommendation of the minister responsible for labour and the civil service.
- (9) The rules governing the proceedings of the Commission shall be prescribed in its internal regulations that shall be made available to the public.

## **11. Powers and Functions**

The Commission shall:

- (a) provide general policy direction with respect to petroleum resources;
- (b) act as a supervisory body in matters relating to petroleum resource management;
- (c) approve all petroleum agreements on behalf of the government and ensure that they are consistent with this Act;
- (d) ensure co-ordination among all levels of Government and states to promote co-operation among the private sector, non-governmental organisations and other persons, institutions and organisations interested in petroleum activities; and
- (e) perform any other power, function or duty as prescribed by law.

## **CHAPTER IV**

### **THE MINISTRY**

## **12. Powers and Functions**

- (1) The Ministry shall be responsible for the management of the petroleum sector in accordance with the provisions of the Transitional Constitution and this Act.
- (2) The Ministry may establish a body to be known as the Petroleum Exploration and Production Authority to oversee petroleum operations and advise the Ministry.
- (3) The Ministry shall implement the policies established by the Commission respecting the management and development of the petroleum sector and for those purposes shall:
  - (a) formulate strategies, plans and programmes for the development and management of the petroleum sector;
  - (b) negotiate petroleum agreements in accordance with this Act;
  - (c) sign, manage and, if applicable, terminate the petroleum agreements on behalf of the Government after approval by the Commission;
  - (d) manage petroleum resources on behalf of the Government;

- (e) manage the relations of the Government with petroleum companies operating in the Republic;
- (f) develop the necessary technical capacity and competence of personnel involved in petroleum activities;
- (g) provide technical expertise and support to the Commission;
- (h) in consultation with affected communities, ensure that all petroleum projects are subject to environmental and social impact assessments;
- (i) make public and disclose documents and information pursuant to Sections 78 and 79 of this Act;
- (j) initiate legislation and make rules and regulations respecting the development and management of the petroleum sector pursuant to Section 99 of this Act;
- (k) provide for the transportation, processing, refining and distribution, including the relevant infrastructure relating to these activities and provide for the marketing and selling of Government entitlement of crude oil and its derivatives; and
- (l) perform any other functions as prescribed by law.

## **CHAPTER V**

### **NATIONAL PETROLEUM AND GAS CORPORATION**

#### **13. National Petroleum and Gas Corporation**

- (1) There is hereby established a National Petroleum and Gas Corporation which shall participate in the upstream, midstream and downstream activities of the petroleum and gas sector on behalf of the Government.
- (2) The National Petroleum and Gas Corporation shall undertake petroleum activities in accordance with this Act.
- (3) This Act shall apply to the National Petroleum and Gas Corporation to the same extent as this Act is applicable to any other licensee or contractor, unless otherwise expressly prescribed by legislation.
- (4) The National Petroleum and Gas Corporation shall be registered as a company under the laws of the Republic, limited by shares, all of which are to be held by the Government on behalf of the Republic and non-transferable to the public.
- (5) The National Petroleum and Gas Corporation shall, on behalf of the Government, act as a commercial entity and safeguard the national interest in petroleum activities.

- (6) If the Government has an interest in a consortium conducting petroleum activities in the Republic, the National Petroleum and Gas Corporation shall represent the Government in the consortium.
- (7) The employees of the National Petroleum and Gas Corporation shall not be appointed to service in the Commission or the Ministry.
- (8) Any appointment to service in the National Petroleum and Gas Corporation shall be based on merit.
- (9) The National Petroleum and Gas Corporation shall, in accordance with applicable petroleum policy, enjoy certain preferential rights in petroleum agreements, including cost carry in the exploration phase.
- (10) The National Petroleum and Gas Corporation shall, in accordance with international standards, make available to the public its audited annual accounts, production share, marketing procedures, sales price, fees paid or received for petroleum activity and transportation, and petroleum agreements and sub-contracts.
- (11) The President shall appoint the Board of Directors, in accordance with subsection (8) of this Section.

## **CHAPTER VI**

### **MANAGEMENT OF AREAS**

#### **14. Graticulation**

- (1) For the purposes of this Act, the land of South 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, on the Ministry's website and by any other appropriate means to inform interested persons.

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

The Council of Ministers may in consultation with the Ministry open an area for petroleum activities after a strategic environmental assessment is carried out and a determination made by the Council of Ministers to open the area in accordance with Section 59 of this Act.

