UNITED STATES INSTITUTE OF PEACE www.usip.org

SPECIAL REPORT

2301 Constitution Ave., NW • Washington, DC 20037 • 202.457.1700 • fax 202.429.6063

David K. Deng, Paul Mertenskoetter, and Luuk van de Vondervoort

Establishing a Mining Sector in Postwar South Sudan

Summary

- The period preceding the promulgation of the 2012 Mining Act was a difficult time for South Sudan's mining sector. After the end of the civil war in 2005 and amid the political uncertainty of the transitional period, government institutions at various levels began issuing mining titles to private companies, whether or not they had the legal authority to do so.
- The Ministry of Petroleum and Mining granted companies licenses to conduct reconnaissance and exploration activities over exceedingly large areas of land. Some promising areas were even awarded to multiple companies. The bureaucratic failures of this period led to a considerable amount of confusion among public and private sector actors.
- To halt the unregulated distribution of mining rights and to permit time for the government to establish its regulatory framework, the Southern Sudan Legislative Assembly put in place a moratorium on mining licenses in November 2010.
- The moratorium largely served its purpose of providing the government with policy space in which to develop a regulatory framework. In December 2012, a new Mining Act was signed into force by the president of South Sudan.
- The Mining Act was a welcome step forward in many respects, but it also leaves room for political influence over decision making, particularly with regard to the granting of licenses, the distribution of benefits from mining ventures, and the applicable standards governing the expropriation of individually and community owned land.
- Government action can help to ensure that the benefits of South Sudan's mineral wealth are allocated fairly among government institutions, private companies, and affected communities. The equitable distribution of benefits can help to reduce the potential for social unrest and conflict in future mining ventures.

About the Report

This report is based on research conducted in Juba, Torit, and Kapoeta during August and September 2012. The research provides an initial examination on the underdocumented issue of mining in South Sudan and seeks to provide the government of South Sudan with evidence-based recommendations that can help it to develop a regulatory framework that will provide equitable benefits to all concerned parties. This report was made possible through financial and editorial support from the United States Institute of Peace.

About the Authors

David K. Deng is the research director for the South Sudan Law Society (SSLS), a civil society organization based in Juba. Paul Mertenskoetter is a student at New York University (NYU) School of Law and has worked with the SSLS on questions relating to foreign investment in South Sudan. Luuk van de Vondervoort holds master's degrees from the University of Amsterdam and University College London. He is currently working for the Bonn International Center for Conversion (BICC) in South Sudan. The views expressed in this report are solely those of the authors and do not necessarily reflect the views of the SSLS, NYU School of Law, or the BICC.

Special Report 330 April 2013

Contents

- In order to satisfy its obligations under both South Sudanese domestic law and international human rights law, the government should not expropriate land for mining purposes without first securing the free, prior, and informed consent of landowning communities.
- Among other measures, the government should also enforce constitutional provisions that prohibit the president, vice president, presidential advisers, ministers, deputy ministers, governors, state advisers, state ministers, and other constitutional office holders from engaging in commercial activities.

Introduction

Since the signing of the Comprehensive Peace Agreement (CPA) and the establishment of the regional government of Southern Sudan in 2005, South Sudan's mineral resources have remained almost completely untapped. Unlike the oil sector, for which South Sudan inherited a mature industry—complete with access to infrastructure, including several pipelines extending north through Sudan to the Red Sea, long-term contractual relationships with multinational oil companies, and immediate profits—the market for minerals is largely restricted to transactions among a handful of rural communities and migrant workers who operated artisanal gold mines in informal cross-border economies. With South Sudan's independence in 2011 and the shutdown of oil production in 2012, international and domestic interest in South Sudan's non-oil natural resources is growing.

During the six-year interim period between the signing of the CPA in 2005 and independence in 2011, the lack of demand for mineral concessions provided an opportunity for the government of Southern Sudan. Since it would take many years to develop commercially viable opportunities for mining, there was little pressure on the government to begin issuing licenses and producing profits. This gave the government space in which to develop a legal framework for mining concessions; enact complementary legislation, such as the 2009 Land Act; and solicit advice from more experienced countries, such as Botswana and Australia, on how to manage South Sudan's mineral wealth.

Despite the positive steps to develop a more responsible regulatory framework, rumors of backroom deals and government incompetence in regard to mineral licensing also proliferated during this time. Increasingly, foreign and domestic companies, keen to secure favorable terms in an insecure political, social, and economic environment, began to seek mineral licenses with government institutions at various levels. Military institutions and individual military officers began negotiating deals with foreign companies in an effort to develop independent sources of funding, a move that could undermine civilian control of the military by removing military budgets from parliamentary control. High-level government officials also began to pursue mining deals in contravention of the prohibition against those who hold constitutional posts engaging in private commercial transactions.

These issues came to a head in 2010 when the Southern Sudan Legislative Assembly issued a moratorium on mining licenses. The regional legislative body declared that no reconnaissance or exploration licenses would be issued or renewed until the promulgation of the new mining law and regulations. In addition to providing the Ministry of Petroleum and Mining with additional time to develop the regulatory framework, the moratorium also allowed the country to get through the particularly sensitive period surrounding its 2011 referendum on self-determination and secession from northern Sudan before entering into long-term commitments with foreign and domestic businesses. In November 2012, after its fourth hearing, the National Legislative Assembly passed the Mining Act. President Salva Kiir Mayardiit signed the legislation into force on December 27, 2012.[1]

While a welcome step forward in many respects, the Mining Act still leaves a number of unresolved questions. Without knowledge of the country's mineral potential, how will the

government set royalties that provide incentives for companies to invest while providing the government with secure sources of national revenue? How can the government reconcile its recognition of customary land rights with state ownership of subterranean resources? Will government policy favor the equal distribution of mining benefits among populations in South Sudan or will those residing in mineral rich areas reap additional rewards? How will foreign and international legal instruments, such as American and British anticorruption legislation, bilateral investment treaties, or regional trade agreements, affect the development of South Sudan's mining industry?

This report explores some of these questions by examining the performance of the government and its private sector partners during the "golden hour" that preceded the passing of the Mining Act, in which the government could either chart a path toward sustainable growth and development in the mining sector or entrench the malpractices that characterized the sector prior to the moratorium. The report concludes with a summary of the lessons learned and a list of recommendations for the government moving forward.

Background

In 2005, the Sudan People's Liberation Movement/Army (SPLM/A) and the government of Sudan signed the CPA, bringing an end to the twenty-two-year north-south civil war. The CPA established a regionally autonomous government in Southern Sudan and gave the south a share of national wealth and power. In 2011, after a six-year interim period, Southern Sudanese voted in a referendum on self-determination to decide whether to remain united with Sudan or secede to form their own nation in the south. As expected, Southern Sudanese overwhelmingly opted for secession, and the Republic of South Sudan declared its independence on July 9, 2011.

