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Special Report

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The Petroleum Revenue Sharing Arrangement in South Sudan[1]

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Summary

This report scrutinizes the transfer of the 2% and 3% of net petroleum revenues to the petroleum producing states and communities. Using historical budget outturns, key informant interviews, and policy documents, we find that:

- The three percent (3%) share of net petroleum revenues has not been properly allocated and transferred to petroleum producing communities;
- The petroleum producing communities are owed a total of $305 million US dollars;
- The two percent (2%) share of net petroleum revenues has been improperly allocated and transferred to the producing states;
- The subnational institutions responsible for the implementation of the three percent (3%) share of net petroleum revenues have barely been established as required by the Petroleum Revenue Management Act, 2013; and
- Key information about the 2% & 3% share for producing states and communities does not publicly get disclosed in accordance with the Petroleum Act, 2012, Petroleum Revenue Management Act, 2013 and other applicable laws in South Sudan.

The Government of the Republic of South Sudan should meet its legal obligations by allocating and transferring the funds to the communities in subsequent budgets, beginning with the 2018/2019 fiscal year. It should also disclose key information about the allocation, transfer, and spending of the net petroleum revenues for producing states and communities as provided for in the petroleum laws. To be effective and credible, this process requires the involvement of independent oversight bodies. Lastly, the government should establish requisite governance institutions for the management of the share of the petroleum revenues for communities in producing regions in accordance with the Transitional Constitution, 2011 (as amended), the Petroleum Act, 2012, and the Petroleum Revenue Management Act, 2013.

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1. Introduction

Countries endowed with natural resources, such as petroleum, minerals, forests, fish and wildlife, are increasingly designing and adopting models of resource revenue-sharing regimes between central and subnational governments and communities in producing areas (Bauer et al., 2016; Morgandi, 2008). The reasons for doing so are varied but chief among them is the need to prevent a "resource curse", a situation in which the extraction of natural resources without gains by the local communities can engender poverty, violence, and political instability (Frankel, 2011, Lewin, 2011). In other words, without such natural resource-sharing mechanisms, extraction can easily breed discontent, mistrust, and ultimately fuel violent conflicts in natural resource producing areas and the country at large (Frankel, 2011, Lewin, 2011). These existential challenges form the impetus for national governments to design and implement more equitable revenue-sharing arrangements, particularly at local levels.

Thus, better designed natural resource revenue sharing arrangements between the central and subnational governments induce peace, political stability, and economic developments in relevant contexts (Haysom and Kane, 2009). To some degree of success, different resource revenue-sharing policy options have been applied in Indonesia's Aceh region, Papua New Guinea's Bougainville region and Nigeria's Niger Delta, among others, to resolve resource-fueled tensions, reduce poverty, and promote economic development.

South Sudan, a country endowed with petroleum and other natural resources, allocates 2% and 3% of the net petroleum revenues to producing states and communities, respectively. This revenue sharing arrangement is enshrined in the Transitional Constitution (2011) and Petroleum Revenue Management Act (2013). However, little is known about the implementation of these allocations and transfers. Therefore, this study examines the implementation of this arrangement. The rest of the report is structured as follows. Section 2 presents the methodology, Section 3 provides an overview of resource-revenue sharing regimes as a general practice in resource producing countries, particularly providing examples of resource revenue sharing as a way to glean some lessons for South Sudan. Section 4 provides an overview of the legal framework and the institutions tasked with the implementation of the provisions of Petroleum Revenue Management Act, 2013. Section 5 discusses the results, and Sections 6 concludes.

2. Methodology

To achieve the objectives of this study, we conducted over 30 key informant interviews with community leaders, Members of Parliament, officials at the Ministry of Petroleum, civil society representatives, and local government leaders. We also reviewed historical public budgets. Summarily, the assessment focuses on the following:

- Whether the three percent (3%) and two percent (2%) of net petroleum revenues have been properly allocated and transferred to petroleum producing communities and states as stipulated in the Petroleum Revenue Management Act, 2013 and Transitional Constitution, 2011;
- Whether information about the allocation and transfer of these funds has been consistently disclosed to the public in accordance with the Petroleum Revenue Management Act, 2013;

- Whether requisite governance institutions for the management of these funds have been established and are functional;
- How much the petroleum producing communities have not received since 2011 when the Transitional Constitution first stipulated this requirement.

We also organized a policy stakeholder forum and presented preliminary findings to gather additional information.