## **16. Closure of Areas**

The Council of Ministers may in consultation with the Ministry close an area or a part of an area that has been opened for petroleum activities in accordance with Section 15 of this Act, provided that the area or part of the area 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 of this Act, the Ministry may, subject to an environmental and social impact assessment being carried out, published and approved in accordance with Section 59 of this Act, announce an open, transparent, non-discriminatory and competitive public tender to 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, 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 an exploration survey in a block or portion of a block, the Ministry shall 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 licensee, subject to consultation with the Ministry, to use such data and information in accordance with applicable law.

## **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 Act and any other applicable law.
- (2) Petroleum agreements shall be entered into following an open, transparent, non-discriminatory and competitive tender process conducted in accordance with applicable law governing public procurement.
- (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 12(3)(b) and (c) of this Act.
- (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 Act, 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.
- (5) If any provision of a petroleum agreement conflicts with a provision in this Act or applicable law, the provision of this Act or applicable law shall prevail.

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

- (1) An entity entering into a petroleum agreement shall be incorporated and registered as a company in the Republic in accordance with the applicable law and shall be capable of managing petroleum activities at all times, including through the technical, operational and financial resources of its shareholders. Such company shall be incorporated as a single purpose company exclusively for petroleum activities in the Republic.
- (2) A contractor shall maintain an office in the Republic 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 the Republic.
- (3) Specific requirements in respect of the contractor, including its capitalization and management, may be prescribed in the regulations.

## **21. Operator**

- (1) If 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) If the Ministry does not require the establishment of a petroleum operating company pursuant to subsection (1) of this Section, the companies shall nominate an operator for approval by the Ministry prior to execution of the 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 the Republic 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 and notice of the transfer shall be announced in the Gazette and made available by any other appropriate means to inform interested persons. 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 subsections (1) and (3) of this Section 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 and Gas Corporation shall have the right of first option 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 and Gas Corporation shall have the right to pay the corresponding monetary value of the agreed consideration.
- (3) The National Petroleum and Gas Corporation's right of pre-emption shall lapse unless exercised within sixty (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. A fixed 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 fixed 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 fixed 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 Act.

**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 Commission.

**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 Commission, 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 discovery within 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 and social impact assessment that has been carried out and approved in accordance with Sections 59(2) and (7) of this Act. 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 ninety 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 twenty-four 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 81 of this Act.

#### **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) of this Section 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, social and environmental aspects of the project.
- (4) An environmental and social impact assessment shall be carried out and approved in accordance with Sections 59(2) and (7) of this Act 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 reasonable 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 of this Act and any other relevant information that may require modification in the production schedule.
- (2) No petroleum shall be produced or injected back into the ground 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 Act.
- (3) In the event of an emergency, a contractor may vent or flare without the prior written authorisation 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. Coordination 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) of this Section, 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 upon terms established by the Ministry.
- (4) Where a petroleum accumulation extends beyond the jurisdiction of the Republic, 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) of this Section, 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, or, if no agreement is reached, the Ministry may stipulate the terms of the agreement. These amendments and stipulations shall have 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. Licence to Install and Operate Transportation Systems**

- (1) Transportation systems shall not be installed or operated without a licence granted by the Ministry unless the rights to undertake such activities are included within the scope of an approved plan for development and operation.
- (2) An application for a licence pursuant to subsection (1) of this Section shall contain:
  - (a) a description of the facilities;
  - (b) an environmental and social impact assessment carried out and approved in accordance with Sections 59(2) and (7) of this Act; 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 licence, 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 licensee or a contractor who owns or operates a petroleum facility shall submit a decommissioning plan for the facilities, including wells, to the Ministry before the applicable licence or petroleum agreement 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 environmental and social impact assessment of the alternatives, carried out and approved pursuant to Sections 59(2) and (7) of this Act.
- (5) A plan for shutdown of petroleum activities pursuant to subsection 2(b) or (c) of this Section 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 licence or a petroleum agreement. 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 licence or petroleum agreement 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 licensee or the contractor 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 licensee or the contractor 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 licensee or the contractor by the cessation decision shall survive the expiration or termination of the applicable licence or petroleum agreement.

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

The licensee and the contractor shall establish a decommissioning fund immediately after the approval of a plan for development and operation or the granting of a licence for transportation systems, 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 an area, the licensee or the contractor 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 licensee or the contractor 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 of this Act, the Ministry may take the necessary remedial measures for and on behalf of the licensee or contractor responsible for cessation, including the engagement of subcontractors for the carrying out of the cessation decision at the expense and risk of the licensee or contractor. 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 licensee or contractor to undertake its own remedial measures.