The SPLM/A's transition from a guerilla movement to a government has proven to be a difficult one, both for the new government and its citizens. Since the signing of the CPA in 2005, South Sudan has been confronted by numerous internal and external challenges, including high levels of interethnic violence, allegations of corruption and misgovernance, human rights abuses committed by a heavy-handed security sector, and periodic fighting along the northern border with the Sudan Armed Forces (SAF). In January 2012, the relationship between Sudan and South Sudan deteriorated further when South Sudan's government suspended its oil production over a dispute concerning oil revenues and fees associated with the use of Sudan's pipeline to the Red Sea. Overnight, the government of South Sudan lost 98 percent of its projected budget, and the economies of both countries were sent into turmoil.

Despite the instability of this transitional period, South Sudan has made significant strides since the end of the war. According to statistics from the World Bank, between 2004 and 2012, poverty in South Sudan reduced from 90 percent to 51 percent, mortality rates for children under five decreased from 25 percent to 10 percent, and primary school enrollment rates increased from 20 percent to 50 percent.[2] In 2010, Southern Sudan took part in national elections, and some independent candidates managed to secure important gubernatorial seats over their SPLM-supported opponents, suggesting some increase in democratic space in the region. Legislation was passed, roads were built, and the country managed to avoid a return to full-scale conflict with the north or a descent into civil war.

South Sudan's ability to maintain these gains in the long run will largely depend on whether it can effectively harness its natural resource wealth in a manner that benefits the people of South Sudan. According to current projections, if pre-2012 oil production levels are resumed without the discovery of significant new reserves, South Sudan could start exhausting its oil resources as soon as 2017. The mining sector, together with other sectors

According to current projections, if pre-2012 oil production levels are resumed without the discovery of significant new reserves, South Sudan could start exhausting its oil resources as soon as 2017.

such as agriculture and timber production, is especially important to economic development in the country because it offers the government an opportunity to diversify the economy and reduce its reliance on oil.

South Sudan's Mineral Potential

The few available scientific studies on minerals in South Sudan date back to the 1970s and early 1980s.[3] In 1977, the southern regional government signed a contract with the British company Hunting Geology and Geophysics Limited to undertake a mineral exploration program in a thirty-thousand square-kilometer area around Juba, which included Torit, the current capital of Eastern Equatoria state, and the border town of Nimule. The program was directed primarily at locating metallic, radioactive, and industrial minerals. It successfully identified a number of mineral deposits, including gold, copper, lead, zinc, nickel, marble, and various rare earth metals, although it did not conclusively determine the commercial viability of extracting them.

The level of knowledge about South Sudan's mineral potential has not progressed much farther than these past studies. Most of South Sudan consists of "greenfields," for which very little is known about the mineral content of the soil. However, the country borders mineral rich parts of northern Uganda and northern Democratic Republic of the Congo (DRC), where mining activities have been going on for decades. Since mineral deposits do not adhere to political boundaries, it seems likely that South Sudan has similar mineral resources, at least in its southernmost regions. South Sudanese communities and migrant workers have also been operating artisanal mines in various parts of the country for generations, another indication of the likely presence of mineral deposits.

Actors in the private sector have taken note of this evidence. According to information provided by the Ministry of Petroleum and Mining, interviews conducted with company representatives in South Sudan, and past research that the authors have conducted on large-scale land investments in South Sudan, at least thirty-one companies have come to do business in South Sudan's mining sector since the government was created in 2005. Most of these are small exploration companies that do not have the capacity to undertake mining activities on their own. In 2011, however, South Africa–based AngloGold Ashanti, one of the world's largest gold companies, expressed interest in expanding operations into South Sudan. Mark Cutifani, AngloGold's chief executive officer, was quoted as saying that South Sudan has "untapped potential." According to Cutifani, "It's that simple. When you look at the area there are lots of historical diggings and works and lots of smoke and in fact fire.…For us, we've only been there five minutes when you look at the time, and we're already seeing gold. That's why we're excited." [4]

At least thirty-one companies have come to do business in South Sudan's mining sector since the government was created in 2005.

Typically, a large company such as AngloGold does not conduct operations in a country that carries as much risk as South Sudan. Instead, "junior" companies will often move in first to try to secure all the necessary agreements. These companies typically consist of a few individuals who see an opportunity to relatively cheaply and easily acquire a mining license, often without exact knowledge of what minerals are present and where. They can then turn around and sell their rights to a large gold company once commercially viable deposits have been verified and the mine is ready to go into production. Nonetheless, the fact that AngloGold has expressed its interest in operating in South Sudan demonstrates the attention that the country is receiving globally for its potential mineral wealth.

Despite the optimism about South Sudan's mineral potential, there is near unanimous agreement among private sector actors that it will take many years to establish a viable mining industry. Mineral extraction requires roads that can bear the weight of heavily loaded trucks, and such roads do not exist in most regions. Large-scale mines require large amounts

of power that cannot be supplied by the diesel generators that are currently being used to power cities and towns in South Sudan. According to Emma Parker, the chief operating officer of a company called Equator Gold, which has been undertaking exploration activities in South Sudan for the past five years, South Sudan's mining industry will be limited to reconnaissance and exploration activities for several years to come: "I think there's going to be a big rush to get land but exploration takes a long time. The progress has been slow but the geology is interesting. There's big potential."[5]

Cross-Border Gold Trade and Its Role in the Wartime Economy

Most of South Sudan's international borders with Ethiopia, Uganda, Kenya, and the DRC can be characterized as soft borders, across which individuals and groups may move with relative ease. The notion of a soft border often carries positive connotations, particularly in contested regions where people's livelihoods depend on movement between countries. But soft borders can also be associated with problems, such as the illicit trade in arms or precious minerals. These dynamics have been well documented in other African countries. In Angola, for example, the National Union for the Total Independence of Angola (UNITA) funded its war efforts by smuggling diamonds through Zambia, Namibia, and the DRC for onward sale to diamond-cutting centers in Israel and elsewhere. Armed groups have also been known to smuggle minerals from eastern DRC to Rwanda and Uganda.[6]

Though not well documented, South Sudanese gold has been traded in cross-border markets for many years. During the civil war, the cross-border gold trade offered a number of advantages to individuals and armed groups in southern Sudan, including the SPLM/A. Although there is little evidence that the SPLM/A operated mines or produced gold itself, the movement is known to have taxed individuals and groups involved with artisanal mining as a way to fund its war efforts. According to historian Douglas Johnson, for instance, much of the friction between the Toposa militias and the SPLM/A during the war can be traced to the SPLM/A's attempt to gain control of the gold fields in Toposaland.[7]

Gold continues to provide individuals and groups in South Sudan with currency that they can use to purchase goods in neighboring countries during times when other forms of monetary exchange, such as U.S. dollars, are scarce. Rural communities in parts of Central Equatoria, Eastern Equatoria, and Jonglei have operated artisanal mines for generations, and although their tools are rudimentary, gold production provides an important source of income for many populations in rural areas.