3. Resource revenue-sharing Regimes

Resource revenue sharing arrangements have become important tools for engendering and maintaining peace and social cohesion. Bauer et al., (2016) define resource revenue sharing arrangement as "an arrangement through which government revenue from extractive activities is shared with subnational authorities." Subnational authorities are entities that are "legally entitled to receive or spend government revenues" (Bauer et al., 2016). Depending on a particular context, subnational authorities include states, provinces, districts, municipalities and traditional authorities (Bauer et al., 2016, Morgandi, 2008). Subnational authorities also refer to subnational levels or jurisdictions (Morgandi, 2008). In this paper, we prefer to use subnational jurisdictions. Some countries share with transporting subnational jurisdictions. Transporting subnational jurisdictions refer to states or provinces through which the resource transporting pipelines, roads or railways, pass (Bauer et al., 2016). We define, in the context of South Sudan, resource revenue sharing arrangement as a mechanism for dividing resource revenues between the national government and resource producing subnational jurisdictions. In this case, subnational jurisdictions refer to states, counties and communities which receive resource revenues from the national government.

Countries share revenues by (1) granting subnational jurisdictions the right to collect and retain taxes from specified tax bases and (2) giving the national government the right to collect and distribute revenues between the subnational entities and the national government (Bauer et al., 2016). The right to a share of revenues is based on two main principles, namely derivation and indicator (Bauer et al., 2016; Morgandi, 2008; Ahmad and Mottu, 2002). Derivation based principle requires that a portion of revenues should be allocated and transferred to the subnational jurisdictions where these resources are produced. Derivation simply means "origin" and therefore subnational jurisdictions receive a portion of revenues because the revenues originate from them.

South Sudan adopted a derivation-based formula to allocate the 2% and 3% of net petroleum revenues to producing states and communities out of the petroleum revenue accounts managed by the national government. Indicator principle requires revenues to be distributed based on population size, poverty level, revenue generation capacity, and geographical characteristics such as remoteness, among others (Bauer et al., 2016; Morgandi, 2008). For instance, in jurisdictions with high population, revenues can be allocated proportionate to the size of the population. Some countries use a mixture of the two principles.

The reasons for sharing resource revenues with subnational jurisdictions include (1) recognition of local rights; (2) compensation for the negative impacts of resource extraction; (3) promotion of economic development in resource-rich areas; and (4) mitigation or prevention of violent conflicts (Bauer et al., 2016).

First, the rights of local communities are acknowledged by allocating to them a portion of revenues accruing from the production of resources from their jurisdictions. Doing this allows the resource extraction companies to get a social license to operate (SLO) (Moffat & Zhang, 2013, Gunningham et al., 2002). SLO is the general acceptance of a resource extraction company by a local community to do business in their territory (Tiitmamer, 2016a; Moffat & Zhang, 2013; Gunningham et al., 2002). If the rights of local communities are not recognized through resource revenue sharing or through other forms of benefits, these communities would often block the extraction companies from exploiting natural resources in their areas (Morgandi, 2008). For example, violence between local landholders and government in Papua New Guinea in 1988 led to the suspension of resource extraction (Bauer., 2016).

Second, producing regions are often compensated for negative environmental and social impacts (Bauer et al., 2016). Oil production leads to pollution of water, soil and air, which causes health problems and decline of farming due to soil contamination. Extraction of resources attracts immigrant workers, which change the standard of living beyond what the local people can afford (Bauer et al., 2016). In addition, extraction of a resource displaces the local inhabitants, rendering them destitute. The revenues are usually used to protect the environment, build education and health facilities and provide financial assistance to those affected, among others (Bauer et al., 2016). While this compensation is channeled for improving health infrastructure, it is our considered opinion that receiving regions should focus on channeling the money to improve standards for preventing and minimizing the health impacts as 'prevention is better than cure.'

Third, natural resources are often found in remote and poor rural areas (Bauer et al., 2016). Thus, additional revenues from the share of resource revenues help promote economic development in these regions (Bauer et al 2016). Indonesia, one of the countries we review later as one of the case studies, is among such countries. Its government, for example, transfers a portion of revenues to oil and mineral producing jurisdictions for investment in education, health and infrastructure (Bauer et al 2016). This effort has improved services in the producing jurisdictions. Similarly, Mongolia allocates 30% of oil revenues and 5% of mineral revenues based on geographical characteristics and development indicators. Empirical evidence shows that indicator based principle is more effective in mitigating environmental problems and improving development because resources target the said issues (Bauer et al 2016).