#### **46. Liability**

A licensee or contractor 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) Following consultations carried out by the Government with the affected local communities and interested parties, the Government may acquire land or an interest in land on behalf of a licensee or contractor who requires the use of land or surface rights for purposes of conducting petroleum activities. The Government shall enter into an agreement with the landowner or person holding an interest in the land to obtain, as applicable:
  - (a) a rental agreement;
  - (b) an easement; or
  - (c) any arrangement analogous to those set out in paragraphs (a) and (b) of this subsection.
- (2) The requirements of the Land Act, 2009 shall be followed with respect to:
  - (a) the acquisition of land;
  - (b) the agreements set out in paragraphs (1)(a), (b) and (c) of this Section; and
  - (c) the conduct of petroleum activities under and the rights and obligations following the expiry of these agreements,

- (3) Compensation relating to an interest under this Section shall be prompt, full and just.
- (4) The licensee or contractor shall reimburse the Government to the extent that it has provided any compensation to the landowner or other person holding an interest in the land in accordance with subsection (3) of this Section, if these rights are disrupted or otherwise interfered with as a result of petroleum activities.
- (5) If no agreement is reached under subsection (1) of this Section, the Government may expropriate the land that is required for petroleum activities and enter into an appropriate arrangement with the licensee or contractor.
- (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, pursuant to the applicable law.
- (7) If resettlement is used as compensation under subsection (6) of this Section, the expropriated party shall be placed in a situation similar to or better than the party's current situation.
- (8) Requirements for consultation and notification and other issues relating to the usage rights shall be prescribed in the regulations.

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

- (1) Petroleum activities shall be conducted in a manner that will prevent waste of petroleum resources and promote the safety and protection of the environment, with due regard to the rights of neighbouring landowners, communities, occupants and others who have certain rights to peaceably enjoy their properties or other interests in land.
- (2) In addition to the requirement set out in subsection (1) of this Section, petroleum activities on land or the surface acquired by lease, easement or an analogous arrangement shall be conducted with due regard to the landowner's residual interest in the land.
- (3) At the expiry of the arrangement referred to in subsection (2) of this Section, 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**

A person may seek redress either in the local courts or through the dispute resolution mechanism under Section 94 regarding any dispute relating to land or surface rights under this Chapter.

### **CHAPTER XIV**

#### **HEALTH, SAFETY AND PROTECTION OF THE ENVIRONMENT**

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

- (1) Petroleum activities shall be conducted in such manner as to ensure that a high level of health and 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 and best international practices on health and safety in the working environment.
- (2) The Ministry may make regulations to achieve the high level of health and safety referred to in subsection (1) of this Section, to ensure the systematic implementation of measures to comply with safety requirements and meet the safety goals set out in this Act and other applicable law and in the working environment and to further develop and improve the level of health, safety and environmental protection.  
Competence and Qualifications.
- (3) 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.
- (4) A licensee or a contractor shall ensure that anyone carrying out work for it complies with subsection (1) of this Section.

#### **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 it complies with subsection (1) of this Section.

## **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 ministry responsible for health, and the ministry responsible for labour for review.
- (4) The licensee or contractor shall disclose the health and safety management plan to the affected communities and shall report to the communities periodically on any changes to the plan.
- (5) The licensee and contractor shall ensure compliance with the health and safety management plan and shall report annually to the Ministry and the Ministry responsible for Labour on the health and safety performance relating to each installation or site.

## **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 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 the environment. Licensees and contractors shall take those measures necessary 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.
- (4) The Operator, Licensee, Contractor or Subcontractor shall at all times maintain a contingency fund, in form of a bank guarantee or such other forms as provided for in Section 91, to meet the costs of restoration and for compensation for any persons whose income or livelihood is damaged whether temporarily or permanently, through fault or not and proof of existence of such fund shall be submitted to the Ministry.

#### **55. Suspension of Petroleum Activities**

- (1) Where an accident or emergency may lead to or has resulted in loss of life, personal injury, pollution or major damage to property or the environment, or a negative effect on the livelihood of persons in the immediate vicinity of the accident or emergency, 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) of this Section, 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) of this Section, the costs associated with these delays shall be borne by the licensee, contractor 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) of this Section only after giving the contractor or other person prior notice.

#### **57. Security Measures for Deliberate Attacks**

- (1) The South Sudan Police Service and the National Security Service shall be responsible for the protection of the licensee or contractor's personnel, infrastructure, equipment, facilities and operations within the contract area.
- (2) A licensee or a contractor shall initiate and maintain appropriate security measures and contingency plans in collaboration with the South Sudan Police Service and the National Security Service to prevent any security breaches or violations against their personnel, infrastructure, equipment, facilities and operations.
- (3) The licensee or contractor shall support and cooperate with the South Sudan Police Service and other security services mandated to protect petroleum activities in the contract area, with facilities and services that enhance their effectiveness.