Legal Framework

After years of anticipation and four readings in the National Legislative Assembly, South Sudan's Mining Act came into force in December 2012. The Ministry of Petroleum and Mining and the Ministry of Justice drafted the legislation with expert assistance provided by the consultancy firm Adam Smith International. The purpose of the legislation is to "provide for, encourage, promote and facilitate reconnaissance, exploration, development and production of minerals and mineral products in South Sudan, consistent with the principles of sustainable development." While the promulgation of the Mining Act represents a very important step forward, there are tensions between the mineral rights that the government claims and individual and community land rights as prescribed by other sources of legislation and current practice. These tensions are not likely to manifest completely until companies begin engaging in more intensive land-use practices, but they nonetheless represent a source of concern for the future development of the mining sector.

There are tensions between the mineral rights that the government claims and individual and community land rights as prescribed by other sources of legislation and current practice.

Table 1. Types of Mining Licenses Available in the 2013 Mining Act

License Type	Duration	Area	Extension
Reconnaissance	Two years	Max. 25,000 km^2 Min. 10 km^2	Not renewable
Exploration	Five years	Max. 2,500 km^2 Min. 10 km^2	Renewable for two terms of five years each
Small-scale mining	Ten years	Max. 1 km^2 Min. Not specified	Renewable for ten years
Large-scale mining	Twenty-five years	Max. Not specified Min. Not specified	Renewable for twenty years
Retention	Five years for exploration and six years for mining license	Same as for exploration or mining licenses	Not renewable
Artisanal mining	No time limit	Max. 1 km^2 Min. Not specified	Must be renewed annually

Mineral Titles

The Mining Act empowers the minister of petroleum and mining, with the advice of the director general of mineral development, to distribute mining rights through six types of licenses: a reconnaissance license, exploration license, small-scale mining license, large-scale mining license, retention license, and artisanal mining license (see table 1).[8] These licenses are available to both foreign and domestic companies with the exception of artisanal mining licenses, which may only be issued to South Sudanese citizens.[9]

Reconnaissance and exploration licenses require the titleholders to "inform and consult, on an ongoing basis, with local government, traditional authorities and communities about those...operations that require physical entry onto the land within their respective jurisdictions" and to "compensate owners and users of land for damage to land and property" resulting from their activities in the designated areas. Small-scale and large-scale mining licenses include the provision on compensation but omit the requirement to inform and consult local stakeholders.[10]

Unlike the other licenses, there is no specific limit on the area covered by a large-scale mining license. The only requirement is that the area "shall only extend to cover the proposed mining area reasonably required for surface mining and treatment facilities and also to cover the proved, indicated and inferred resources."

Administrative Confusion, the Moratorium, and Preexisting Mineral Titles

Since the government of Southern Sudan was established in 2005, the mining sector has been characterized by a high degree of administrative confusion and arbitrary decision making. According to John Ariki, the head of the geology department at the University of Juba and former director of geological survey at the Ministry of Petroleum and Mining, when the ministry first started issuing licenses, any company that wanted to buy a license could get one, irrespective of the company's technical or financial capacity.[11] The ministry simply lacked the qualified personnel to assess the applications. Those geologists and inspectors that were on staff also faced logistical constraints, such as a lack of vehicles and fuel, preventing them from effectively monitoring company activities, especially in remote rural areas.

Aside from the administrative confusion, a variety of public sector malpractices also arose during the premoratorium period. Several high-ranking government officials became directly involved in mining ventures despite provisions in the Interim Constitution and

the Transitional Constitution that prohibit constitutional post holders from engaging in commercial transactions while in office.[12] The military also became involved with several mining ventures, both as an institution and through separate agreements between private companies and individual military officers.

When the moratorium was instituted in November 2012, it raised a number of uncertainties for companies who had already obtained licenses. According to James Yousuf Kundu, the acting director general of geological surveying, the ministry awarded licenses to twenty-two companies between 2007 and 2010. With only one exception—the South Sudanese company Consolidated Minerals and Energy Resource Investment Company (CMERIC), partially owned by a minister in the South Sudanese government—these companies were all prevented from renewing their licenses.[13] As a result, depending on whether the Ministry of Petroleum and Mining considers the licenses to have lapsed or whether they were merely suspended, the companies may have lost their right to conduct mining activities in South Sudan.[14] In a more developed economy, actions such as these could violate investment treaties and raise liability concerns for the government in international forums.[15] However, since the South Sudan government has not yet taken on such international obligations, there is very little legal recourse for companies who feel as though they have had their property unlawfully expropriated.

Ambiguities in the Distribution of Regulatory Authority

As with many public sectors in South Sudan, the distribution of regulatory authority over the mining industry among ministries and between the central, state, and local levels of government remains somewhat ambiguous. The Transitional Constitution clearly states that the mineral wealth of South Sudan belongs to the central government. However, state and local government authorities also maintain that they have a role to play in regulating mining activities in their areas. For example, the deputy governor of Eastern Equatoria State claims that the role of the national government should be to make policy, or to act as "policy primer," so as to make it easier for the various levels of government to be involved. The state government reports that it has already been approached by at least ten companies seeking to invest in various mining projects, including a Chinese company that has already begun feasibility studies to mine limestone and establish a cement factory. Representatives in the central government's Ministry of Petroleum and Mining said that they had not heard about the venture.

The Mining Act seeks to address some of these federalism concerns through State Mineral Resources Advisory Coordination Committees. The committees' main function is to advise the minister of petroleum and mining on issues affecting mineral titles in the state. According to the Mining Act, the committees are required to meet within sixty days of any application for a mineral title in a given state. The director general of mineral development is the permanent chairperson of all state committees, which also include other representatives of relevant authorities at the central, state, and local government levels.[16]

There is also a degree of ambiguity over how regulatory authority is distributed between the Ministry of Petroleum and the Ministry of Commerce, Industry, and Investment. Both ministries see it as one of their core tasks to attract investors to South Sudan and to facilitate their activities. The Ministry of Commerce identified the mining industry as one of its investment priority sectors, which would render mining companies eligible for large tax breaks, exemptions from import and export duties, and various "special incentives," including interest-free loans and government grants.[17] The ministry is also establishing a "one-stop shop" that is meant to expedite administrative procedures for foreign companies.