Fourth, mitigation or prevention of conflict motivates the allocations of a portion of resource revenues to the original regions as a way to create harmony between the communities and extraction companies (Bauer et al 2016). This approach is also in line with approach number one. However, the former is used to preempt any conflict while the later approach serves to resolve existing conflicts between the communities and the extraction companies or national governments. Examples where this approach has been applied with some degree of success include Southern Irag, Southern Sudan (as region of

Sudan), Bolivia, Kazakhstan, Mongolia, Nigeria and Papua New Guinea (Bauer et al., 2016). Indonesian Aceh region receives 70% of locally produced revenues based on an agreement that ended 30 years of a devastating conflict. Southern Sudan in 2005 was allocated 50% of the oil revenues based on the Comprehensive Peace Agreement (CPA) which ended the devastating war between the national government in Khartoum and Sudan People's Liberation Movement and Army based in the South. However, this approach does not completely end the conflicts if poorly designed. For example, regional groups have continued to demand greater share by sometimes taking over the extraction sites or blocking extraction companies. Peru is one of the examples where regional leaders organized violent campaign to demand for more transfer of mining revenues to their regions.

In summary, the literature highlights the following as part of designing an effective resource revenue sharing arrangement:

- It is very critical to legally establish specific bank accounts for the transfers of revenues to subnational jurisdictions and to ensure there are independent institutions to provide oversight on the transfers and spending.
- For a revenue-sharing regime to work and have a chance of success in implementation, there must be a clear understanding of the mechanisms that are used to share the resource revenues (Wennmann, 2012). The starting point is a strict and enforced constitutional framework that ensures that key provisions are implemented. These include (1) establishing objectives for sharing revenues with subnational jurisdictions (e.g., recognition of local rights, compensation for environmental degradation etc.); (2) clear resource revenue sharing formula either on the basis of derivation (e.g., sharing resource revenues based on origin), indicator based formula (e.g., sharing resource revenues based on indicators such as population, geographical extent, environmental degradation, poverty etc.) or both, (3) rules to guide the allocations, transfers and spending of revenues at subnational jurisdictions (e.g., earmarks for health, education, road infrastructure and on agencies that provide oversight or monitoring of the expenditures) and enforcement of penalties for noncompliance. As will be seen later, South Sudan has stipulated some of these in its constitution and laws.
- Transparency and accountability are also key to successful implementation and must be built into the design of the revenue-sharing system (Hayom and Kane, 2009; Al Moumin, 2012). These serve as safeguards against corruption and inefficiency and ensure that the state cannot conceal revenue or claim that they have used these funds for development when this has not happened (Rustad et al., 2012). South Sudan has very elaborate transparency and accountability sections in Petroleum Act, 2012 and Petroleum Revenue Management Act, 2013, even though they are not observed, as will be seen later.
- In addition to transparency and accountability, an effective revenue-sharing regime benefits immensely from resource persons or experts. For this reason, industry and finance experts must be involved during the negotiations and design of the revenue-sharing system (Haysom and Kane, 2009). The presence of experts in the process removes politics of resource governance and instead provides the requisite technical backstopping required in managing resource governance. Experts can provide stakeholders with information and realistic assessment of underlying issues and

approaches to deal with them. While there are well trained personnel in some accountability institutions in South Sudan, inadequate compensation frustrates the professionals from doing their work (Awolich and Akol, 2015).

- Lastly, institutional quality and capacity matter in implementing a resource management and revenue-sharing regime. In this regard, technical capacity in public institutions responsible for managing the resource revenues is critical for successful subnational governance of resource revenues (Ushie, 2012). Without this, inadequate transparency and oversight or the failure of national governments to make fiscal transfers according to the agreed formula become a pervasive implementation hurdle.

3.1. Revenue-sharing regimes in select case study countries

In the next subsections, we look at cases in a number of selected countries to draw lessons that can be used to improve the resource revenue sharing regime in South Sudan. Our analytical methodology looks at specific country resource revenue sharing legislation and available secondary data on resource revenue in these countries. Specifically, we assess the application of the revenue sharing legislation, the results and consistency of such arrangements as well as measures of transparency and accountability procedures inherent in the design and implementation of policies governing extractive industries. We selected Nigeria in Africa, Bolivia in South America, and Indonesia in Asia as case studies with similar contexts to South Sudan in natural resource management. Over time, some of these countries have developed requisite policies to improve the management of natural resource revenues for the common prosperity and welfare of their citizens. As can be seen from table 1, all the case study countries allocate and transfer relatively higher shares of petroleum revenues to producing regions than South Sudan.

