

Report on Investing in the Sudan

*Prepared for the Corporation Committee on Investor Responsibility
by the Advisory Committee on Investor Responsibility*

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Executive Summary

The government of Sudan is an active participant in genocide against people in the Darfur region. Oil revenues account for a majority of Sudanese government income, and therefore are instrumental in financing genocide. The Advisory Committee on Investor Responsibility (ACIR) believes that providing instrumentalities of genocide represents a grave social injury. Therefore the Committee recommends divestment from oil companies operating in Sudan as well as from the general obligations of the Sudanese government, along the guidelines contained in *The Ethical Investor*. In addition, the Committee recommends active monitoring of certain companies in the electricity and telecommunications industries.

1. Socially Responsible Investing at Yale

Yale was one of the first institutions to address formally the ethical responsibilities of institutional investors. In 1969, Professor John Simon and graduate students Charles Powers and Jon Gunnemann wrote *The Ethical Investor: Universities and Corporate Responsibility*. Published in March 1972 by Yale University Press, the book established criteria and procedures by which a university could respond to requests from members of its community to consider factors in addition to economic return when making investment decisions and exercising rights as shareholder. The Yale Corporation adopted the guidelines outlined in *The Ethical Investor* in April 1972 and Yale became, according to the New York Times, "the first major university to resolve this issue by abandoning the role of passive institutional investor."

Yale has taken positions under its ethical investment policy on two major issues: South Africa and tobacco. In the former case, Yale divested from companies that operated in South Africa that did not pursue racial integration in their operations. Yale also divested from companies that provided strategic support to the government, including through oil sales. In the case of tobacco, the Corporation declined to divest but instructed the Advisory Committee on Investor Responsibility (ACIR) on how it should vote tobacco-related proxy resolutions. The voting guidelines called for supporting public education regarding the risks of tobacco, as well as supporting restrictions on sales to minors.

Use of shareholder voice is a key component of Yale's ethical investment policy. Divestment is viewed as a last resort, when efforts to remedy grave social injury¹ appear unlikely to succeed. In cases where the social injury is not considered grave, Yale's policy calls for use of shareholder voice but not for divestment. When a company is found to be committing grave social injury, Yale will engage company management or otherwise seek to end the offending behavior before divesting.

The lack of widely accepted standards for evaluating companies operating in Sudan distinguishes the present situation from that faced by Yale in 1978, when the University divested from certain companies operating in South Africa. Yale's policy at that time was based on compliance with the Sullivan Principles, a set of standards requiring firms to pursue racial integration in their operations. Companies were rated based on their compliance and could be divested accordingly. No comparable standards have been developed regarding the Sudan.

This lack of standards has led to a wide variety of institutional responses. Harvard divested only from a single company, and Stanford divested from four companies.² At the opposite extreme, several state pension funds will divest from all companies operating in the Sudan. The ACIR's proposed policy falls in between these approaches, calling for divestment from oil companies currently operating in Sudan, as well as from obligations of the Sudanese government.

Several student organizations have called for divestment from Sudan, including the Yale College Council, *Yale Daily News* and the Yale chapter of Students Taking Action Now: Darfur (STAND). Recent articles from the *Yale Daily News* are attached as Appendix A.

2. Genocide in Sudan

Since early 2003, the Government of Sudan and government-sponsored militias have committed pervasive violations of human rights in Darfur, Sudan. The United Nations Commission of Inquiry on Darfur found in a report issued in January 2005 that "[Sudanese] government forces and militias conducted indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement, throughout Darfur. These acts

¹ *The Ethical Investor* defines social injury as, "the injurious impact which the activities of a company are found to have on consumers, employees, or other persons, particularly including activities which violate, or frustrate the enforcement of, rules of domestic or international law intended to protect individuals against deprivation of health, safety, of basic freedoms; for purposes of these Guidelines, social injury shall not consist of doing business with other companies which are themselves engaged in socially injurious activities." No definition is provided for grave social injury.

² Harvard divested in April 2005 from PetroChina. Stanford divested in June 2005 from PetroChina, ABB, Sinopec and Tatneft.

were conducted on a widespread and systematic basis.”³ Estimates of the death toll range from 100,000 to 400,000, with the true figure likely somewhere in between.

