

# A Report on the Lundin Case

SUDAN

SOUTH SUDAN  
(After 2011)

Prepared by the chambers of  
9 Bedford Row and RPC Solicitors



BEDFORD ROW INTERNATIONAL

# A Report on the Lundin Case

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## Introduction

Nearly 20 years have passed since the publication of Christian Aid's "Scorched Earth: Oil and War in Sudan" report in March 2001, which contained serious and wide-ranging allegations of suspected complicity in alleged international crimes by Lundin Oil (formerly IPC, later Lundin Petroleum, later Lundin Energy all to be referred to below as Lundin or the Company) and other oil companies in Sudan.

These allegations were investigated immediately by Lundin, by independent journalists invited by the Company to its operations and by European Union Ambassadors, whilst in Sudan in May 2001. Christian Aid's allegations were front-page news in Sweden for weeks. Following media criticism regarding lack of actions by Swedish authorities, questions were raised in the Swedish Parliament and Sweden's Minister of Foreign Affairs was encouraged to open an investigation.

Christian Aid's allegations were exposed to be without foundation. The Company published a comprehensive response to their report, which refuted the allegations line by line. The independent journalists who visited Sudan did not support the accusations and neither did the EU Ambassadors following their visit in May 2001. In 2001, the Sudan desk officer at the Swedish Ministry of Foreign Affairs recorded the following:

"The EU ambassadors' conclusions [from their visit to Sudan] are that ... no evidence can be provided that Sudanese government troops have forced people to flee their villages in the oil fields or that the Government of Sudan carr[ied] out a scorched earth tactic to prepare for the oil industry...most of the allegations made by the various groups and individuals thus seem[s] to be inaccurate and based on hearsay rather than independ[ent] and objective observations...the oil companies have improved the infrastructure ...in the area, which in turn, improved local people's access to marketplaces, health and water."<sup>1</sup>

The Swedish Government took no steps to investigate Lundin.

In 2010, years after Lundin had left Block 5A, the same discredited allegations, were recycled by the European Coalition on Oil in Sudan (ECOS), a campaigning organization, in its report "Unpaid Debt: The Legacy of Lundin, Petronas and OMV in Block 5A, Sudan 1997-2003". The ECOS allegations targeting the Company only arose after a case it had supported against the Canadian oil company Talisman for damages was struck out as the US court held that the claimants had failed to establish that Talisman "acted with the purpose to support the Government's offences."

Notwithstanding the fact that nothing material had changed since Lundin's exoneration in 2001, the Swedish Prosecutor announced a preliminary investigation in 2010. This investigation has been unreasonably long; it was not until end of 2016 that the Company Chairman and CEO at the time, were formally declared to be under suspicion. After 11 years, the Prosecutor has yet to reach a conclusion and has changed the original contents of his suspicion sheet on several occasions, which suggests the evidence to back up his case is lacking.

Lundin's history with Sudan dates back to the early 1990s when it looked for oil in the Red Sea. No oil was discovered, and the concession was handed back. In the year leading up to the Khartoum Peace Agreement in 1997 (KPA), the Company was invited by the Government of Sudan to create an international consortium to search for oil in the southern part of Sudan.

The Company was granted concession rights for Block 5A in collaboration with the Malaysian company Petronas, the Austrian company OMV and the Sudanese state oil company Sudapet. Block 5A lay south of blocks 1, 2 and 4 where discoveries of oil had previously been made. At that time, existence of a petroleum system in Block 5A had yet to be found.

Lundin entered Block 5A in 1997 following the formulation and agreement of principles for peace in the Political Charter dated 10<sup>th</sup> April 1996. The Khartoum Peace Agreement (KPA), signed on 21<sup>st</sup> April 1997, included provisions on the distribution of oil revenues between the Government of Sudan and the producing states as well as southern states and contained assurances that all parties would refrain from armed conflict. Following discussions with central and local authorities and the signing of the KPA, Lundin assessed and expected that it would be operating in a peaceful environment.<sup>2</sup> The EU and UN supported a policy of constructive engagement and actively encouraged oil companies and others to invest in Sudan. There were no UN or European sanctions that stopped companies from doing so. It was agreed by all parties that the economic benefits from oil would help Sudan to develop and improve the wellbeing of its people.

Throughout the six years Lundin was active in Block 5A, it maintained close ties with the local communities, including through its Community Development and Humanitarian Assistance Program (CDHAP). At no stage did the Swedish Government advise, direct or otherwise intervene to halt the oil activities. Sweden's Prosecution Authority did not play any role at the time either. The United Nations and European Union did not make any demands that the Company cease its activities in Sudan.

Lundin eventually sold its interest in Block 5A to Petronas Carigali in 2003 without ever having produced any oil commercially. Its activities had been minimal compared with the other oil companies operating in Sudan.

Sudan before independence in 2011 was the largest country in Africa, occupying eight per cent of its landmass, thinly populated in most rural areas, but suffering continually from ecological disasters that caused not only death but also the displacement of people. This led to the movement of people seeking to improve their socio-economic opportunities and basic survival. Increased conflicts for water, grazing land and fishing rights as well as cattle raids, particularly between the major southern ethnic groups, the Dinka and Nuer, were a constant feature in Sudan's instability. The inter-factional conflicts in the 1990s and the new millennium were responsible for ninety-percent of internally displaced people in southern Sudan. As well as natural disasters, religion and ethnicity were exploited by elites and foreign actors for their own political agendas. The 1990s saw the issue of secession framed around conflicts between the 'Islamic north' and 'Christian south', have increasing resonance to international audiences.