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

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

- (2) The measures referred to in subsection (1) of this Section 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 comply with the environmental management plan required under Section 60 of this Act.

## **59. Strategic Environmental Assessment, Environmental and Social Impact Assessments**

- (1) The Ministry, in consultation with the ministry responsible for the environment, shall initiate and coordinate a strategic environmental assessment prior to the opening of a new area pursuant to Section 15 of this Act.
- (2) The Ministry shall, in consultation with the ministry responsible for the environment, coordinate an environmental and social impact assessment that shall be initiated and undertaken by the licensee or contractor and linked to the strategic environmental assessment, prior to conducting the following activities:
  - (a) reconnaissance activities pursuant to Section 17 of this Act;
  - (b) exploration drilling pursuant to Section 28 of this Act;
  - (c) development and production pursuant to Section 31 of this Act;
  - (d) construction of transportation system pursuant to Section 37 of this Act;
  - (e) decommissioning pursuant to Section 39 of this Act; and
  - (f) in any other case in which petroleum activities are likely to have a significant social or environmental impact.
- (3) The licensee or contractor shall, concurrently with the environmental and social impact assessment, conduct a comprehensive environmental baseline study that provides for an understanding of the existing environment in the contract area in which the activities referred to in subsection (2) of this Section are intended to take place.
- (4) The assessments referred to in subsections (1) and (2) of this Section shall:
  - (a) be appropriate to the scale and possible effects of the petroleum activities subject to the assessments;
  - (b) include consultation with the public, including local communities;
  - (c) evaluate, after consideration of the consultations conducted under subsection (b) of this Section, 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, agriculture and other industries and past, present or potential conflict; and



- (d) be in the form and containing the information prescribed in the regulations.
  - (e) be consistent with international practice as reflected in the Social and Environmental Performance Standards of the International Finance Corporation.
  - (f) be made publicly available, including in the area where petroleum activities are planned, as soon as notice is published in the Gazette.
- (5) Notice of the assessments referred to in subsections (1) and (2) of this Section shall be given in the Gazette and by any other appropriate means to inform interested persons as determined by the Ministry. 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.
- (6) The Ministry shall present the assessment under subsection (1) of this Section along with the views of interested persons to the Commission, 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 and determine the environmental and social conditions under which to carry out the petroleum activities.
- (7) The Ministry, in consultation with the ministry responsible for the environment and any other relevant agencies, shall, after considering the assessment under subsection (2) of this Section, and the views of interested persons, decide to approve or not approve the assessment. The Ministry shall publish the decision in the Gazette and by any other appropriate means as determined by the Ministry.

## **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) of this subsection 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;
  - (f) 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;
  - (g) establish a system to track the source, transport and destination of potential hazardous waste from petroleum activities;
  - (h) 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; and
  - (i) identify the person responsible within the licensee's or contractor's organisation for implementation and compliance with the plan.
- (3) The environmental management plan shall be submitted to the Ministry and the ministry responsible for the environment for review.
  - (4) The licensee or contractor shall disclose the environment management plan to the affected communities and shall report to the communities periodically on any changes to the plan
  - (5) An environmental audit shall, when necessary, be performed on the environmental management plan by the ministry responsible for the environment or an expert on its behalf, at the expense of the licensee or contractor.
  - (6) Annual reports should be made to the Ministry and the ministry responsible for the environment on implementation of the environmental management plan.

## **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) The licensee or contractor shall create a pollution damage fund for clean-up and rehabilitation of the site in which the pollution damage is found.
- (4) If pollution damage occurs in a petroleum activity and the activity has been conducted without a licence or a petroleum agreement, 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 petroleum agreement.

- (5) 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.

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

- (1) If, in the conduct of petroleum activities, 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 or if the pollution has resulted from a deliberate attack. 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 petroleum agreement.
- (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 XV**

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

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

- (1) Subject to the provisions in this Chapter, procurement of goods and services that exceed a prescribed threshold value shall follow open, transparent, non-discriminatory and competitive tendering procedures as prescribed in the regulations.
- (2) Unless exempted under the regulations, the licensee or contractor shall ensure that any person engaged in providing goods and services with respect to the licensee's or contractor's petroleum activities shall be registered or incorporated in the Republic.