On July 23, 2004, the U.S. Senate and House of Representatives unanimously adopted a joint resolution declaring the atrocities in Darfur genocide.⁴ Based on interviews with over 1,000 Darfurian refugees in Chad, the U.S. Department of State announced in September of 2004 that genocide had occurred, and might still be occurring, in Sudan.⁵ President Bush reiterated that the U.S. Government believes genocide is taking place in Darfur in June, 2005.⁶

Investigations by the humanitarian group Physicians for Human Rights, conducted in refugee camps along the Chad/Sudan border in May 2004, also concluded that genocide was unfolding in Sudan⁷, a position also articulated by non-governmental organizations including the U.S. Committee for Refugees, the International Crisis Group, Africa Action, the U.S. Holocaust Museum Committee for Conscience, and Justice Africa.⁸

In a December 2005 report Human Rights Watch stated: “The Sudanese government at the highest levels is responsible for widespread and systematic abuses in Darfur.”⁹ The U.N. Commission of Inquiry on Darfur found that the government has provided weapons to pro-government militias in Darfur.¹⁰ The State Department indicates that as of August 2004, more than 100 locations in Darfur had experienced aerial bombardment from the Sudanese government.¹¹ The U.N. Commission of Inquiry on Darfur found that government army attacks in Darfur were “deliberately and indiscriminately directed against civilians.”¹²

The U.N. Commission of Inquiry on Darfur has turned over a list of 51 “senior Sudanese government officials, militiamen, army officers, and rebel commanders” to the International Criminal Court for possible indictment.¹³

³ United Nations Commission of Inquiry on Darfur, *Report of the International Commission of Inquiry on Darfur*, January 25, 2005, p. 3. Available at www.un.org/News/dh/sudan/com_inq_darfur.pdf

⁴ 2004 House Concurrent Resolution 467; 2004 Senate Congressional Resolution 124

⁵ U.S. Department of State, *op. cit.* U.S. Department of State, “Documenting Atrocities in Darfur,” September 2004, available at <http://www.state.gov/g/drl/rls/36028.htm>. See also Secretary of State Colin Powell’s opening remarks before the Senate Foreign Relations Committee, available at <http://www.state.gov/secretary/former/powell/remarks/36042.htm>

⁶ VandeHei, Jim. “In Break with U.N., Bush Calls Sudan Killings Genocide” *Washington Post*, June 2, 2005. <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/01/AR2005060101725.html>

⁷ Physicians for Human Rights, “PHR Calls for Intervention to Save Lives in Sudan: Field Team Compiles Indicators of Genocide,” June 23, 2004, available at <http://www.phrusa.org/research/sudan/documents.html>

⁸ Compiled by Eric Reeves, “Quantifying Genocide in Sudan: A Summary and Update,” June 28, 2004, available at http://freeworldnow.blogspot.com/2004_06_01_freeworldnow_archive.html

⁹ Human Rights Watch. *Entrenching Impunity: Government Responsibility for International Crimes in Darfur*. December 2005. available at <http://www.hrw.org/reports/2005/darfur1205/darfur1205text.pdf>

¹⁰ United Nations Commission. at 59; U.S. Department of State, *op. cit.*

¹¹ U.S. Department of State, *op. cit.*

¹² United Nations Commission at 3.

¹³ Warren Hoge, “International War-Crimes Prosecutor Gets List of 51 Sudan Suspects”. *The New York Times*, Sec. A. Col. 3. Pg. 6. Apr. 6, 2005

3. Policy Proposal for Evaluating Companies with Ties to the Sudan

The ACIR considered the question of whether it is possible for companies to responsibly operate in a country whose government directly supports genocide. We concluded that companies who provide funding or other assistance to perpetrators of genocide are themselves complicit. This led the ACIR to develop the following policy:

A company with business dealings in the Sudan shall be presumed to be committing grave social injury, thereby making applicable the guidelines of section B.4. of *The Ethical Investor* on divestment, if a company has knowledge of an act, or acts of genocide and renders substantial assistance to the perpetrators of the genocide. Substantial assistance includes (but is not limited to):

1. providing significant net revenue to those committing genocide
2. providing the instrumentalities with which to commit genocide, and the company knows or should know that those instrumentalities will be used for committing genocide;
3. providing aid to perpetrators that amounts to participation in specific acts of genocide.