The KPA was superseded by the Comprehensive Peace Agreement of 2005 ("CPA"), setting the stage for the separation of this massive state into two: Sudan and South Sudan. Hopes that peace would come to the south with the two states solution have been defeated. The violence has continued long after South Sudan seceded in 2011 and became an independent state. Many of the South Sudanese leaders today sit uneasily in a fragile government coalition, aimed at keeping the peace between the different tribes and factions who have clashed, competed, and fought with each other before and since independence. South Sudan now ranks as one of the most corrupt states in the world.

That allegations of suspected responsibility for the conflicts were made, and continue to be perpetuated against Lundin, mainly by Christian-led NGOs, is not a surprise when it is understood that conflicts in Sudan were carefully manipulated so as to be seen as a Muslim north vs. Christian south conflict in which oil was claimed to play a central role, despite evidence to the contrary.

The rebel group, the Sudan People's Liberation Movement/Army (SPLM/A), developed the narrative around 'oil wars', alongside that of religious persecution, in their propaganda war as these themes had international resonance. They were successful in influencing western religious evangelists and NGOs who perpetuated this narrative in their reporting.

One of the reasons for the conflict between the Government of Sudan and the SPLM/A was about the degree of autonomy of the south from the north, and eventually the creation of the new state of South Sudan, with oil companies - acting legally and legitimately to assist the country's development - caught in the crossfire. A review of events shows that the conflicts in Sudan were between different people, in different areas, at different times, for different reasons. To put the context of this kaleidoscopic conflict into one that holds foreign oil companies as responsible is a clear misrepresentation of the history of Sudan.

Advocacy groups such as Christian Aid, ECOS and other NGOs were intentionally led to believe by those seeking to separate southern Sudan from Sudan that a religious war was being waged by an Islamic government in the north against the Christians in the south of the country. Southern Sudanese leaders were financially supported by international NGOs and the American evangelical communities which encouraged the US government to take the southern side in this conflict. Whether on purpose or not, the advocacy groups and the churches overlooked evidence that the separatist SPLA leaders in the south were more intent on personal gain than catering to their people and their lands.

This Report is based upon our research and assessment of the background to the criminal investigation against Lundin representatives and a review of the wider context in which the Company invested and operated in Sudan from 1997 to 2003 as part of a consortium of companies. It contains a historical overview of peace and conflict in Sudan. It also explains the policy of constructive engagement, transparency and cooperation adopted by the EU and UN, within which Lundin operated at the time. It assesses the political background to the public scrutiny of the Company and the Swedish Prosecutor's decision to open a criminal investigation in 2010 and maintain it for over 10 years. It assesses the reports of NGOs and other organisations which form the basis of the Swedish Prosecutor's investigation, examining the reception and evaluation of such reports in international tribunals. The Report raises serious concerns about the independence and reliability of the information included in the NGOs' advocacy reports, which forms the basis of the continuing investigation by the Swedish Prosecutor and explains that by the standards of international courts, these reports would not be admissible in an investigation or a prosecution. Contrary to the claims of the NGOs, there is evidence of Lundin's commitment to support and provide much-needed infrastructure for the local population that undermines the allegations the company has faced.

Aside from the inadequate foundation for this investigation, there is a stark issue of natural justice for Lundin representatives who find themselves under suspicion. Having this unfounded suspicion hanging over their lives for so long and the potential of a criminal trial more than twenty years after the disputed events is a significant breach of their human rights to a fair trial within a reasonable time.

This Report was commissioned by the Board of Directors of Lundin to assist it and the Company's stakeholders in understanding the full context in which the Company found itself operating at the time and the Swedish Prosecutor's decision to open an investigation in 2010 into allegations of complicity in international crimes in Sudan. It has been prepared by Steven Kay QC, Gillian Higgins, and John Traversi of 9 Bedford Row Chambers, London and Rupert Boswall, a Senior Partner of RPC, London, independent international lawyers with specialist expertise in international criminal prosecutions, human rights, corporate conduct, and the Rule of Law.

Whereas the Report has been commissioned by the Company's Board of Directors, its content, analysis and conclusions are solely those of the authors and not of the Company or any other concerned parties.

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London  
10 May 2021

## Executive Summary

### I. INTRODUCTION

Lundin Oil,<sup>3</sup> its former CEO and Chairman of the Board are suspected of complicity in alleged war crimes committed in Block 5A in southern Sudan 1999-2003. From the outset, the Company has always maintained that none of its representatives committed or were complicit in any international crimes in Sudan. The allegations and basis for this investigation are seriously flawed as set out in outline in this report.

Nearly 20 years have passed since the allegations were first published in a report issued by Christian Aid, “Scorched Earth: Oil and War in Sudan” (Scorched Earth) in March 2001. These allegations were investigated immediately by the Company and exposed to be without foundation. Independent journalists who accompanied Lundin into Block 5A on that investigation, found nothing to support the allegations. EU Ambassadors who visited Sudan two months later in May 2001, concluded the allegations made by various groups and individuals were inaccurate and based on hearsay rather than independent and objective observations. They also noted that the oil companies had improved the infrastructure in the areas, which in turn had improved people’s access to marketplaces, health and water. In Sweden, no steps were taken at this stage to investigate the actions of the Company.