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

A 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) In this Section, “alien” and “South Sudanese national” shall have the meanings ascribed to them in the Nationality Act, 2011.
- (2) A licensee, contractor or sub-contractor shall ensure that opportunities are given for the employment of South Sudanese nationals who have the requisite expertise or qualifications at the various levels of petroleum activities.
- (3) Unskilled labour shall not be contracted to aliens.
- (4) Subject to subsections (1) and (2) of this Section, 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 licensee or contractor carrying out petroleum activities shall, in consultation with the Ministry, prepare and implement plans and programmes to train South Sudanese nationals in job classifications and in all aspects of petroleum activities, including plans and programmes for post-graduate training and scholarships.

#### **66. Knowledge Transfer**

- (1) In order to enable service and supply entities indigenous to the Republic 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 the Republic. To make this transfer effective, the licensee or contractor shall make its business understandable and accessible to the service and supply entities indigenous to the Republic 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, patent, trademark, trade name and other intellectual property infringement.

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

- (1) A licensee or contractor shall prepare and implement annual local content plans that are adequate for the systematic implementation of the requirements set out in Sections 64 to 66 of this Act and the regulations. The annual local content plan shall be submitted to the Ministry and a summary of the plan shall be published by notice in the Gazette and made available by any other appropriate means to inform interested persons.
- (2) The local content plan shall be in accordance with the regulations and shall comprise:
  - (a) a plan for procurement of national goods and services in accordance with Section 64 of this Act;
  - (b) a detailed plan and programme for local recruitment, employment and training, including post-graduate training and scholarships, in accordance with Section 65 of this Act; and
  - (c) a plan for the transfer of skills, knowledge, competence and know-how in accordance with Section 66 of this Act.
- (3) The licensee or contractor shall submit and publish an annual report describing the initiatives regarding local content taken in the preceding year and their results.

## **CHAPTER XVI**

### **FISCAL PROVISIONS**

## **68. Fees**

- (1) A contractor shall pay surface rental fees for the contract area retained under a petroleum agreement as prescribed in the 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 and Economic Planning.

## **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 the Republic 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 petroleum 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 Act, any regulations, any licence issued under this Act or under any petroleum agreement shall be paid exclusively to the National Revenue Fund in accordance with applicable law.

**73. Transactions**

Subject to the provisions of this Act any transaction between a licensee, contractor or sub-contractor and an affiliate in relation to petroleum activities to be carried out under this Act 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.** The Government shall allocate and pay to the states and communities in accordance with applicable law.

**CHAPTER XVII**

**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 the Republic 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) of this Section as well as any reports, studies, interpretations and analyses relating to the data and information.
- (3) The Ministry may authorise a licensee holding a reconnaissance licence to sell or transfer the data and information referred to in subsection (1) of this Section. 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. A summary of the sale or transfer shall be published by notice in the Gazette and made available by any other appropriate means to inform interested persons.
- (4) A licensee, contractor or sub-contractor shall maintain complete and accurate records in the Republic 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, and 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 the Republic, 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 applicable law, a decision of the Ministry or the terms of a petroleum agreement.
- (8) Subsection (7) of this Section shall not be applicable if the data referred to in that subsection is required by law to be provided to other entities in the Republic.

## **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 Act.
- (2) The licensee and the contractor shall maintain information in respect of planning and implementation of petroleum activities, and shall submit reports to the Ministry pursuant to this Act as further prescribed in the regulations.

- (3) The licensee or contractor 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 the Republic;
  - (c) records are submitted to the Ministry as prescribed in the regulations; and
  - (d) regular petroleum production data is made available to the public 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 shall not be made public if such information:
  - (a) contains proprietary data belonging to the government, license or contractor; or
  - (b) must be kept confidential in order to maintain a climate of competition between the licensees and contractors participating in petroleum activities;

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

- (1) Information about petroleum activities contained in Government records shall be public in accordance with applicable law. Any person may demand access to public documents. Access to information shall be free, if made available for examination at the Ministry's premises, or for a fee to recover the cost of copying the applicable document.
- (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 of this Act;
  - (b) notice of the grant of licences and petroleum agreements and the grounds for the grants, and a summary of the terms of the licences and agreements;
  - (c) a summary of the plan for development and operation;
  - (d) notice of the termination of licences and petroleum agreements; and
  - (e) all key oil sector production, revenue, and expenditure data.

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

- (1) Licensees, contractors and sub-contractors shall annually disclose information on all payments and deemed payments made to the Government and Government



agencies, monetary or in kind in connection with petroleum activities, in accordance with applicable law.