Officials at the Ministry of Commerce envision a role for the institution in assisting mining companies to access land.[18] According to ministry representatives, once investors have obtained an investment certificate, they should then go to the Investment Authority to indicate the areas in which they are interested in conducting activities. Ministry officials would then go to the particular state and try to facilitate access to the land with local communities. The ministry also has future plans to own and distribute land among interested investors. It is not clear how this would accord with the responsibilities of the Ministry of Petroleum and Mining and the requirements of the new Mining Act.

One area in which both the Ministry of Petroleum and Mining and the Ministry of Commerce are in agreement is in the national government's right to make unilateral decisions about mining rights. Officials in both ministries were either unaware or dismissive of the Land Act's provisions recognizing communities' ownership rights. They claimed that communities could not negotiate directly with companies or with ministries. Instead it had to be "explained" to communities that the companies were investors to whom access should be granted in the "national interest." Otherwise, community leaders often would not "understand." This disregard for the rights of landowning communities and indigenous peoples in South Sudan has also been documented in other land-based investment sectors in South Sudan, such as agriculture and forestry.[19]

Community Land Rights and the Limits of Expropriation

The 2009 Land Act effectively formalized community ownership rights over the surface of the land by granting customary land tenure equal force in law with freehold and leasehold rights.

One ambiguity that has surfaced in relation to the new Mining Act is how community rights to the surface of the land will coexist with the central government's ownership of subterranean resources. South Sudan is home to some sixty-five ethnic groups whose territories span the entire region. There is no *terra nullius*, or "no man's land," in South Sudan. The 2009 Land Act effectively formalized community ownership rights over the surface of the land by granting customary land tenure equal force in law with freehold and leasehold rights. It defines community land broadly to include all land "lawfully held, managed or used by specific community as community forests, cultivation, grazing areas, shrines and any other purposes recognized by law." The Land Act also allows communities to allocate land for investment purposes so long as the investment activity reflects an important interest for the community and contributes to its economic and social development.

Subterranean resources, on the other hand, are deemed to be the property of the central government. This gives rise to something of a dilemma in relation to mining ventures. Large-scale mining operations can interfere substantially with other forms of land use. In order to access subterranean resources, the government would have to either expropriate community land and transfer it to a private company to conduct its mining activities or enter into some kind of third-party agreement with landowning individuals or communities to allow the company to lawfully operate on community land. Section 140 of the Mining Act seems to allow for either approach:

> In the event that a Mining Licence is granted over community or private land, as defined in the Land Act, or land subject to a customary right to of use, the Mining Licence Title Holder may—
>
> i. enter into a private Licence, compensation or resettlement agreement with the landowner or right holder; or
>
> ii. request the Minister to revoke, expropriate or otherwise extinguish such right of ownership or usage.[20]

The right of a government to expropriate private property for public use in exchange for just compensation is a well-established attribute of state sovereignty, which is used

by governments to access land for construction of roads, railways, schools, hospitals, and other government facilities. Article 28(2) of the Transitional Constitution presents the requirements for lawful expropriation in South Sudan, including mandatory judicial review in the form of a court order:

> No private property may be expropriated save by law in the public interest and in consideration for prompt and fair compensation. No private property shall be confiscated save by an order of a court of law.

The Land Act allows for the expropriation of land for a public interest and subject to the payment of compensation to the landowner, but the list of activities that comprise a public interest do not include private investments such as mining.[21] This was changed in the Mining Act, which declares that, "[f]or purposes of the Land Act the issuance of a Mining Licence Area constitutes reason for expropriation of the land in question for public interest." The Mining Act also includes a provision that exempts reconnaissance and exploration activities from the terms and conditions of the Land Act.[22] Small-scale and large-scale mining licenses do not include the same exemptions. This type of blanket restriction may be legally problematic; once the government has recognized people's ownership rights, it should not be able to restrict them in such a fundamental manner without compensating landowners for the loss.

International human rights law also affords heightened protection to the land rights of indigenous peoples and other affected communities.[23] Article 46 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states that any limits placed on indigenous peoples' rights—such as the expropriation of land in the public interest—should only occur if "strictly necessary." [24] UNDRIP also states that projects affecting the lands, territories, or other resources of indigenous peoples should not proceed until states have secured the free, prior, and informed consent of affected communities.[25] The Committee on the Elimination of Racial Discrimination (CERD) has affirmed this right.[26] More specifically, community consent must be given without coercion (free), secured before any decision is made on the project (prior), and based on a full understanding of the activity in question (informed).[27]

The government of South Sudan has not yet ratified any international human rights instruments, and the extent to which the government is legally bound by these international standards is subject to debate. Nonetheless, there are increasing calls from South Sudanese civil society and the government's international partners to move quickly to ratify the core human rights treaties that prescribe the minimum standards by which states must treat their citizens. The ratification of the UNDRIP will be an important step in clarifying the government's obligations, particularly as they relate to the development of the mining sector.

Community Development Agreements

As the previous section highlights, the relationship between the government, private companies, and landowning communities remains a real source of concern for the future development of the mining industry. From the viewpoint of the private sector, company representatives seem to acknowledge the reality that mining activities are not possible without community approval. But they also complain of unrealistic demands that communities make when they hear that a company is interested in the possibility of establishing a mine in their area. Nevertheless, the Mining Act does acknowledge the importance of community engagement, albeit in a voluntary sense.

One way in which the Mining Act seeks to support community engagement practices is through Community Development Agreements (also called Payam Development Agreements), which are mandatory for large-scale mining licenses. According to the Act:

> A Large-Scale Mining Licence Titleholder shall—
>
> a. assist in the development of communities near to or affected by its operations to promote the general welfare and enhance the quality of life of the inhabitants living there; and
>
> a. enter into Community Development Agreements with such communities in cooperation with relevant government authorities.

The terms of the Community Development Agreements are more precisely defined in a set of draft regulations that are meant to accompany the Mining Act. At this writing, the draft regulations have not yet been formally adopted. The objectives of the draft community development regulations are fourfold:

1. to involve communities in decisions relating to the exploitation of natural resources in their areas and promote a safe and healthy environment;
2. to enhance the sustainable social, cultural and economic well-being of communities in Payams that may be positively or negatively impacted by Mining Operations;
3. to define when Payam Development Agreements are required and to provide a framework for such agreements;
4. to ensure accountability and transparency in mining related community development.

If the community's representatives lack the capacity to effectively negotiate a Community Development Agreement, the draft regulations require the titleholder to assist them in building that capacity.