The NGOs and advocacy groups who made allegations against the possible complicity of the Company were influenced in their reporting by the main rebel group, the Sudan People’s Liberation Movement/Army (SPLM/A). This reality has never been acknowledged by the advocacy groups. The SPLM/A did not want the Government of Sudan to receive oil revenues and sought a deliberate policy of targeting oil companies, which mainly included an international propaganda campaign driven by advocacy, NGO and religious groups, underpinned by a deliberately misleading narrative around ‘oil wars’. The reality was far more complex and importantly, none of these groups ever visited the Company’s area of activities. Crucially, a World Bank publication from 2003 made the following finding: *“The conflict began before the discovery of oil in commercial quantities. Oil is therefore not a prime cause of the conflict, but the future distribution of oil revenue is one of the main outstanding issues in the IGAD peace negotiations.”*

By way of background, the Company entered Block 5A in southern Sudan in 1997 following the formulation and agreement of principles for peace in the Political Charter dated 10<sup>th</sup> April 1996. At that time, peace was the talk of the town with the signing of the Khartoum Peace Agreement (KPA) on 21<sup>st</sup> April 1997. Notably, the KPA included provisions on the distribution of oil revenues between the Government of Sudan and the States and contained assurances that all parties would refrain from armed conflict.

Following discussions with central and local authorities and the signing of the KPA, the Company reasonably expected to be operating in a peaceful environment in Sudan. This belief was held against the backdrop of the EU and UN supporting a policy of constructive engagement and the active encouragement of oil companies and others to invest in the country. It was believed that the economic benefits from oil and international investment would help Sudan to develop and improve the lives of its people. Economic development was seen as a means of long-term peace building. Notably, there were no contraindications by way of UN or European sanctions stopping companies from investing or carrying out operations in Sudan.



Over the course of the Company's activity in Block 5A, it maintained close ties with the local communities through its extensive Community Development and Humanitarian Assistance Program. At no stage did Sweden's Authorities advise, direct or otherwise intervene to halt exploration activities. Neither did the United Nations at any point make any demands that the Company should cease its activities in Sudan. Contrary to the claims of the NGOs there is evidence of Lundin's commitment to support and provide much-needed infrastructure for the local population that undermines the allegations the Company has faced.

Seen in context, the Company was a minor contributor to the overall drilling activity in the area known as the Muglad-Sudd Rift Basin (the "Muglad Basin" covering an area approximately 750 km long and 250 km wide). During the period 1997-2003, 235 exploration, appraisal and development wells were drilled in southern Sudan and the Company drilled just four in Block 5A, accounting for only 1.85% of the total number of wells drilled in the Muglad Basin. The Company never progressed beyond exploratory and appraisal drilling and seismic soundings. The footprint left by its exploration activities was miniscule in comparison with the size of Block 5A and the activities carried out by other companies in other oil blocks in Sudan as it operated for no more than three months of each year.

The Company eventually sold its interest to Petronas Carigali and left Block 5A in 2003 without ever having produced any oil commercially.

In early June 2010, seven years after the Company had formally left Block 5A, the previously discredited allegations were recycled by a campaigning organisation known as The European Coalition on Oil in Sudan (ECOS), in its report "Unpaid Debt, The Legacy of Lundin, Petronas and OMV in Block 5A, Sudan 1997-2003". Notably, these allegations targeting the Company only arose after a case ECOS had supported against the Canadian oil company Talisman for damages was struck out by a US court. It was held that the claimants had failed to establish that Talisman "acted with the purpose to support the Government's offences."

Notwithstanding the fact that nothing material had changed since the Company's exoneration in 2001, on 21<sup>st</sup> June 2010, the Swedish Prosecutor announced the opening of a preliminary investigation. It was not until the end of 2016 that the Company Chairman and CEO at the time were formally declared to be under suspicion. Over the past 11 years, the Prosecutor has changed the original contents of his suspicion sheet on several occasions – an approach which suggests the evidence to back up his case is absent. The unreasonable length of time taken to conduct this investigation constitutes a breach of the right to a fair trial within a reasonable time under Article 6 of the European Convention on Human Rights.

The allegations against the Company and its representatives being considered by the Swedish Prosecutor are without merit and will be challenged in the Swedish Court, should that stage be reached. The Company never ordered by direct or indirect means that any actions be taken by any forces or militias that contributed to the conflict in Sudan, nor did it control any such actions. It held no authority or power that could even cause it to influence events or acts that took place between rival factions in Sudan that had been in conflict with each other for decades, and indeed, remain so today.

This report sets out the Company's involvement in the country, its work in the field of Community Development and Humanitarian Assistance, its contribution to peace, the falsity of the NGO allegations and the response taken by the Company and other actors at the time. The Swedish political context and elements of the unfairness of the investigation to date are also set out in brief.

## II. THE HISTORICAL SETTING

Before South Sudan's independence in 2011, Sudan was the largest country in Africa and bordered nine other African countries: covering more than 2,500,000 square kilometres with 19 major ethnic groups and over 500 subgroups speaking more than 60 languages and dialects. Simply navigating this vast land presents significant challenges.