- (2) All disclosures under this Section 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 prevent disclosure of information on any payments made and revenues received in connection with petroleum activities conducted in the Republic shall be void to the extent required for disclosure of such information as set out in subsection (1) of this Section.
- (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. Ministerial disclosure and publication**

- (1) The Minister shall make available to the public, both on the Ministry website and by any other appropriate means to inform interested persons:
  - (a) all key oil sector production, revenue, and expenditure data, petroleum agreements and licenses;
  - (b) regulations and procedures related to the petroleum sector;
  - (c) justification of award of petroleum agreements, the beneficial ownership information for the contractor and documented proof of the requisite technical competence, sufficient experience, history of compliance and ethical conduct and financial capacity of the contractor ;
  - (d) annual production permits;
  - (e) any model petroleum agreement referred to in Section 71;
  - (f) the key parameters of each petroleum agreement, to the extent such parameters differ from an already published model petroleum agreement, including the cost oil management and limits, the production-sharing formulas and mechanisms any bonuses, taxes or fees, royalties, any exemptions or favourable tax treatment and any stability clauses; and
  - (g) except for the information and data referred to in Section 76 (5), information relating to petroleum activities, including information on petroleum agreements and relevant treaties as prescribed in the regulations.
- (2) The information referred to in subsections (1)(c), (d) and (f) of this Section shall also be published in the Gazette.

## **80. Petroleum Registry**

- (1) The Ministry shall establish and maintain a registry of petroleum agreements, licences and authorisations and any change in interests in an existing petroleum agreement, license or sub-contract. 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

## **CHAPTER XVIII**

### **MISCELLANEOUS PROVISIONS**

## **81. Prudent Petroleum Operations**

- (1) Petroleum activities shall be conducted in a prudent manner to prevent waste of petroleum resources and promote the safety and protection of the environment in accordance with this Act, applicable legislation, best international practices and sound economic principles, and shall include reasonable steps to:
  - (a) optimise the ultimate recovery of petroleum from a petroleum field;
  - (b) maintain the sustainability of the reserves and the environment;
  - (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 or manage environmental hazards and risk using the best available technology.
- (2) The licensee or the contractor shall, in accordance with the regulations, develop, implement, maintain, comply and ensure compliance with an adequate and effective management system that:
  - (a) integrates operations and technical systems with financial and human resource management to achieve the goals set out in subsection (1) of this Section and ensure the company's compliance with the Act, the regulations, and any licences, permits, orders or other approvals required by this Act;
  - (b) applies to programs and plans required under the Act and corresponds to the size, nature and complexity of activities authorised under the Act, and the associated hazards and risks.
- (3) The licensee or the contractor 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 subsections (1) and (2) of this Section.

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

- (1) The Ministry shall provide a community development plan, after consultation with local communities in the contract area.
- (2) The community development plan shall set out strategies to improve the quality of life of local communities in the contract area. The plan shall include programmes for activities such as construction of roads, hospitals, schools and water and sanitation facilities.
- (3) A licensee or contractor shall establish a fund called the Community Development Fund to finance the plan.

## **83. Compliance**

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

## **84. Insurance**

Petroleum activities conducted pursuant to a licence 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 over-insurance providing coverage beyond what is necessary to adequately cover the risks related to the petroleum activities.

## **85. 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 the Republic.
- (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) of this Section shall apply correspondingly unless the particular situation warrants otherwise.

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

- (1) The Ministry shall carry out regulatory supervision to ensure that the provisions of this Act 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 Act.
- (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 authorise any person to inspect petroleum activities to ensure that the petroleum activities are carried out in accordance with this Act and in accordance with the terms and conditions of any applicable petroleum agreement, petroleum sub-contract or licence.
- (4) The authorised 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 Act, the regulations, the petroleum agreement, the licence or other authorisation are being complied with.
- (5) A licensee, contractor or subcontractor shall provide the authorised person with reasonable facilities and assistance to enable the effective and timely performance of the supervisory and inspection functions under this Section.

## **87. 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 the regulations.
- (2) Without prejudice to the powers set out in the Audit Chamber Act, 2011, the Ministry or any person or government institution authorised by the Ministry may at any reasonable time 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 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.

**88. Notification of Natural Resources other than Petroleum**

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

**89. Third Party Exploitation of Natural Resources other than Petroleum**

- (1) A licence or petroleum agreement shall not preclude the granting to a person other than the licensee or contractor 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 licensee or contractor. 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 licensee or contractor 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) of this Section, 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 licensee or contractor whose activities have been postponed under subsection (2) of this Section may apply for extension of the licence or petroleum agreement 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 licence or petroleum agreement, 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 licence or petroleum agreement applies.