If the community's representatives lack the capacity to effectively negotiate a Community Development Agreement, the draft regulations require the titleholder to assist them in building that capacity, including the provision of funds for capacity building and preparation. However, community consent is not required for the investment to proceed. According to the draft regulations, if the titleholder and the community representatives fail to conclude an agreement by the time the titleholder is ready to commence construction activities, either party may refer the matter to the minister of petroleum and mining for resolution, and the decision of the minister, in consultation with the State Mineral Resources Advisory Coordination Committee, shall be final and binding.[28]

If these provisions in the draft regulations are formalized and enforced, Community Development Agreements may help to promote more constructive relationships between government institutions, companies, and communities involved with mining projects. To better encourage good-faith negotiations, the Ministry of Petroleum and Mining could consider introducing a consent-based standard into the approval process for community development agreements. Such a standard would better conform with the requirements of indigenous people's rights under international human rights law, as well as with the terms of the Land Act. The government could also expand the circumstances in which Community Development Agreements are required to include all forms of licenses, not just large-scale mining licenses. The danger of only allowing the community to negotiate the terms of development programs when large-scale mining operations are set to begin is that their leverage over the process will be greatly reduced by the prospect of large returns from the mine. This problem is exacerbated by the fact that the minister may force approval of the agreement, even if the affected populations oppose the project.

In fact, there is evidence that some individuals within the government do not feel the need to strictly enforce these provisions regarding community engagement. For example, representatives of the Ministry of Petroleum and Mining asserted that it was not up to the company itself to talk to local communities and try to come up with a mutually beneficial agreement, even though some companies seemed willing to invest substantial time in talking to and negotiating with local elders. Such an approach demonstrates a certain lack of awareness about the business argument for community participation in mining projects and could undermine the effectiveness of Community Development Agreements in practice.

Company Profiles

Since the signing of the CPA in 2005 and independence in 2011, foreign and domestic companies have begun pursuing mineral concessions with a number of different government institutions. Economic development is high on the agenda for the government of South Sudan, particularly after its shutdown of oil production in 2012, and the current economic environment provides an opportunity for private sector actors to secure favorable terms with the government. Investor interest, however, does not necessarily translate into a vibrant mining sector. At this stage in the development of South Sudan's mining industry, most investments are devoted to very risky reconnaissance and exploration activities.[29] Nonetheless, there seems to be a considerable number of companies that are willing to accept the risk of investing in South Sudan (see table 2).

Equator Gold and Consolidated Minerals and Energy Resource Investment Company

Equator Gold, a British company, has been exploring for gold in South Sudan since January 2008. The company's venture is in an area called Luri, on the outskirts of Juba. Starting in early 2008, Equator was one of the first foreign companies that commenced exploration activities in South Sudan. Equator renewed its license from the Ministry of Petroleum and Mining in November 2012 through a partnership with a company called Consolidated Minerals and Energy Resource Investment Company (CMERIC), which is owned by a South Sudanese minister and a Sudanese investor. Equator Gold representatives would not discuss the exact division of shares between the two companies, but they confirmed that Equator owns more than 50 percent of the venture.

Such partnerships between domestic and foreign companies are common practice in the mining industry. According to Equator representatives, mining ventures typically unfold in one of two scenarios: either an existing company with sufficient capital extends its portfolio and provides the necessary start-up capital to fund the venture or else a new mining company is created and they seek to attract the funds necessary to conduct the initial reconnaissance and exploration activities from third parties. In the latter scenario, the funds can be raised either through private investors or through an initial public offering (IPO), usually done on stock exchanges in Australia or Canada.

In transitional economies, such as that of South Sudan, the foreign companies typically provide the capital to get the investment started, including the conduct of feasibility studies, reconnaissance and exploration activities, and any construction costs that may be required. The disproportionate allocation of risk between the foreign and domestic companies is often translated into the dilution of shares if the domestic company does not continue to invest in the venture. According to Equator, developing a mining venture through to the feasibility-study stage typically takes four to five years and costs $15 million to $20 million. For most companies, including Equator, the ideal scenario is that they complete the feasibility studies within three years, confirm that commercially viable deposits of gold are present, obtain a legally recognized mining license, and then sell to a big gold producer, such as AngloGold Ashanti or Barrick Gold.

According to Equator, developing a mining venture through to the feasibility-study stage typically takes four to five years and costs $15 million to $20 million.

New Kush Mining

New Kush Mining has been operating in South Sudan since 2006. Company representatives report that in 2007 they obtained one of the first licenses issued after the CPA. Most of the other companies that received licenses at that time have ceased operations after falling out of favor with the government. New Kush has continued to operate in South Sudan, though the company's CEO reported certain difficulties that they too have been encountering with the Ministry of Petroleum and Mining in recent years. According to the CEO, the ministry granted licenses for areas in Kapoeta that are currently under the New Kush license to DCB Ventures.

Table 2. Companies That Have Conducted Business in South Sudan's Mining Sector since 2005

Company	Nationality/ Country of registration	Type of application	Date of application	Nature of business	Minerals	Area of operations
AfroSuez	—	—	—	—	—	—
Block Mountain Trading & Investment Company	South Sudan	Exploration	April 5, 2010	—	—	Kajokeji, Kapoeta, Boma, Western Equatoria, and Bazi [sic]
Brinkley Mining	United Kingdom	Renewal, exclusive, prospecting	February 16, 2009	Mining	Uranium and associated minerals	Budi, Eastern Equatoria
Cadogan Capital	United Kingdom, St. Kitts & Nevis	Gold dealer, refinery, exploration, export	March 3, 2010	Investment company	Gold	—
Cemex	—	—	—	—	Diamonds	Ezo County, Western Equatoria
Consolidated Minerals and Energy Resource Investment Company (CMERIC)	South Sudan	Prospecting	October 2, 2007	—	Gold and associated minerals	Upper Luri basin area, Central Equatoria
Delta Group	South Sudan	Gold dealer	March 16, 2010	Exploration	Gold	—
DCB Ventures	United Kingdom, South Sudan	—	2012	—	—	Eastern Equatoria
EcoSwiss partners GmbH	Switzerland	Exploration	October 19, 2009	—	Gold, diamonds	—
Epic Exploration/ SPLA partnership	Australia, South Sudan	Mining	February 2, 2012	—	—	Mabaan, Maiwut, Langchok counties
Equator Gold	United Kingdom	—	2008	Exploration	Gold	Luri (outside Juba), Central Equatoria
Eyat for Mining & Exploration	Sudan	Exploration, mining	July 1, 2010	Oil, mining	Bauxite, iron ore, and associated minerals	Map from Beseillia, Wau, Western Bahr-el-Ghazal was attached to the application but it has been lost.
Hono Anton (Sudan)	South Sudan, Korea	Exploration	November 26, 2009	Exploration	Gold	Boma area of Jonglei but issued Mundri West County
Jarch Capital	United States	—	—	—	—	Mayom County, Unity
Liberty Construction	South Sudan	Exploration, cement factory	April 13, 2011	Cement production	Marble, limestone	Kapoeta, Eastern Equatoria