Conflict may be synonymous with Sudan but alongside exists a continuum of peacebuilding efforts. The international community and Intergovernmental Authority on Drought & Development (IGADD, latterly IGAD) were heavily involved in peace-building efforts between the Government of Sudan and the rebel group, the SPLM/A throughout the 1990s and 2000s. Internal peacebuilding efforts led by the churches and NGOs focused on the inter-factional fighting that had been devastating local communities for decades. The number of different factions, competing groups and warlords in southern Sudan throughout the 1990s/2000s was staggering and when combined with communal grievances presented a deeply complex landscape covering a vast geographical area. To put the context of this kaleidoscopic conflict into one that holds foreign oil companies as responsible is a clear misrepresentation of the history of Sudan.

Droughts, floods and famine are also recurrent themes in Sudan's history. These incidences have not only caused death and food shortages but also displacement on a large scale. From the 1980s through the 1990s, droughts accompanied the desertification of Sudan. This led to the movement of people seeking to improve their socio-economic opportunities and prospects for basic survival. Increased conflicts for water, grazing land and fishing rights, as well as cattle raids, particularly between the major southern ethnic groups, the Dinka and Nuer, were a constant feature in Sudan's instability. It is estimated that the inter-factional conflicts in the 1990s and the new millennium were responsible for ninety-per cent of internally displaced people in Sudan.

Sudan was the largest recipient of aid in sub-Saharan Africa in the 1980s. During the 1990s, humanitarian emphasis began to shift from relief to development. The aid industry was also attempting to move to more sustainable methods to establish longer term peacebuilding in Sudan. The UN Operation Lifeline Sudan (OLS) (1989-2005) was one such example. It was a unique operation as it involved a tripartite agreement between the UN, Government of Sudan and the SPLM/A. Over time, aid would become synonymous with the conflict as aid was taken by the SPLM/A and used in its military campaigns against the Government of Sudan and by the other militia groups in their internecine conflicts in the south. Crucially, these conflicts both pre- and post-dated the Company's oil exploration in Block 5A and their causes multi-layered. Factors include the role of political elites, inter and intra-tribal animosities, competition and control of resources such as land and cattle, historic external influences from Egyptian interference to the divide and rule policies of colonial Britain.

In southern Sudan, the prevailing way of life is traditional agriculture and the raising of livestock. For decades, this has led to acute competition and conflict over natural resources, such as water, fishing and grazing, among the various communities. Farmers and nomadic herdsman in undeveloped rural areas have historically clashed for long-standing reasons, unconnected with oil resources. Religion and ethnicity have been exploited by elites and foreign actors for their own political agendas. Famine and food have been used frequently as weapons of war. Arms have been supplied by foreign powers via Sudan's neighbours fighting proxy or ideological wars via Sudanese factional groups or opportune warlords. The picture is complex and history disputed.

### III. THE COMPANY'S INVOLVEMENT IN SUDAN

Prior to independence in 2011, more than 95% of Sudanese land legally belonged to the State. Sudan's development of its oil resources was not only legitimate, but it was also lawful and in the interest of the State. The extent of the Company's involvement in the State's development of its natural resources was however extremely limited. Block 5A was approximately 30,000 sq km of which a third was swampland with significant additional areas of this region being also flooded during the rainy season. Thar Jath, the site of Lundin's drilling in Block 5A, as well as the Thar-Jath area were entirely flooded during the rainy season. Before the building of the All Weather Road (an elevated gravel road to avoid flooded areas), the lack of roads in this area limited Lundin's exploration activities. In the six-years the Company was in southern Sudan, it only operated approximately 20% of the time.

Following discussions with central and local authorities and the signing of the KPA, the Company assessed and expected to be operating in a peaceful environment in Sudan. The backdrop of EU and UN constructive engagement and the absence of international sanctions encouraged the understanding that the economic benefits from oil and other international commercial sector investments would help Sudan to develop and improve socio-economic development for its people. International investment across many sectors including forestry and agricultural development was actively being promoted and sought by the international community as a means of building peace. The Company was one of multiple international oil and global oil services companies present in Sudan in the late 1990s.

From the end of 2001, the Company suspended operations and made their resumption conditional on a permanent peace agreement. After this point, it did however maintain its community and humanitarian programmes, until it sold its interest in the Block.

### IV. THE COMPANY'S COMMUNITY DEVELOPMENT AND HUMANITARIAN ASSISTANCE IN SUDAN

Throughout the Company's presence in Block 5A, close ties were maintained with the local population through its substantial Community Development and Humanitarian Assistance Program.

The Company believed that community engagement was vital to the economic success of the concession and that its investment had a positive impact on the local community. This plain fact contradicts the allegations by certain NGOs of its complicity in alleged war crimes against civilians.

The Company's development projects had the sole aim of contributing to the welfare of the local populations, particularly those situated in the concession area. In order to achieve this, it carried out consultations with representatives from the local population, tribal leaders, representatives of the state, the Government of Sudan, and other relevant stakeholder groups to determine key needs. This assessment was developed into a formal Community Development and Humanitarian Assistance Program (CDHAP) in 2001.

CDHAP projects included freshwater supply, the improvement of education facilities, healthcare and capacity building. By way of example, the Company built and/or supported six schools by the end of 2001 in Kwergen/Dorang, Kwosh, Thar Jath, Koo, Thoan, and Adok, for 585 pupils. A permanent school was constructed in Thoan.