- (6) Where the postponement referred to in subsection (2) of this Section renders the work obligation imposed under the licence or petroleum agreement 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) of this Section is of a particularly long duration, the licence may be revoked or the relevant agreement terminated.
- (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.

#### **90. International Treaties and Agreements**

- (1) The Republic may, through its relevant institutions, enter into international agreements with any neighbouring country respecting exploration, development and production of cross-border petroleum resources including the construction of related infrastructure.
- (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.
- (3) Any international treaties and agreements must be approved by the National Legislative Assembly

#### **91. 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 licence or petroleum agreement or any other authorisation issued pursuant to the Act.
- (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 Act.

## **92. 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.

## **93. 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.

## **94. Dispute Resolution and Arbitration**

- (1) The licensee or contractor shall establish a dispute resolution mechanism in accordance with the regulations, open to all persons or groups who are affected by or may affect petroleum activities, and that address grievances against the licensee, its contractors, and subcontractors. The mechanisms shall comply with the highest international standards, and shall be:
  - (a) proportional to the complexity of the issue;
  - (b) culturally appropriate;
  - (c) understandable, transparent, accountable;
  - (d) address concerns promptly; and
  - (e) at no cost to the successful party and without reprisal.
- (1) The licensee or contractor shall inform the affected communities about the dispute resolution mechanism.
- (2) The dispute resolution mechanism established under subsection (1) of this Section shall be fully documented and the records of each case shall be made public and be kept for at least 20 years.
- (3) The parties to a petroleum agreement may agree to refer disputes arising under the petroleum agreement to arbitration.

## 95. 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 Act or the regulations or by any order, directive or stipulation made by the Ministry pursuant to this Act 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 Act or the regulations;
  - (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 Act, the regulations, the licence or any other authorisation issued pursuant to this Act or the regulations or any order, directive or stipulation of the Ministry; or
  - (b) undertakes or carries on a petroleum activity without a petroleum agreement, licence or any other authorisation issued pursuant to this Act or without complying with the terms or conditions of the licence or authorisation.
  
- (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 Act; 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 Act.
  
- (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 Act or the regulations, the licence or any other authorisation issued pursuant to this Act or any order, directive or stipulation made by the Ministry pursuant to this Act 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, directly or indirectly, acquire, attempt to acquire or hold:
  - (a) a licence or an interest in a petroleum agreement, a licence or any other authorisation issued pursuant to this Act 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 the Republic; or



- (c) a direct or indirect economic interest, participation interest or share in a body corporate that is providing goods or services to a licensee or contractor under this Act.
- (6) A person who contravenes subsection (5) of this Section 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) of this Section, 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 Act, the court may in addition to any other penalty imposed under this Act or any other law, 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 subparagraph (9)(b)(i) of this Section 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 subparagraphs (9)(b)(ii) or (iii) of this Section.
- (11) If a person is guilty of an offence under this Act, the court may, in addition to any other punishment it may impose, order that person to comply with the provisions of this Act, the regulations, any order, directive or stipulation of the Ministry and the terms or conditions of the licence or other authorisation issued pursuant to this Act for the contravention of which he has been convicted.

- (12) If an individual is guilty of an offence under this Act that results in pollution, the person is liable:
- (a) on summary conviction, to a fine not exceeding the value in local currency of 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 the value in local currency of one million US dollars, or to imprisonment for a term not exceeding five years, or to both.
- (13) If a body corporate is guilty of an offence under this Act that results in pollution, the person is liable on summary conviction to a fine not exceeding the value in local currency of five hundred thousand US dollars or on conviction on indictment, to a fine not exceeding the value in local currency of one million US dollars.
- (14) If an offence under this Act 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.
- (15) Any person, in or outside the Republic, 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 XIX**

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

#### **96. Employee Recruitment for Petroleum Sector**

Any recruitment for employment in the petroleum sector shall be based on relevant qualifications and conducted in accordance with public service procedures.

#### **97. Declaration of Assets**

- (1) Members of the Commission and any senior public service officials employed in the governing of petroleum activities shall, upon assumption of their offices and annually, make a 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 the Republic 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 and Gas Corporation.