Company	Nationality/ Country of registration	Type of application	Date of application	Nature of business	Minerals	Area of operations
MAR Investment Holding	—	Mining	—	—	—	—
Mayfox	Mozambique	Exploration, transfer	February 26, 2007	Lawyer	Gold and associated industrial minerals	All Kapoeta area
New Cush Engineering & Construction	South Sudan	Mining	December 10, 2009	Cement production	Marble, limestone	—
New Kush Exploration & Mining	United Kingdom, Kenya	Exploration	December 7, 2007	Mining, exploration	Gold and associated minerals	Kajokeji County, Kapoeta District, Anak Anak and Kawokoro areas in Kapoeta South, Budi County
Nile Geotech	South Sudan	Exploration	July 28, 2010	Exploration	Gold	Pageri Payam
Nile Trading & Development	United States	—	—	—	—	Mukaya Payam, Central Equatoria
Nyandang Mining	South Sudan	Mining	February 29, 2012	—	—	—
Palala Resource Global	South Sudan	Prospecting	February 13, 2010	Exploration	Diamond	Tombura County, Western Equatoria
Progressive Construction	Dubai	Exploration	December 3, 2009	Exploration	Limestone	Kapoeta
RA International	South Sudan	Exploration	October 4, 2011	—	—	Kapoeta, Boma, Yambio
Saharco Group International	South Sudan	Prospecting, mining	February 8, 2010	—	—	Kapoeta Mukai
South Sudan Cooperative (SCOOP)	South Sudan	—	—	—	—	—
Southern Cross Mining	United States	—	—	—	Gold	Morobo, Central Equatoria
Southern Sudan Minerals Exploration	South Sudan	Prospecting	January 18, 2007	Exploration	—	—
South Sudan Mining and Investment	South Sudan	Exploration, mining	November 18, 2008	—	Gold	—
United Mining	—	Prospecting	September 22, 2009	—	Gold	Boma area

Note: The information in this table is drawn from several sources, including the register of applications at the Ministry of Petroleum and Mining, interviews with policymakers in the Ministry of Petroleum and Mining and Ministry of Justice, interviews with company representatives, media articles, and past research on large-scale land investments conducted by the South Sudan Law Society (SSLS). Some of the data, therefore are incomplete. Several companies are thought to be no longer active. The ministry's official list of applicants for licenses includes twenty-one of the thirty-one companies listed in the table.

The CEO also cited unrealistic expectations among South Sudanese as to the benefits of mining ventures as a barrier to business in the new country:

> Community engagement projects are necessary for successful business in South Sudan. . . . However, the more you give the more communities will ask. They see a *kawaja* [white person] and will expect large sums of money, without any knowledge of the complications of the mining sector. Expectations are too high and they are very difficult to manage.

He added, "Neither MPs [members of parliament] nor the Ministry of Petroleum and Mining understand how long it will realistically take before gold is coming out of the ground on a large scale."

To date, New Kush has invested approximately $2 million on its venture in South Sudan, half of which was spent on a radio-aerological survey, which company representatives say is the only one of its kind ever undertaken in South Sudan. Company representatives say that they have been criticized by the ministry for not undertaking any activities since 2009, but New Kush maintains it knew their license would not be renewed and were waiting for the enactment of the new mining law before proceeding with additional exploration. In the meantime, the company has been left in limbo as to the current status of the investment. Like the representatives of Equator Gold, the CEO of New Kush thought that this was a pivotal time for the government of South Sudan:

> One of the biggest risks for South Sudan is that the companies now coming in are empty shells, only trying to get a concession so as to flip it, and then sell it on to another buyer. The only added value comes from external factors, such as the mining bill being passed and regulations put in place, improved investment climate and foreign direct investment flowing in, and mining successes in adjacent areas. . . . The next few months will be crucial for the direction of the country.

In terms of its future prospects, New Kush would like to pursue one full season of sampling before continuing with exploration drilling by the end of 2013. After analyzing the samples, a full feasibility study can be finished, which would ideally lead to a mining lease in 2014 or 2015. Then the company would hope to make a public offering or be sold to a large mining company.

DCB Ventures

DCB Ventures is named after the company's founders, a British man named David Cubbin and a South Sudanese woman named Clara Benjamin. According to company representatives, DCB was created in mid-2011 as a financier-facilitator-brokerage company with the long-term aim of creating more jobs, particularly low-skilled ones, with decent salaries.

DCB reportedly entered the mining sector after being invited by a number of prominent politicians in Eastern Equatoria. The company formed a partnership with South Sudan Cooperative (SCOOP) to provide long-lasting panning equipment to artisanal miners in Eastern Equatoria. According to company representatives, DCB is the only mining company operating with a mining license in South Sudan. The license was granted in 2012, and DCB has already filed applications for exploration licenses that would cover an area of fifteen thousand square kilometers.

Currently, due to the manner in which the black market trade in gold operates, miners are greatly disadvantaged when compared with buyers higher up the market chain.

Another stated objective of DCB Ventures is to provide artisanal miners with trading posts where they can sell their gold at a fair price. DCB would then pay duties and government fees, sell the gold internationally, and invest profits in the community in order to limit incentives for black market trading. Currently, due to the manner in which the black market trade in gold operates, miners are greatly disadvantaged when compared with buyers higher up the market chain. Due to the scarcity of dollars, traders buy gold at world prices from local producers using South Sudanese pounds.

They then take the gold to neighboring countries where they can sell it for dollars. In addition to the direct profits from this exchange, the traders will also sometimes purchase goods in the neighboring countries and import them back to South Sudan, including to the mining areas. However, due to factors such as bad roads and import taxes, the traders can charge much more for their goods, making huge profits and leaving the local community with very little profit from gold production.

Epic Exploration

Epic Exploration is an Australia-based company formed in 2009 by property developer Tony Heyns and two African mining expats, Murray Surtees and Allan Mulligan. Their operations are currently restricted to South Sudan.[30] According to Surtees, he was attracted to South Sudan when he found a book in a secondhand bookshop in Germany, which mentioned two water boreholes that the British Geological Survey had drilled in the Upper Nile province.[31] After traveling to the region to confirm the deposits, the company reportedly entered into two joint ventures with the Sudan People's Liberation Army (SPLA). According to Mulligan, Epic hopes to attract additional capital once it has had an opportunity to conduct exploration activities:

> Once we have done some drilling we will then look at either an IPO or backdoor listing. We've had some really promising discussions at Mining Indaba and we will probably take the story to London as well as Australia.[32]

Although experts interviewed for this study thought that such deals between a private company and the military were problematic on several fronts, including the fact that parliamentary control over military funding is indispensible to civilian control over the military, Heyns maintained in an interview with Australian mining magazine *Paydirt* that such direct deals were not uncommon in Africa:

> The MoU [Memorandum of Understanding] offers legitimate protection. In Tanzania, a number of companies have been in JV [joint ventures] with the Ministry of Defence. It is all about trying to make the ministry self-funding. . . . In the case of South Sudan, the ministry has been empowered to develop the country's infrastructure capacity. They are a very organised body because it evolved out of the SPLA, the group that was instrumental in pressurising Sudan into signing the peace agreement in 2005. They were the best funded group during the civil war.[33]

Reports from the field, however, suggest that the investment has been far more contentious than reported in *Paydirt*. According to several local residents, the community in the area where Epic visited initially opposed the investment and threatened to pursue legal means to force the company to cease operations before senior politicians intervened and convinced the community to acquiesce. The matter remains very sensitive, and few interviewees were willing to speak publicly on the matter. As a result, researchers were not able to confirm the precise sequence of events and the current state of the relationship between Epic and the local community.