To prevent the spread of communicable diseases such as malaria, diarrhoea and bilharzia, the Company distributed water, blankets, mosquito nets, tarpaulin, and soap to the local population, sprayed huts and swamps to control mosquitoes, constructed latrines, and facilitated vaccination programmes carried out by health organisations. Between five and eight Sudanese doctors, as well as more than a dozen local paramedical staff were employed by the Company. They worked in mobile tent clinics, temporary straw clinics, as well as in hospitals in the area. Word spread about these clinics and thousands of patients were treated by the Company's medical staff.

In terms of capacity building, the Company also distributed farm tools and fishing tackle to local entrepreneurs and, in particular, it collaborated closely with an international NGO based in Rubkona, which helped thousands of families in the area with their farming and fishing techniques and provided tools to enable people to cultivate their own land. The Company also constructed two water filtration units on the Bahr el Ghazal river for the local population to take drinking water to nearby villages.

#### V. THE COMPANY'S CONTRIBUTION TO PEACE

In 1996/1997, there were clear signs that Sudan was working towards peace. Sudan was opening up to foreign investment and the European Union was actively encouraging European businesses to invest in the country. The IMF was working with Sudan on economic reforms and structural adjustment programmes. It was in this context, and with the upcoming signing of the Khartoum Peace Agreement in April 1997, that the Company entered into an Exploration and Production Sharing Agreement (EPSA). The KPA secured peace between the Government of Sudan and prominent Nuer leaders and southern stakeholders in Unity State, as well as other factions of the SPLM/A. The KPA gave the Company confidence that it would be able to operate in a peaceful and stable environment.

However, the KPA did not hold and there was a resumption of violence in southern Sudan, including in and around Block 5A between the various regional groups and factions and at times between the Government of Sudan and the SPLM/A. It is important to note that distinctions between factions and groups was never 'neat' and alliances were fluid and ever changing. Experts on Sudan recognised that it was difficult to ascertain specific allegiances or objectives of the various factional groups and individuals.

Although the Company generally refrained from getting involved in the political affairs of a country, Carl Bildt, who was the UN Secretary-General's Special Envoy for the Balkans from 1999 to 2001 and a member of the Company's Board volunteered to use his vast experience to promote peace in the region. Bildt met with a number of high-level representatives from all sides, as well as representatives of the key nations acting as peace mediators, such as Kenya, Norway, the UK, and the USA. Sweden as a member of the Inter-Governmental Authority on Development (IGAD) Partner's Forum Support Group for Sudan was also involved in the peace process. During the 1997 peace discussions, Sweden provided significant support including contributions to the IGAD peace fund. Sweden was publicly and actively engaged and directly supported events taking place in Sudan to ensure peace, which provided a clear lead for the Company to follow.

The Company's consultations in relation to peace were held with an array of stakeholders, from the Sudanese government, local government, local Nuer communities, the Swedish government, the humanitarian community, the UN Commission on Human Rights, NGOs, think tanks, the media, negotiators, including representatives of southern Sudan, and the local government of Unity State. The Company also maintained a dialogue with the Swedish Authorities as to their operations in Sudan and continued that dialogue when criticism of their presence entered into the media in 2001. At no stage did the Swedish Government advise, direct or otherwise intervene to halt the Company's exploration and appraisal activities. Neither the UN nor the Swedish Government in the spring of 2001 made any requests or demands that the Company cease its activities in Sudan.

It was not until many years later in 2010 that the Swedish Prosecution Authority embarked on an investigation into the Company's activities in Sudan. This was notwithstanding the fact that the Company had made its own rigorous, wide ranging and transparent investigations and found the substance of the NGO allegations to be untrue.

## VI. FALSE NGO ALLEGATIONS

Allegations of the Company's potential complicity in alleged war crimes come from a small number of NGOs: Christian Aid's March 2001 'Scorched Earth' report and two years later, Human Rights Watch published "Sudan, Oil and Human Rights", the main premise of which claimed that "oil now figures as an important remaining obstacle to a lasting peace". The June 2010 publication of the European Coalition on Oil in Sudan (ECOS) report – Unpaid Debt: The Legacy of Lundin, Petronas and OMV in Block 5A, Sudan 1997-2003 (Unpaid Debt), is based on secondary material. One of ECOS's main purposes was to establish that "Lundin... as a matter of international law may have been complicit in the commission of war crimes and crimes against humanity."

A close analysis of the NGO allegations raises serious concerns about their independence and the reliability of the information cited. These allegations form an important part of the investigation conducted by the Swedish Prosecutor. Many of the reports rely on biased and/or anonymous hearsay evidence and make assertions on the basis of unattributed sources using poor methodology.

Of significance is the reliance by NGOs on the SPLM/A for their conclusions. The SPLM/A was in charge of the majority of the regions visited by the NGOs and had the means to manipulate and control the narrative against the Government of Sudan. Such control inevitably impacted the reliability and impartiality of the subsequent reports published by the NGOs.

The SPLM/A was originally founded in 1983 as a guerrilla movement with Ethiopian backing to fight against the Government of Sudan. In 1991 it split into two rival factions that resulted in years of inter-factional violence in southern Sudan. The SPLM/A was never a coherent fighting force and had various allegiances ranging from Cold War Marxist collaborations to Christian 'victims' in the fight against militant Islam in the late 1990s/2000s. The political wing of the SPLA was the SPLM; the relief arm was the Sudan Relief and Rehabilitation Agency (SRRRA), and the New Sudan Council of Churches (NSCC) was the 'spiritual wing' of the movement. The SRRRA controlled access to SPLA areas for NGOs and other international entities in issuing visas and travel permits. NGOs had to seek visas from the SRRRA and agree terms to access southern Sudan.