## **98. Disclosure of Interests**

- (1) Any public official including a member of the Commission or an employee of the Ministry, whether engaged in full-time or part-time functions or as 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) of this Section, shall not take part in any deliberation or decision to be taken with respect to the subject matter.
- (4) The rules governing disqualification in subsection (3) of this Section shall not apply if it is apparent that the connection of the person who is subject to disclosure of interest under subsection (1) of this Section 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 XX**

### **REGULATIONS**

## **99. Power to issue Regulations**

- (1) The Minister may issue regulations for the efficient and effective implementation of the provisions of this Act, and in particular, without restricting the generality of the foregoing, regulations respecting:
  - (a) criteria for appointment of members of the Board of Directors of the National Petroleum and Gas Corporation;
  - (b) incorporation and organizational requirements of the contractor, including requirements respecting the contractor's capitalization and management and participation of the National Petroleum and Gas Corporation;

- (c) graticulation;
- (d) reconnaissance licences, including their form and content;
- (e) requirements relating to the exploration period, including work and expenditure obligations;
- (f) requirements relating to the relinquishment of the contract area;
- (g) petroleum measurement, including calibration, testing and compensation in cases of mismeasurement;
- (h) production permits, including their form and content;
- (i) licences to install and operate transportation systems ;
- (j) third party access to facilities for the transportation, treatment and storage of petroleum, including the terms upon which the access is granted;
- (k) matters relating to decommissioning, including the establishment of and criteria relating to a decommissioning fund;
- (l) the content and conduct of surveys relating to plugging and abandonment of wells;
- (m) the acquisition of rights to land or surface for the conducting of petroleum activities, including the requirements for consultation and notification;
- (n) 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;
- (o) local content plans;
- (p) management system requirements;
- (q) training and qualification, competency and nationality requirements regarding the Board of Directors, management, employees and subcontractors of persons engaged in providing goods and services and training of public servants by these persons and exemptions from these requirements;
- (r) 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;
- (s) records, reports and information, including requirements as to their content, submission and retention;
- (t) 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;
- (u) the petroleum registry, including the amount or manner of calculation of fees that may be levied;
- (v) insurance requirements, including the type and amount of coverage and criteria related to its adequacy;
- (w) requirements governing arbitration proceedings;
- (x) exemptions and the criteria for such exemptions from any requirements under these Regulations; and

- (y) any other matter that the Ministry deems necessary or appropriate to give effect to the provisions of this Act.
- (2) Unless otherwise provided in this Act, regulations made under subsection (1) of this Section 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 XXI**

### **TRANSITIONAL PROVISIONS**

#### **100. Prior Contracts**

- (1) The Republic shall not assume any obligations or responsibility under or in connection with prior contracts related to petroleum activities, and is not a successor to such contracts.
- (2) The Minister may enter into new petroleum agreements, effective as of July 9, 2011, with respect to petroleum activities in the territory of South Sudan with the same arrangements related to profit and cost oil as those contained in the prior contracts, subject to the remaining provisions of this Section.
  - (a) Without the Minister's express prior written approval, no cost, expense or expenditure may be recovered from cost oil, each case to the extent such cost, expense or expenditure relates to land, fixtures, assets, goods, services or operations in or benefiting the Republic of Sudan or in respect of which ownership is or will be held in whole or in part by the Republic of Sudan or any of its agencies or instrumentalities, including Sudapet Company Ltd.
  - (b) Costs, expenses and expenditure may be recovered solely with respect to assets, the title of which is transferred to the Republic free from any third party claim.
  - (c) The Minister may agree to provisions in the new petroleum agreements providing for payment of cost-based fees for the use of assets and services located in the Republic of Sudan to the extent benefitting the Republic.
  - (d) The Minister may review the prior contracts in light of the principles reflected in this Act and may require the terms of the new petroleum agreements to address areas where there is conflict between any provisions of the prior contract and the provisions of this Act or the policies and regulations promulgated pursuant to this Act.
- (3) The Ministry shall review all concession blocks and if necessary divide large blocks into smaller blocks conformable with international standards.
- (4) Any rights, roles or functions under the prior contracts that applied to the Government of Sudan before July 9, 2011 shall apply, with such modifications as

the circumstances require and as set out in the new petroleum agreements, to the same extent to the Republic as a sovereign nation as of July 9, 2011.

- (5) The Government shall not be responsible for a loan or other debt obligation incurred by the Government of Sudan under a prior contract using oil produced in South Sudan as collateral.
- (6) The Minister may re-designate those blocks that straddle the border between the Republic of Sudan and the Republic with respect to the areas within the territory of South Sudan and the terms of the new petroleum agreements shall reflect these new designations.
- (7) Petroleum agreements entered into before or after July 9, 2011 with respect to petroleum activities in the territory of South Sudan shall be brought to the National Legislative Assembly for approval.
- (8) When a project involves existing petroleum activities, the contractor or licensee shall carry out and pay for an independent social and environmental audit, in compliance with international standards to determine any present environmental and social damage, establish the costs of repair and compensation and determine any other areas of concern.