Table 1. Petroleum revenue redistribution in case study countries and South Sudan

Case study Country	% of Total Government revenue	% Allocation for National Government	% Allocation to producing regions
Indonesia	25%	85%	15%
Nigeria	62%	46%	54%
Bolivia	31%	37%	63%
South Sudan	98%	95%	5%

Source: Natural Resource Governance Institute and Ministry of Finance and Planning, Government of the Republic of South Sudan (GRSS).

3.1.1. Indonesia

Legal framework

The government of Indonesia adopted resource revenue-sharing model as a measure to prevent resource-rich regions, especially the oil producing Aceh region, from seceding (Morgandi, 2008). A derivation-based formula was designed and adopted to allocate revenues to petroleum and gas producing regions. The key legislation for this revenue sharing mechanism are the Fiscal Balance Law 2004 and the Government Regulation 104/2000 (Morgandi, 2008). The legal requirements and provisions allocate about 15% of petroleum royalties to producing districts and municipalities (Morgandi, 2008).

Results and consistency of sharing arrangements

The sharing model, though consistently applied and succeeded in preventing secession of producing regions, has failed to deliver the level of revenue-sharing equality necessary between the resource-rich and non-resource rich regions that was envisaged when the policy was designed (Morgandi, 2008). The sharing arrangement has benefited only a few producing provinces, leading to inter-regional inequality in development and public service delivery.

Transparency and accountability procedures

The public financial management is not effective in Indonesia as evidenced by the following (Morgandi, 2008):

- Sub-national government reporting requirements of fiscal and financial management to the central government are not conducted. Despite the State Audit Law 15/2004 requirement, only about 40% of the funds disbursed to producing regions were audited due to the staffing deficiencies in the national audit agency.
- Subnational governments are under no obligation to publicly disclose fiscal and financial information and in many cases such information is not available.
- The only publicly available information is the amount of resource revenues to be shared between the two levels of government (central and regional). There are no disaggregated data to verify allocations, transfers, receipts, and expenditure. This makes it difficult to reconcile with the revenue distribution formula, resulting in suspicion from producing regions.

3.1.2. Nigeria

Although one of Africa's oldest and largest oil-producing countries, Nigeria continues to struggle to manage its large windfalls from oil and other resources. The country adopted a formula-based revenue distribution model which has been in use for decades (Morgandi, 2008). But this formula has been ineffective and oil revenues continue to engender widespread irregularities, including grand scale cases of corruption. More importantly, the oil revenue-sharing regime has not resulted in socio-economic development, especially in the restive oil-producing Niger Delta (Strachan, 2014).

Legal framework

The distribution of oil revenue is regulated by Article 162 of the 1999 Civilian Constitution (Morgandi, 2008). The law centralizes all revenues from oil, which represents about 72% of the national budget. Out of this oil revenue pool, 13% is allocated and transferred to 9 oil producing regions by derivation. The remainder is distributed by a statute that allocates 45.8% to central government, 23.3 % to all 36 states/regions, and 17.9% to all municipalities.

These revenue shares are further distributed according to a formula provided by an ad-hoc commission (Morgandi, 2008). The formula, which is based on derivation and indicator principle, allocates funds both at the state and municipal levels, with 40% equally distributed across all states, 30% by population size, 10% by extension, 10% by revenue raising effort, and 10% by social development effort.

The share to the Central Government includes a 7% allocation to special funds, which include: a stabilization fund, an ecological fund to mitigate environmental damages, a fund for the development of the Natural Resource sector, and extra allocation to the Federal Capital Fund (Morgandi, 2008).

Results and consistency of sharing arrangements

The Nigerian natural resource revenue sharing model continues to be contested, particularly by producing regions (Morgandi, 2008). At the center of the issue is the failure to bring about economic development, employment, and reduction in poverty levels through oil revenues.

There is longstanding and widespread discontent in oil producing regions, where costs in terms of environmental damage and economic inequality have far outpaced any benefits from oil revenues (Morgandi, 2008). The producing regions have been legitimately asking for increase in the derivation share. Failure by the central government to reach consensus has often been met with rioting, destruction of oil infrastructure and violence by organized groups such as the Movement for the Emancipation of the Niger Delta (MEND).

3.1.3. Bolivia

In South America, Bolivia's oil and gas revenues account for over 31% of government revenues, with oil and gas sector constituting 4.3% of the country's GDP and 55% of exports, respectively (Aresti, 2016).