The NSCC partnered with organisations such as Norwegian Church Aid, DanChurch Aid, Christian Aid, and the Mennonite Central Committee, as well as religious groups to win financial and material support for clergy, church members, and the greater southern Sudanese community.

The NSCC was expressly thanked in Christian Aid's Scorched Earth report published in 2001 and in Human Rights Watch 2003 report 'Sudan, Oil and Human Rights'. The NSCC developed especially close links with American evangelicals, through its skilful framing of the civil war as a religious conflict.

Many of the NGO reports contain only generalised statements about the movement of people and fail to provide substantive facts or information to establish the causes and exact timing of the alleged displacement. Moreover, none of the NGOs visited the Company's areas of operation in Block 5A. Some of the reports rely on only a handful of interviews and/or unnamed sources and provide no linkage evidence to the Company. There are also serious methodological failings including the following: some interviewees are anonymous, and it is not clear whether formal interviews were ever conducted and recorded; no information is provided as to the qualifications of the interpreters; there is no evidence as to how information was collected and whether interview protocols were adhered to; the identity of the interviewers and their competence to conduct the interviews is unknown; no information is provided as to the duration of any of the interviews or how individuals were selected. Neither is information provided as to the steps taken, if any, to verify the true identity of the interviewees and whether or not they were ever offered an opportunity to confirm what had been attributed to them.

Many interviews are vague, unverifiable and constitute hearsay. They contain secondary, recycled sources and lack transparency, demonstrate confirmation bias and portray a misleading view of the conflict. Satellite imagery relied upon by ECOS to demonstrate population displacement is incorrect and misleading.

Simply put, these reports are advocacy documents implicating the oil industry in conflicts of which they were not a part. Pursuant to the standards of international courts, such reports would not be admissible in an international criminal investigation or a prosecution. Over the years, international criminal tribunals have shown an increasing wariness about relying on such material prepared by advocacy groups, NGOs and other international organisations. The nature and methodology of such reports prevents those accused of crimes from being able to rigorously challenge the case against them in contravention of their fundamental human rights. Evidence of bias, unreliability, flawed research and the absence of accountability make any use of such NGO reports in future criminal proceedings unconscionable.

## VII. RESPONSE TO ALLEGATIONS OF COMPLICITY

When the Company received information concerning allegations of its suspected complicity in war crimes, it responded constructively by (i) carrying out its own internal investigations with independent journalists travelling with them into the region and publishing the findings ('Lundin Oil in Sudan'); (ii) inviting the Government of Sweden to visit the concession to investigate (an invitation which the Government declined); (iii) engaging with NGOs such as Amnesty International, Christian Aid, Human Rights Watch and ECOS; and (iv) seeking to engage with the Government of Sudan as a way to exercise leverage to advocate for a sustainable peace agreement. The facts on the ground that the Company discovered as to what really happened, were completely different to the alleged "oil wars" propagated by the NGOs.

Following their trip in May 2001, EU Ambassadors visiting Sudan found no proof that Sudanese Government troops forced people to leave their villages near the oil fields or that the Government of Sudan was undertaking 'scorched earth' tactics in order to prepare for the oil industry. The UN Special Rapporteur also visited Sudan from 2-14 October 2001 and did not request that the activities of oil companies and in particular, those of the Company to cease.

At no stage did the Swedish Authorities advise, direct or otherwise intervene to halt the oil operations. Neither did the United Nations make any demands that the Company cease its activities in Sudan.

#### VIII. POLITICAL WRANGLING AGAINST CARL BILDT AND LUNDIN

Between 1994 and 2006, the Swedish Government comprised the Social Democrats who were running a minority government with confidence and support from the Green Party (Miljöpartiet) and the Left Party (Vänsterpartiet); collectively known as the Red-Greens (in Swedish, “De Rödgröna”). The Red-Greens were the Government during the entire period of the Company’s involvement in Block 5A from 1997 to 2003.

In the 2006 election, the Red-Greens lost their majority to the Centre-Right Alliance Coalition, who appointed Carl Bildt as Foreign Minister. Carl Bildt had been a Board member of the Company since 2000 but had resigned from this role in 2006 following his appointment as minister and sold his shareholding in the Company.

At this point, certain Red-Green politicians began a campaign against the Company, publicly accusing it of complicity in international crimes in Sudan. This appeared to be a means by which to attack Carl Bildt and thus the Centre-Right Alliance Coalition, notwithstanding his active and well-documented peace advocacy efforts in Sudan and his high reputation as a former Prime Minister and UN Secretary General Special Envoy to the Balkans. The Social Democrat Members of Parliament Morgan Johansson and Peter Hultqvist were the most vocal in this attack.

Despite Carl Bildt's clear testimony and Morgan Johansson's own party's support for constructive engagement at the time the Company was operating in Sudan, Johansson – who was serving as a member of the Committee – maintained his deeply critical stance stating that: “Carl Bildt should understand that it is not appropriate for a Foreign Minister to have financial interests in a company like Lundin Petroleum, which has received widespread criticism from human rights organizations for its operations in Sudan [regarding] involvement in displacement of peoples.”