The presumption in this section can be rebutted if it can be shown that the company's activities in the country in question benefit members of the victim group more than they cause harm to them.

The policy is formulated as a rebuttable presumption because of the extreme difficulty in gathering information on companies in the Sudan. Contributing to this difficulty is the fact that many of the companies covered by the policy are incorporated in foreign jurisdictions, and subject to a variety of regulatory systems and rules governing disclosure. The presumption places a burden on companies to engage in a dialogue with the University and to provide the ACIR with information.

In line with previous policies adopted by Yale University, the ACIR recommends that the above policy apply equally to public and private investments.

4. Identification of Companies with Business Ties to the Sudan

The ACIR purchased data compiled by Institutional Shareholder Services to identify companies operating in the Sudan. The database contains information on 65 companies gathered from press commentaries and company disclosures. In addition, the ACIR worked with the Allard K. Lowenstein Human Rights Clinic at the Yale Law School and the Lowenstein International Human Rights Project to conduct an in-depth background

study of the situation in the Sudan, and to better understand corporate operations in the country. The Clinic's findings are contained in a report that is attached as Appendix B.

The companies identified in the Lowenstein report can be grouped into 3 sectors: oil, electricity, and telecom. Major oil companies include CNPC and Sinopec (both Chinese), ONGC (Indian), Petronas (Malaysian, state owned), in addition to several smaller companies building oil infrastructure. The energy sector primarily consists of companies involved in the construction of the Merowe/Hamadab Dam, and includes ABB (Switzerland) and Alstom (France). The Telecom sector consists of companies operating the existing land lines and developing wireless communication networks. In addition to Sudatel, the Sudanese telephone company, the major foreign players in this sector are Etisala (UAE), Investcom Holding (Lebanon), and Mobitel/MTC (Kuwait).

Although companies in the electricity and telecommunications sectors may provide means for the government to collect revenue, this must be balanced against the contribution of utility services to the economic welfare of the Sudan. The oil industry provides the majority of government revenues and contributes little direct benefit to most Sudanese. In contrast, provision of utility services contributes relatively little government revenue and provides widespread benefit. Even though only a small fraction of these benefits are directly enjoyed by the members of the region where the genocide occurs, the positive impact of electricity and telecommunications is impossible to ignore. For these reasons, the ACIR decided to focus initially on the oil sector, but may further investigate other sectors of the Sudanese economy in the future.

5. The Link Between Oil Companies and Military Expenditure in Sudan

Oil revenue is a crucial source of income for the Sudanese government. In 2003, total revenues for the Sudanese government were 742 billion dinars (\$3.2 billion). Of this, 423 billion dinars (\$1.8 billion) were from oil revenue and 319 billion dinars (\$1.4 billion) came from tax revenue and other sources.¹⁴ Human Rights Watch has noted that:

Oil revenue has made the all-important difference in projected military spending. The president of Sudan announced in 2000 that Sudan was using the oil revenue to build a domestic arms industry. The military spending of 90.2 billion dinars (U.S. \$ 349 million) for 2001 was to soak up more than 60 percent of the 2001 oil revenue of 149.7 billion dinars (U.S. \$ 580.2 million).¹⁵

Amnesty International has reported that:

Sudan's oil wealth has played a major part in enabling an otherwise poor country to fund the expensive bombers, helicopters and arms supplies which have allowed the Sudanese government to launch aerial attacks on towns and villages and fund militias to fight its proxy war [in Darfur]. By earning increasing oil revenues, the Sudanese government continues to be in a position to deploy considerable resources to military activities – be it in the form of paying salaries, or acquiring

¹⁴ International Monetary Fund. *IMF Country Report No. 05/180*. June 2005. p. 30.
<<http://www.imf.org/external/pubs/ft/scr/2005/cr05180.pdf>>

¹⁵ Human Rights Watch. *Sudan, Oil, and Human Rights*. 2003; p. 59.
<<http://www.hrw.org/reports/2003/sudan1103/sudanprint.pdf>>

equipment, such as helicopter gunships, armaments, and associated hardware. The government has used increases in oil revenues to fund a military capacity that has in turn been used to conduct war in Darfur, including carrying out violations of international human rights and humanitarian law.¹⁶

The Lowenstein Clinic Report provides background on 23 companies that have direct business interests in Sudan's oil industry, either by owning rights to develop particular fields, or through contracts for oil-related construction projects. A majority of these companies are publicly traded, but several are either privately held or state owned. And while most of these companies have active operations, others hold a passive stakes in particular blocks of fields or have suspended their activities.