Legal framework

A 2005 law requires the resource companies to pay 44% of royalties and 67% of direct taxes on resource extraction to the government. Bolivia is divided into 9 departments (equivalent of states in the case of South Sudan). Four of these departments produce oil and gas and they are allocated 11% of oil and gas revenues on the basis of derivation principle. Departments are in turn divided into provinces, which are in turn divided into municipalities. Provinces are equal to counties and municipalities in the case of South Sudan.

In addition to derivation formula, Bolivia uses general intergovernmental transfer system to share general revenues with subnational jurisdictions (Morgandi, 2008, Aresti, 2016). Besides oil and gas revenues, forestry and mining revenues are also shared on the basis of derivation formula. Bolivia also directly allocates a certain portion of oil and gas revenues to its universities.

Transparency and accountability procedures

Bolivia's government discloses a disaggregated information on oil and gas revenues, which allows producing subnational jurisdictions to compare and determine if they are receiving the right amount (Morgandi, 2008; Aresti, 2016). However, little information exists on the spending of revenues at the subnational jurisdictions.

In summary, we can glean a number of key messages. First, while the laws lay out that portions of revenues should be transferred to resource producing subnational jurisdictions, communities at these jurisdictions appear hardly satisfied with the share they are getting, even those that are getting higher shares than the ones the South Sudanese producing communities are getting. This has created some confrontations with national governments and resource companies. Nigeria and Indonesia are cases in point.

Second, while most of the countries have managed to disclose disaggregated data of revenues at the federal or national levels, there is a serious inadequacy of transparency of the expenditure of resource revenues at subnational levels, a phenomenon that is also prevalent in South Sudan.

Third, country-specific literature in this area indicates that extraction of natural resources such as oil in a region generates economic and social costs, for which resulting net effects are often negative. This happens due to revenue volatility, poor planning and expenditure capacity constraints of local agencies, lack of functional responsibilities proportional to the revenues, absence of external controls, and institutional deterioration, things that are also prevalent in South Sudan. However, the difference we see is that these countries have tried to improve over time. For this reason, compensating producing regions with substantial shares of the total resource revenues can only be a legitimate response from the vantage point of a responsible authority. Allocation and transfer of resources to subnational level is not by and of itself a sufficient answer to the deleterious extractive activities. There must be a credible strategy to spur economic development and employment, offering safeguards to governing institutions and the environment. Failure to do so, revenues from these resources may eventually become a curse, especially in producing territories.

Fourth, the legislation reviewed in sampled case studies have very good provisions intended to address the negative effects of extraction and management inefficiencies, either by mitigating externalities or by introducing mechanisms to make the resource revenues an engine of development. These initiatives include provisions for social development funds, environmental mitigation funds, infrastructure expansion requirements, and local labor requirements. Some of the countries reviewed have improved with regards to the implementation of these mechanisms while others have not managed to implement them.

4. Petroleum revenue sharing arrangement in South Sudan

4.1. Legal framework

The petroleum sector in South Sudan is governed by a set of laws enacted during the interim (2005 – 2011) and post-independence periods (2011 – present). Interim period relevant laws include the Comprehensive Peace Agreement (CPA), 2005, the Sudan Interim Constitution, 2005, the Southern Sudan Interim Constitution, 2005, and the Local

Government Act, 2009. The CPA provided for the allocation of at least two percent (2%) share of oil revenues to oil producing states and regions. Despite some challenges and discrepancies, by and large, the 2% share of net petroleum revenues was allocated and transferred during the CPA period. However, there is little to no information about how these funds were used.

After 2011, key legal documents governing resource sharing relations include the Transitional Constitution 2011 (as amended), the Petroleum Act, 2012, the Petroleum Revenue Management Act, 2013, the Public Financial Management and Accountability Act, 2011 and the Agreement on the Resolution of Conflict in South Sudan (ARCISS), 2015. In particular, the Petroleum Revenue Management Act, 2013 provides for the allocation and transfer of the three percent (3%) of the net petroleum revenues out of the Petroleum Revenue Account[2]. The Petroleum Revenue Account gets 75% of the net petroleum revenues and the rest is allocated for stabilization account (15%) and future generation account (10%), respectively (Savage, 2013). The stabilization funds are supposed to address the budget gap due to volatility caused by fluctuations in the global oil prices and the future generation funds are to be invested in projects that benefit the future generations.