In any case, Epic's links with the SPLA raise a number of problematic issues. Experience in several other African countries has demonstrated that a combination of mineral deposits of gold and diamonds, the involvement of the armed forces, and weak central government control over the peripheries of the country often contribute to conflicts. In a worst-case scenario, armed groups operating in rural areas outside of direct army and government control could seize discovered minerals and use the profits to secure weapons and supplies. Epic's connections with the SPLA are already somewhat controversial, as the contact person listed on Epic's original application was later arrested for treason.[34] Sources within the government confirm that Epic was already working with a different contact person in the SPLA at the time of his arrest.

In a worst-case scenario, armed groups operating in rural areas outside of direct army and government control could seize discovered minerals and use the profits to secure weapons and supplies.

Conclusion

To the extent that there existed a "golden hour" in South Sudan after the signing of the peace agreement in 2005—during which the country could either chart a path toward economic development and peace or return to conflict and civil war—it is likely drawing to a close. For the last seven years, governance institutions in South Sudan have been in a state of flux. Power has not yet fully consolidated, and the fresh memories of war have given rise to overwhelming public support for new and innovative approaches. The payoffs from reforms in terms of spurring equitable and sustainable economic growth during this period were high.

But sentiments are starting to shift. The political capital that the SPLM/A enjoyed after successfully achieving independence has begun to dissipate, and South Sudanese citizens are beginning to expect and demand more progressive reforms. Decisive government action following a well-timed moratorium saved the country from many problems during the transitional period, but the unresolved tension between state ownership of oil and mineral resources and individual and community ownership of the land surface presents a fundamental dilemma to the mining sector.

The unresolved tension between state ownership of oil and mineral resources and individual and community ownership of the land surface presents a fundamental dilemma to the mining sector.

In order to reduce potentials for social unrest and conflict in relation to future mining ventures, the government and its partners in the private sector should not proceed with any mining activities unless they have secured the free, prior, and informed consent of affected individuals and groups. The military must be prohibited from engaging in commercial activities in the mining sector, and constitutional post holders should not operate mining companies. All government decision making must be subject to open and transparent public review, and the benefits of South Sudan's land and mineral wealth must be shared equitably among all the parties involved.

This report is a first attempt to reconcile existing realities on the ground with the policy decisions that have informed regulatory reforms in the mining sector. The following recommendations are designed to help promote the development of a responsible and sustainable regulatory framework for mining and reduce the potential for social unrest and conflict in relation to future mining ventures:

- In order to satisfy its obligations under both South Sudanese domestic law and international human rights law, the government should not expropriate land for mining purposes without first securing the free, prior, and informed consent of landowning communities.
- The government should enforce constitutional provisions that prohibit the president, vice president, presidential advisers, ministers, deputy ministers, governors, state advisers, state ministers, and other constitutional office holders from engaging in commercial activities.
- The Ministry of Petroleum and Mining should adopt a policy that prohibits the military from becoming involved with mining ventures, either as an institution or through military officers acting in their individual capacity.
- The Ministry of Petroleum and Mining should make Community Development Agreements mandatory for all mining ventures, not just for large-scale mines, and community decisions on whether to grant or withhold consent for agreements should be made legally binding.
- In consultation with the Energy, Mining, Commerce, and Industry Committee of the National Legislative Assembly and the Ministry of Justice, the Ministry of Petroleum and Mining should develop a Mining Revenue Bill that lays the rules for revenue sharing between the different levels of government, and between government institutions, affected communities, and private companies.

- The Ministry of Petroleum and Mining should invest its time and resources in developing the State Mineral Advisory Committees provided for in the Mining Act and ensure that affected communities are represented in all negotiations with government institutions and private companies.
- The Energy, Mining, Commerce, and Industry Committee in the National Legislative Assembly should conduct periodic oversight hearings to monitor implementation of the Mining Act and its effect on the mining sector.
- The government of South Sudan should move quickly to ratify the UNDRIP and other core human rights treaties to clarify its obligations to its citizens under international human rights law.