The ACIR has asked the Investments Office to communicate with companies listed in the Lowenstein report, asking them to provide detailed information concerning their activities in the Sudan. A generic version of David Swensen's letter to companies is attached as Appendix C. Thus far, we have received responses from four oil companies: CNPC, PetroChina, Tatneft, and Total. These responses are attached as Appendix D. While the responses vary widely in content, none provide concrete information.

The ACIR is discouraged by the response rate of the letter writing campaign. In those cases where responses were received, they provide little concrete information to counterbalance the findings laid out in the Lowenstein report. For this reason, the ACIR is pessimistic that a policy of constructive engagement will lead to near-term correction of the grave social injury occurring in the Sudan. Nonetheless, we recommend a final round of engagement with companies before any divestment is finalized.

6. Conclusions and Recommendations to the CCIR

In April of 2005, the ACIR began an extensive study on the links between companies operating in Sudan and the ongoing genocide in the country. This investigation resulted in a detailed report prepared in cooperation with the Allard K. Lowenstein Human Rights Clinic at the Yale Law School and the Lowenstein International Human Rights Project.

The ACIR adopts the conclusion of the Lowenstein report that there is overwhelming evidence that the government of Sudan supports genocide against people in the Darfur region, and that this activity represents grave social injury. Therefore the ACIR recommends divestment from all bonds issued by the government of Sudan.

The Lowenstein report further concludes that the oil sector is the primary source of revenue for the Sudanese government, allowing the government to support genocide. The military, which has been implicated in attacks on civilians, accounts for a large portion of government expenditures. By providing significant funding to a genocidal government, certain oil companies may have become partners in causing grave social injury.

¹⁶ Amnesty International. *Arming the Perpetrators of Grave Abuses in Darfur*. November 2004. <http://web.amnesty.org/library/index/engafrr541392004>

In line with previous policy, the ACIR has asked the Investments Office to actively engage companies identified in the Lowenstein report, requesting detailed information about their activities in the Sudan and their attempts to correct the grave social injury inflicted on the people in the Darfur region. The low response rate by the companies leads the ACIR to be pessimistic that constructive engagement will lead to correction of the grave social injury in the near term.

The ACIR recommends separating companies into two groups. Companies may move between the lists, and new companies may be added, as more information becomes available. The first group, "List One," includes companies which currently operate oil assets in Sudan. This group includes seven companies, four of which are publicly traded and three of which are privately held. These companies are targeted for divestment barring a satisfactory response to a final round of inquiries. Given the gravity of the situation we believe it is reasonable to expect companies to respond within a six-week period. Two other companies, Petronas and Sudapet, would qualify for divestment were they not state-owned.

The second group of companies, "List Two," does not appear to be actively producing oil in Sudan. Some of these companies have the right to operate within the country but are not currently doing so. We will contact these companies and encourage them to refrain from increasing their activities in Sudan. Other companies were placed on this list because they are alleged to be producing Sudanese oil but insufficient evidence was available to merit placement on List One.

List One: Likely Divestment

Bentini (private)
Higleig (private)
Hi-Tech Petroleum (private)
Nam Fatt
ONGC
PetroChina
Sinopec

List Two: Watch List

Al-thani
Cliveden
Dodsal
Lundin
Malaysia Mining Company
Marathon
PECD Berhad
Ranhill Berhad
Tatneft
Total
Vangold
Videocon
Weir Group
White Nile
Zafer

Background Information on Companies Targeted for Likely Divestment.

Oil & Natural Gas Corporation - Active Interests: In March 2003, in the face of mounting pressure from human rights organizations, Talisman, a Canadian oil company, sold its interests in Sudanese oil to ONGC Videsh Limited (OVL), a subsidiary of India's Oil and Natural Gas Corporation (ONGC).