The 3% share for petroleum producing communities came with the Transitional Constitution, 2011 (as amended). The 3% share is divided among the counties in the petroleum producing states. With the overarching aim to make all the communities benefit, the Act states that 55% of the funds should be transferred to producing counties and 45% to non- producing counties in the producing regions, and receiving counties should bear the administrative costs.

4.2. Fiscal decentralization and resource revenue governance subnational institutions

South Sudan has three layers of governments, namely the national government, the state governments, county and municipal governments. There are currently 32 states, which have been subdivided into many counties. Like the national government, state, municipal and county governments have three arms, namely the executive headed by the governor, mayor and commissioner, respectively, legislative assembly/council, and judicial branches. The lower tier of the administrations has very vague mandates and is therefore controlled by state governments as provided for in the Transitional Constitution, 2011 (as amended). While most states have legislative assemblies, most counties and municipalities do not have functioning legislative councils. Also, counties do not have clearly established expenditure responsibilities. They operate on state handouts.

According to the Transitional Constitution (2011, as amended), the national government is responsible for national defense, public health, security and natural resource extraction, among others. Conversely, subnational authorities are responsible for legislating and administering a wide range of activities in their jurisdictions, including some expenditure responsibilities albeit in consultation with relevant national line ministries and agencies, particularly the national Ministry of Finance and Planning. Although the state and local

[2] The South Sudan Petroleum Revenue Management Act 2013, establishes several Petroleum Revenue Accounts, the process of payments into and out of these accounts and the responsible governance institutions for the management and oversight of these funds.

governments may collect some taxes and fees, they do not collect revenues from the extraction of petroleum, except in cases like artisan mining. The public budget is developed and implemented under what appears to be a fiscal decentralization system.

Chapters II, III and IV of the South Sudan Petroleum Revenue Management Act, 2013 establish the Petroleum Revenue Accounts and the process of making payments into and transfers out of these accounts. The Act also identifies the Bank of South Sudan and the Ministry of Finance and Planning as the responsible institutions that execute these transactions.

In particular, the Petroleum Revenue Management Act, 2013 provides for the establishment of Community Development Committee (CDC) and Community Development Committees' Coordination Forum (CDCCF). The CDC, which works at the county levels, plans and supervises the community fund while the CDCCF, working at the state level, provides oversight to the CDC. A county Legislative Council, established in accordance with the Local Government Act, 2009, establishes the CDC and approves its projects and programs following the presentation of such plans and projects by the CDC.

The Act gives powers to county commissioners to nominate members to CDC and present them to County Legislative Councils for approval. The Act requires that the membership of CDC should be drawn from farmers' union, trade chambers, civil society organizations, traditional authorities, religious, women and youth groups. The committee is to be assisted by technical persons. The day to day affairs of the CDC are to be run by a Secretariat to be established.

The CDCCF comprises state government officials and civil servants, as well as a non-permanent resource person. The composition of CDCs is in principle achieved using procedures that are mindful of ensuring not only balanced gender representation but also that of youth. However, no emphasis is made in the selection criteria of CDC members about the level of education that can afford the body the requisite competence, leaving much to be desired about how efficient the Committee would be.

Besides, the Act requires that the Ministry of Finance and Planning should transfer the equivalence of the 3% share to the CDC's account to be opened at the Bank of South Sudan, as mentioned previously. It also states that every time the money is transferred to this account, the Council of States must be notified. Opening an account under the CDC and notifying the Council of States are some of the critical safeguards for the fund management. However, the Act remains silent on the signatories to this account and the procedures for withdrawing the funds. These limitations can easily be exploited and abused, requiring additional safeguards to keep the funds safe.

The Act states that each month, the amount due to each petroleum producing community must be transferred to the CDC's account not later than the 15th day of the following month. Specifying the date on which the money should be transferred to the account can be one of the effective ways to ensure the money goes to the account as planned.

These institutions are supposed to devise the necessary transparency and accountability measures, including mandating free access to public information pertaining to the petroleum sector. The Act requires that petroleum revenue related records should be documented and publicly disclosed in accordance with the Right to Information Act, 2013 and relevant petroleum laws.

5. Results and discussion

Based on historical public budgets and interviews with various stakeholders, we present a number of findings with regards to (1) allocation and transfer of the 2% and 3% of net petroleum revenues as stipulated in the Petroleum Revenue Management Act, 2013 and Transitional Constitution, 2011 (as amended), (2) the establishment of the subnational institutions that the laws task to implement the petroleum revenue sharing plan, and (3) the transparency of the transfer and spending of the revenues.