Morgan Johansson went on to make the defamatory statement that it was a “company with an extremely bad reputation when it comes to human rights. In Sudan, the company is linked to displacement and attacks on the civilian population.”

In 2008, Peter Hultqvist wrote an inflammatory article entitled “Bildt’s Oil Connections are Financing Genocide” (“Bildts oljekontakter finansierar folk mord”). Not only did Hultqvist condemn profits from oil operations as “blood money” that “finances war, abuse and devastation”, but he also alleged that Carl Bildt’s interest in the Company and contact with President Bashir directly damaged the credibility of Swedish foreign policy. All these statements contradicted the previous Swedish Government policies (led by Hultqvist's own party) encouraging constructive engagement in Sudan and failed to take into account that the Company did not, at any stage, make any revenue from oil extraction during its time in the country.

With the publication of ECOS’s “Unpaid Debt” report in June 2010, the Social Democrats and the Left Party continued to raise the matter in Parliament, stating that the Company should fulfil “its obligations under the [2005] CPA and pay reasonable compensation to the victims of the war in Block 5A.” These allegations were made three months before the 19 September 2010 general election in Sweden.

Notwithstanding a number of attempts to discredit Carl Bildt by linking him to allegations made against the Company, the Centre-Right Alliance coalition won the 2010 election, although no longer with an outright majority. Certain Red-Green politicians continued the campaign against the Company.

The next general election took place in 2014, which the Social Democrats won by a small margin. They have been ruling in a minority coalition ever since. Morgan Johansson became (and remains) the Minister of Justice and Peter Hultqvist became (and remains) the Minister of Defence.

In the absence of independent evidence or an inquiry, the willingness of prominent politicians – notwithstanding their own party's position when in government and in the face of comprehensive and detailed refutation by the Company - to make serious allegations against the Company and indirectly Carl Bildt, has been a disturbing aspect of the political backdrop to this case.

## IX. UNFAIRNESS OF THE INVESTIGATION

Whilst the Company and its representatives have co-operated with the investigation, it has been clear that the inordinate length and continuation of this process is a breach of the right to a fair trial within a reasonable time under Article 6 of the European Convention on Human Rights. Applications have been made by Ian Lundin and Alex Schneider to the Swedish Court to have the investigation stopped on these grounds. Notwithstanding Sweden's status as a signatory of the Convention, the Swedish Courts have to date declined even to recognise a power to stop the investigation on human rights grounds and an appeal on this issue is on-going.

The Company and its representatives have co-operated fully with the Prosecutor by providing documents voluntarily requested as part of the investigation and the Chairman and former CEO have agreed to multiple interviews. The Company has always believed that common sense would prevail, and that the investigation would eventually be closed. However, as time has passed, the Company has become increasingly concerned at the entire approach adopted by the Prosecutor on many levels, including the application of the correct principles of law. The Company considers that the investigation has proceeded on an incorrect basis as to the applicable law for complicity liability. To date, applications to the Swedish Prosecution Authority in 2014 and 2015 on this issue have been rejected. As Sweden seeks to take on the responsibility of prosecuting international crimes under the laws of universal jurisdiction it ought to apply international standards.

Moreover, the scope of the Prosecutor's investigation is flawed. For example, the Prosecutor's office has made it clear that it does not intend to call any representative from the Government of Sudan or its military to testify to alleged primary crimes. However, unless the primary crimes can be proved, there is no foundation for the allegations against the Company. Thereafter, complicity between the Company and the Government of Sudan must be proved in relation to the specific alleged primary crimes.

The Prosecutor has decided that owing to the security situation in South Sudan and budgetary constraints, it is unable to carry out any investigations in South Sudan or East Africa.

The approach of the Prosecutor in this case shows a willingness to afford unreasonable credence to biased allegations against the Company. It is incumbent on a prosecutor to seek out sources of objective evidence, independent witnesses and corroboration in respect of crimes alleged by NGOs, since they cannot in any sense be considered impartial. This approach has not, however, been taken to date. Furthermore, a prosecutor must be careful not to align himself with the narrative of the NGOs and should investigate a case independently of intermediaries who might supply evidence and a skewed



case theory. The dangers of not taking such care are well known to those experienced in other cases involving NGOs. This was a fundamental error, committed in recent years by the Prosecutor in the trial of President Kenyatta at the ICC, which ultimately resulted in the withdrawal of the charges and the collapse of the case.

In August and September 2018, the Company made submissions to the Ministry of Justice that the criteria for authorisation to prosecute were not satisfied, contending that the Prosecution's investigation is not in accordance with Sweden's international obligations; and that it is impossible for Sweden to investigate the alleged crimes adequately, given the passage of time and the Prosecution's own acknowledgement that it was not possible for Swedish personnel to travel to Sudan/ South Sudan.

Moreover, there has been unequal treatment as between the Prosecution and the Defence in the Prosecutor's handling of the investigation, which is contrary to the principles of natural justice. The Prosecutor has sought to restrict the Company's legal team's access to details regarding the plaintiffs, has resisted disclosure of the audio recordings of the plaintiffs' interrogations, and refused to accept the lawful application of privilege to the Company's materials. The Company was compelled to go to court on each occasion to ensure unrestricted access to the plaintiffs' details for their legal team, and force disclosure of the recordings and preserve privilege.