The Indian Government owns approximately 90% of ONGC while the remainder was sold to the public in March 2004. OVL is a wholly owned subsidiary of ONGC. OVL owns a 25% share in the Greater Nile Oil Project, which lists reserves of more than 1 billion barrels of crude oil and current production levels of 300,000 barrels a day.

In addition, OVL reportedly holds a 24% stake in the White Nile Petroleum Company, a consortium of oil companies including Petronas and Sudapet, which owns oil assets in Sudan. ONGC is active in exploring new oil blocks in Sudan, constructing pipelines, and modernizing refineries.

ONGC has not responded to our initial inquiries regarding their involvement in the Sudan. The Sudan Tribune quotes the Vice-President of ONGC as saying, "The shadows of Darfur don't affect us."

PetroChina – Active Interests: The China National Petroleum Company (CNPC) is wholly owned by the Chinese government and owns a 40% stake in the Greater Nile Oil Project. GNOP was set up by the Sudanese government and includes, among other investors, Sudapet, the national oil company. CNPC operates interests in the Sudanese oil industry with Sinopec, Petronas, ONGC, and other investors, and is not only active in the GNOP, but also has stakes in Petrodar and other oil blocks in Sudan.

When CNPC attempted to go public on the New York Stock Exchange in 1999, public criticism over its holdings in Sudan forced it to create a subsidiary, PetroChina, which went public instead. At the time of its creation, PetroChina was 90% owned by CNPC and was comprised of CNPC's domestic holdings. When PetroChina was created, it inherited \$15 billion in debt from CNPC, some of which was incurred in respect to its Sudan activities. There is a large overlap between the management and the board of PetroChina and CNPC. This creates doubt that there exists a firewall between the two companies. The ACIR perceives that the separation between these two companies is largely cosmetic. Companies should not be rewarded for creating lists of subsidiaries that purposefully do not directly own controversial assets owned by the parent company.

In CNPC's response to the ACIR, CNPC lists a number of humanitarian activities in the Sudan that it funds. However, it is not clear to the ACIR whether any of these lend any support to the people in Darfur.

Sinopec - China Petroleum & Chemical Corporation (Sinopec Corp.) was set up in 2000 as a publicly traded company by the state-owned China Petrochemical Corporation (Sinopec Group). 67.2% of Sinopec Corp. is owned by Sinopec Group. Sinopec Group is the unlisted parent company of Sinopec Corp. This situation is similar to CNPC's relationship to PetroChina. It is one of the largest oil companies in China today.

Sinopec's involvement in the Sudan is three-fold. First, through its subsidiary, ZPEB International, which is one of the largest oil engineering service providers in Sudan. Second, through its subsidiary Sinopec International Petroleum Service Corp. (SIPSC), which is Sinopec Group's international overseas and engineering and service arm. Third, through a direct 6% ownership share in Petrodar.

We have received no response to our inquiries from either Sinopec Corp. or Sinopec Group.

Nam Fatt - Active interests: Nam Fatt is a Malaysian construction firm. In July 2004, Nam Fatt's subsidiary, NF Energy, and Bentini Construction won a contract from Petrodar to build six pumping stations on the Melut Basin. This is one of the larger oil investment projects in Sudan. When Africa Intelligence reported the awarding of the Ranhill and Nam Fatt/Bentini contracts for the Melut basin, it stated the total contract worth was \$540 million, which would make Nam Fatt/Bentini's share of the contract \$300 million.

Higleig Petroleum Services and Investment Company Limited (private)/Hi-Tech Petroleum (private): These are both Sudanese oil companies with active interests in block C. Hi-Tech Petroleum also has interests in Blocks 8 and 15. Despite the paucity of information on these two private companies their sole purpose of operation seems to be to further the extraction of oil from Sudan

Bentini (private) - Active interests: In July 2004, Bentini, an Italian construction firm, won a contract, along with Nam Fatt's subsidiary NF Energy, from Petrodar to build six pumping stations on the Melut Basin. This is one of the larger oil investment projects in Sudan. When Africa Intelligence reported the awarding of the Ranhill and Nam Fatt/Bentini contracts for the Melut basin, it stated the total contract worth was \$540 million, which would make Nam Fatt/Bentini's share of the contract \$300 million.

Additional detail on these companies can be found in the Lowenstein report.

Respectfully Submitted,

Advisory Committee on Investor Responsibility

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