First, the 3% of the net petroleum revenues has not been properly allocated and transferred to the petroleum producing communities in accordance with Petroleum Revenue Management Act, 2013 and Transitional Constitution, 2011 (as amended). Table 2 shows no allocations and transfers to the producing communities since 2011, when the Transitional Constitution first provided for the transfer of the 3% of the net petroleum revenues to the petroleum producing communities. While the government budgets show a combined line for the petroleum producing states and communities, what was allocated and transferred falls short of the required 5% share for both the petroleum producing states and communities (see table 2).

Second, the 2% of the net petroleum revenues has been improperly allocated and transferred to producing states (see table 2). For example, in the budget year of 2011/2012, 3.64% was allocated and transferred. This was over by 1.64% and short of the required 5% for both the producing states and communities by 1.36. However, interviews with community members and area Members of Parliament show that no money was received. The budget years 2013/2014 and 2014/2015 were also over the required 2% by 0.94% and 0.15%, respectively. However, budget years 2015/2016 and 2016/2017 extremely fell short of the legally required threshold for the producing states and communities, as only 0.26% and 0.18% were allocated and transferred. There was no allocation and transfer for the producing states and communities in the budget year 2012/2013 due to the shutdown of oil operation, even though there was still some money coming from the oil revenues (see table 2). In short, budgetary allocations, transfers, and expenditure have not been carried out in line with the Petroleum Revenue Management Act, 2013 and Transitional Constitution, 2011 (as amended).

Missed past payments to the petroleum producing communities since 2011 amount to a total of $305 million US dollars (See table 2). It is not only the communities that are not receiving their share of net petroleum revenues. Due to improper allocations, petroleum producing states have not also been receiving some parts of their share. Lack of transfer of this money has not only delayed development, it creates mistrust between the oil industry and the communities.

Table 2. Allocations and transfers of net petroleum revenues by national government for producing states and communities, 2011 - 2017 (in million US dollar equivalents)[3]

Revenue Allocations and Transfers	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17
Total Net Petroleum Revenue	3, 222	126	2, 445	1, 611	2, 558	195
Allocations to PPS (2%)	65	5	49	32	51	4
Transfers to PPS	117	0	72	35	7	0.357[4]
Transfers to PPS (expressed in %)	3.6 %	0.0 %	2.94 %	2.2 %	0.3 %	0.18 %
Allocations to PPC (3%)	97	4	73	48	77	6
Transfers to PPC	0	0	0	0	0	0
Unpaid transfers for PPC	97	4	73	48	77	6
Cumulative unpaid transfers for PPC			**305**			
Official Budgetary Exchange Rate	2.96	2.96	2.96	2.96	2.96	98.16

Source: Ministry of Finance and Planning, GRSS (Historical public expenditure data); Authors' calculations.
Note: PPS denotes Petroleum Producing States, PPC denotes Petroleum Producing Communities.

Third, we find that CDC, CDCCF and County Legislative Councils, which are mandated to manage and implement the 3% share have not been established. Implementation starts with establishment of the CDC, which, as mentioned early, is mandated to open a bank account at the bank of South Sudan, transfer the money to it and notify the Council of States of the transfer, little of which has happened since the laws came into effect.

Fourth, key information about the 2% and 3% shares has not been publicly disclosed, leaving local communities and public inadequately informed about their benefits as required by law. For instance, there is no disaggregated information on how the 2% allocated and transferred to the producing states has been spent. Allocations during the pre-independence period[5] are not available publicly on the budget documents of the Government of South Sudan. This lack of public disclosure of information about revenue sharing is a continuous trend. In 2016, only 42% of the items stipulated in the Petroleum

[3] Table 2 provides information in million US dollar equivalents about (1) net petroleum revenues for the Government of the Republic of South Sudan, (2) Allocations to petroleum producing states (PPS), (3) Transfers to PPS, (4) Allocations to petroleum producing communities (PPC), (5) Transfers to PPC, (6) Unpaid balance to PPC since 2011, (7) Transfers to PPS as a percentage of net petroleum revenues and (8) Official budgetary exchange rates. The information is rounded off to millions for ease of reading. If a figure extends to the fourth digit, the fourth digit represents a billion. However, all the figures in three digits represent millions. Information in table 2 has been converted to US dollars using official exchange rates from 2011 to 2017 and the unpaid balances for petroleum producing states and communities were calculated. Unpaid balance for each year since 2011 was added to get the total unpaid balances for the petroleum producing states.

[4] This figure is in thousands US dollar equivalent instead of a million dollar equivalent like other figures in the table.