Notes

1. Ministry of Justice, "Laws of South Sudan: Mining Act, 2012," 2012, www.mpmrss.org/Docs/Mining%20Act%202012%20signed.pdf.
2 "Briefing by Marcelo Guigale, World Bank Director of Economic Policy and Poverty Reduction Programmes for Africa," March 1, 2012, www.sudantribune.com/IMG/pdf/WB_SS_Analysis.pdf.
3. M. S. Deane, "The Mineral Deposits of the Sudan, Hunting Technical Service Report" (unpublished, 1960); O. A. Mohammed, "Geology, Hydrology and Mineral Occurrences in the Southern Region" (unpublished, Geology Mineral Resources Department, Ministry of Industry and Mining, Khartoum, n.d.); J. R. Vail, *Outline of the Geology and Mineral Deposits of the Democratic Republic of Sudan and Adjacent Areas*, Overseas Geology and Mineral Resources, no. 49 (London: Her Majesty's Stationery Office, 1978); A. J. Whiteman, *The Geology of the Sudan Republic* (Oxford: Clarendon Press, 1971).
4. Ed Stoddard, "AngloGold Shows Interest in South Sudan Mineral Potential," *Business Daily*, August 7, 2011, www.businessdailyafrica.com/Opinion-and-Analysis/AngloGold-shows-interest-in-South-Sudan-mineral-potential--/-/539548/1215104/-/tjlrp/-/index.html.
5. Hereward Holland, "Gold Fever Sweeps South Sudan Ahead of New Mining Law," *Reuters*, www.reuters.com/article/2012/11/09/us-sudan-south-gold-idUSBRE8A80M120121109.
6. Jakkie Cilliers and Christian Dietrich, eds., *Angola's War Economy* (Pretoria: Institute for Security Studies, 2000).
7. Douglas Johnson, *The Root Causes of Sudan's Civil Wars* (Oxford: International African Institute, 2003).
8. There are two directorates devoted to mining in the Ministry of Petroleum and Mining: the Directorate of Geological Survey and the Directorate of Mineral Development. The latter is responsible for advising the minister on all mineral title matters and overseeing all mining operations to ensure that they adhere to regulatory standards, whereas the former focuses more on the scientific studies required for the government to effectively exploit their mineral resources.
9 The main limitation on foreign companies is a requirement that they maintain a location in South Sudan where they can be served with legal documents in order to qualify for a license. An exception is made in the case of a large-scale mining license for which foreign companies are only required to incorporate under the Companies Act 2012 and restrict themselves to mining activities as detailed in the mining license.
10. While there is no specific consultation requirement, applications for small-scale and large-scale licenses must "provide a description of how, on an on-going basis, local government, traditional authorities and communities will be informed and consulted about Mining Operations within or near their jurisdiction."
11. The current acting director general for geological surveying, James Yousuf Kundu, confirms Ariki's assessment of the premoratorium period. He contends that most of the companies applying for licenses were little more than speculators who were purchasing licenses in the hope that a general improvement of the investment climate in South Sudan would increase their value, at which point they could sell their rights to "real" mining companies.
12. According to the Transitional Constitution: "Constitutional office holders shall, during their tenure of office, neither practice any private profession, transact commercial business, nor receive remuneration or accept employment of any kind from any source other than the National Government or a state government as the case may be."
13. According to representatives of the Ministry of Petroleum and Mining, CMERIC was allowed to renew its license and continue operating after proving its competence in operation and development of the industry. Robert Obetia Okuga, "Ministry Suspends Companies' Mining Licenses," *Juba Post*, June 29, 2012.
14. The Mining Act gives preexisting license holders sixty days to apply on a priority basis for a license. However, the Mining Act was signed into force in December 2012. It is therefore uncertain how the ministry will treat licenses that predate the moratorium.
15. Andrew Newcombe and Lluis Paradell, *Law and Practice of Investment Treaties*: *Standards of Treatment* (Alphen aan den Rijn, Netherlands: Kluwer Law International, 2009), 370.
16. According to the Mining Act, these committees are to be funded by the Ministry of Petroleum and Mining.
17. "South Sudan Investment Guide," Investment Authority, Ministry of Commerce, Industry and Investment, Government of South Sudan, 2011.
18. The "South Sudan Investor Guide" asserts that for natural resource development, "land can be made available for long-term lease." Ibid., 17.
19. David K. Deng, "The New Frontier: A Baseline Survey of Large-scale Land-based Investment in Southern Sudan," Norwegian People's Aid, 2011, www.npaid.org/en/News_Archive/?module=Articles;action=Article.publicShow;ID=17086; David K. Deng, *Understanding Land Investment Deals in Africa: Country Report*: *South Sudan* (Oakland, CA: Oakland Institute, 2011), www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_country_report_south_sudan_1.pdf.
20. The Mining Act also states that holders of mining licenses cannot begin activities until they have "extinguished, compensated, relocated or otherwise settled" all land-use rights held by third parties in the mining license area.
21. The Land Act seems to use the terms public purpose and public interest interchangeably. John Cantius Mubangizi, "The Constitutional Protection of Socio-Economic Rights in Selected African Countries: A Comparative Evaluation," *African Journal of Legal Studies* 2, no.1 (2006): 1–19.
22. The provision states that reconnaissance and exploration activities "shall not constitute a land use for the purposes, objectives, rents, fees and other requirements of the Land Act, 2009."
23. Saturnino M. Borras and Jennifer Franco, "Towards a Broader View of the Politics of Global Land Grab: Rethinking Land Issues, Reframing Resistance" (ICAS Working Paper Series No. 001, Initiatives in Critical Agrarian Studies, May 2010), 35, www.tni.org/sites/www.tni.org/files/Borras%20Franco%20Politics%20of%20Land%20Grab%20v3.pdf.
24. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), G.A. Res. 61/295, Art. 10, UN Doc. A/RES/61/295 (Sept. 13, 2007), www.un.org/esa/socdev/unpfii/en/drip.html.
25. Ibid., Art. 32(2).

26. UN Committee on the Elimination of Racial Discrimination, *Report of the Committee on the Elimination of Racial Discrimination: Annex V—General Recommendation XXIII*, ¶ 4(d), UN Doc. Supplement No. 18 (A/52/18) (Sept. 26, 1997).

27. Decisions from regional human rights bodies have affirmed these rights. José Martínez Cobo, "Study of the Problem of Discrimination against Indigenous Populations," UN Doc. E/CN.4/Sub.2/1986/7 ¶ 379, 1986; Elizabeth Ashamu, "Centre for Minority Rights Development (Kenya) and Minority Rights Group International on Behalf of Endorois Welfare Council v. Kenya: A Landmark Decision from the African Commission," *Journal of African Law* 55, no. 2 (2011): 300-313.

28. The draft regulations also indicate minimum expenditure requirements for titleholders. Titleholders are required to invest 1 percent of average annual revenues into community development programs. If the titleholder fails to meet this minimum requirement, their title may be suspended. Titleholders are also required to submit annual reports to the Ministry of Petroleum and Mining about their community development activities, and those reports are to be made available for public review.

29. According to a strategic minerals adviser working with private consultancy firm Adam Smith International, mineral exploration companies such as those that are currently operating in South Sudan only have a 0.5 percent success rate on the Toronto Stock Exchange.

30. "An Epic Jump into New Land," *Paydirt*, March 2012.

31. Ibid.

32. Ibid.

33. Ibid.

34. Major General Simon Gatwec Dual was originally listed as Epic's contact person for the original application for a mineral title. *Sudan Tribune* reports that Dual was arrested in November 2012 for an alleged coup attempt. "Coup Plotters Will Be Isolated Internationally If Succeeded—South Sudan's Kiir," *Sudan Tribune*, October 17, 2012, www.sudantribune.com/spip.php?article44238.

eISBN 978-1-60127-174-7

An online edition of this and related reports can be found on our Web site (www.usip.org), together with additional information on the subject.

Of Related Interest

- *Oil, Profits, and Peace: Does Business Have a Role in Peacemaking?* by Jill Shankleman (USIP Press, 2007)
- *Oil and State Building in South Sudan* by Jill Shankleman (Special Report, July 2010)
- *Local Justice in Southern Sudan* by Cherry Leonardi, Leben Nelson Moro, Martina Santschi, Deborah H. Isser (Peaceworks, September 2010)
- *Improving Natural Resource Management in Sudan: A Strategy for Effective State Building and Conflict Resolution* by Paul J. Sullivan and Natalie Nasrallah (Special Report, June 2010)
- *Some Assembly Required: Sudan's Comprehensive Peace Agreement* by Timothy Carney (Special Report, November 2007)

United States Institute of Peace
2301 Constitution Ave., NW
Washington, DC 20037
www.usip.org