[5] The Comprehensive Peace Agreement (CPA), 2005 gives two percent (2 %) share of petroleum revenues to producing states. There are no public data and information to the implementation of the two percent share to producing stations. The national budgets 2005-2011, do not have this information.

Act 2012 were publicly disclosed and the 3% share was not one of them (Tiitmamer, 2016b). Community representatives we interviewed assume that the money might have been embezzled along the way. However, government officials we interviewed reported that the money has not been embezzled but used to address pressing needs due to mounting economic stress induced by the war since 2013. Community representatives complained that lack of transfer of their money by the government is a violation of the law. This has created some mistrust between the communities and some government officials.

Fifth, our review of other contexts shows that allocating higher percentage of net resource revenues alone without transparency and accountability cannot resolve producing regions' grievances as transferred money sometimes end up in wrong hands. National governments, in some of the cases reviewed, have come up with strict rules and regulations that punish subnational authorities for failing to account for revenues transferred to them. For example, subnational jurisdictions that fail to comply with the rules are not given their money next time. This is something South Sudan can adopt in enforcing the petroleum revenue sharing arrangements. Indeed, South Sudan is not only well positioned to adopt best practices from other countries, it can also learn from its experiences to improve its resource revenue sharing arrangement.

6. Conclusion

We have assessed the implementation of resource revenue sharing arrangements for subnational jurisdictions in South Sudan and made comparison in a selected number of countries. Although the laws are in place in South Sudan, implementation of resource revenue sharing arrangements for subnational jurisdictions remains a distance dream in the petroleum sector.

First, the 3% share of net petroleum revenues has not been properly allocated and transferred to producing communities since the laws came into effect. In addition, no information about it has been publicly disclosed as required by the law, which has produced suspicions and mistrust.

Second, the institutions for the implementation of this resource revenue sharing arrangements have not been established, which have made it hard in part to implement the resource revenue sharing arrangement. Third, while the two percent share of net petroleum revenues have been transferred to producing states, it has improperly been allocated. Besides, there is very inadequate transparency in terms of what it is being spent on, making it hard to ensure accountability. Overall, budgetary allocations are inconsistent with the law as allocation is based on other priorities, leaving the specification in the law unmet.

Fourth, based on our calculation using budget outturns, the communities have not received since 2011 a total of $305 million US dollars. This is a huge sum of money that will be difficult for the government to pay at once given the current economic situation but can be easy to pay if its payment is planned, linked to community development needs and spread over time. Lack of transfer of community revenues and inadequate transparency and accountability have created mistrusts between the communities and government and extractive companies based on our interviews with community representatives.

These findings demonstrate that more efforts need to be exerted to speed up the implementation of these crucial parts of the resource revenue sharing arrangements between the national government and subnational jurisdictions to create trust and give social license to the petroleum industry.

Policy Recommendations

Based on the foregoing, we would like to recommend the following:

i. The government should reach out to the communities and explain why the money has not been transferred and come up with a concrete plan starting with transferring the money in the next financial year 2018/2019. Besides, the government should calculate the amount that has not been transferred since the law was signed, recognize it as a debt it owes to the communities and come up with a schedule of payments. This will put the government on track on fulfilling its policy objectives of equitable distribution of resources.

ii. The communities and producing states should in collaboration with the national government establish or operationalize institutions for the implementation of the resource revenue sharing arrangements. These institutions include Community Development Committees, County Legislative Councils and Community Development Committees' Coordination Forum as stipulated in the Petroleum Revenue Management Act 2013. The government should also establish and strengthen independent oversight institutions to monitor the implementation of the petroleum revenue sharing regimes including the three percent and two percent shares for the petroleum producing communities and states. The Transitional National Legislative Assembly and the Council of States should exert pressure to ensure these institutions are operationalized and functional.

iii. The government should actively and regularly disclose information on the petroleum sector in general and especially on sales volume, revenue allocations, transfers and expenditure.

iv. The government should judiciously develop a system of accountability including regular audits.

v. Last but not least, the Parliament and the Ministry of Finance should align budget lines with financial specifications in the laws so that any discrepancies are avoided.

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The Sudd Institute is an independent research organization that conducts and facilitates policy relevant research and training to inform public policy and practice, to create opportunities for discussion and debate, and to improve analytical capacity in South Sudan.

The Sudd Institute's intention is to significantly improve the quality, impact, and accountability of local, national, and international policy- and decision-making in South Sudan in order to promote a more peaceful, just and prosperous society.

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