Furthermore, the bias of the Prosecutor was shown by his unlawful disclosure to the plaintiffs' lawyers of confidential information provided by the Company to the Prosecutor. The Company applied for the Prosecutor to be removed from the investigation as a consequence but whilst the Swedish Prosecution Authority admitted the unlawfulness of Prosecutor Elving's actions in February 2018, he was not removed. A further application to the Parliamentary Ombudsman also failed to secure any action against the Prosecutor to redress this unlawful behaviour. Subsequently, when Prosecutor Elving stood down from the lead role, his successor Prosecutor Attorps also disclosed information unlawfully to the plaintiffs' lawyers to which the Defence has again objected, without consequence.

The Company maintains that none of its representatives committed or were complicit in any alleged international crimes in Sudan. The allegations and basis for this investigation are seriously flawed. The Company was a force for development in Sudan and did everything in its power to promote peace in that country.

## Chapter 1: Conflict and Peace in North and South Sudan

Conflict may be synonymous with Sudan but alongside this exists a continuum of peacebuilding efforts. There were eight peace agreements from the Addis Ababa Agreement in 1972 to the signing of the Comprehensive Peace Agreement (CPA) in 2005, along with 25 direct or mediated peace talks.<sup>4</sup> These agreements were not limited to settling conflicts between the north and south, in fact most focused on addressing the conflicts between competing southern factions.

The 1990s and 2000s witnessed successive peace initiatives. The IGAD negotiations began in 1993 and continued into 1994 but eventually stalled and broke down as regional tensions overshadowed their progress.<sup>5</sup> The 1996 Political Charter laid the foundation for the Khartoum Peace Agreement (KPA) in 1997. The KPA was a defining and historic moment in Sudan's history as it set in motion plans for a referendum on the south – a pledge that was included in Sudan's 1998 constitution,<sup>6</sup> as well as provisions for wealth sharing, including the oil resources.<sup>7</sup> It laid the foundation for later discussions in Machakos, Kenya and the Protocol of 2002 that included the details on the right to self-determination which eventually led to the CPA in 2005<sup>8</sup> and secession for South Sudan in 2011.

This chapter provides a brief historical overview of conflict and peace in Sudan. Full historical accounts are beyond the scope of this Report, so instead it examines the Khartoum Peace Agreement (KPA) to show the clear rationale for Lundin entering Sudan at a time when peace was the 'talk of the town'. It also coincided with the international community's focus on 'constructive engagement' and economic development as a means for long-term peacebuilding and a means to move away from dependence on humanitarian aid, which is not a sustainable solution for a country. It then looks at external involvement in Sudan and particularly the role of the USA, which was instrumental to South Sudan's independence via powerful religious and political lobby groups. The southern rebel group, the Sudan People's Liberation Movement/Army (SPLM/A) is considered in the context of the USA and humanitarian aid connections; its leading role amongst the many different factions in the secession movement; and the powerful propaganda campaign it initiated focused around religion and oil that the advocacy groups propagated.

### I. HISTORICAL CONTEXT

Before South Sudan's independence in 2011, Sudan was the largest country in Africa and bordered nine other African countries: covering more than 2,500,000 square kilometres with 19 major ethnic groups and over 500 subgroups speaking more than 60 languages and dialects. Simply navigating this vast land presents limitations that are rarely explained to outsiders.

Droughts, floods and famine are also recurrent themes in Sudan's history. These incidences have not only caused death and food shortages but also displacement on a largescale. From the 1980s and through the 1990s, droughts accompanied the desertification of Sudan. This led to the movement of people seeking to improve their socio-economic opportunities and basic survival. Increased conflicts for water, grazing land and fishing rights as well as cattle raids, particularly between factions of the major southern ethnic groups, the Dinka and Nuer, were a constant feature in Sudan's instability. The inter-factional conflicts in the 1990s and the new millennium were responsible for ninety-per cent of internally displaced people in Sudan. There have long been conflicts that have led to strife between different ethnic groups in southern Sudan and Sudan that in no way have been linked to a "north-south" conflict.

Two such conflict hot spots have been the conflicts between the Dinka and Nuer ethnic groups and between different Nuer groups.

Singular causes of the conflicts in southern Sudan are contested. The factors that are most fiercely debated centre around: the role of political elites, inter and intra-tribal animosities, competition and control of resources such as land and cattle, historic external influences from Egyptian interference to colonial divide and rule policies of the former British Empire, access to weapons, external patronage, militarization of society, and/or leadership.

In southern Sudan, the prevailing way of life is traditional agriculture and the raising of livestock. For decades, this has led to acute competition and conflict over natural resources, such as water, fishing and grazing, among the various communities. Farmers and nomadic herdsman in undeveloped rural areas have historically clashed for long-standing reasons. Religion and ethnicity have been exploited by elites and foreign actors for their own political agendas. Famine and food have been used frequently as weapons of war. Weapons have been supplied by foreign powers via Sudan's neighbours fighting proxy or ideological wars via Sudanese factional groups. The picture is complex and history disputed.

## II. KHARTOUM PEACE AGREEMENT (KPA) AND PEACE INITIATIVES

The international community and Intergovernmental Authority on Drought & Development (IGADD, latterly IGAD) were heavily involved in peacebuilding efforts between the Government of Sudan and the rebel group, the SPLM/A throughout the 1990s and 2000s. Internal peacebuilding efforts led by the church and NGOs focused on the inter-factional fighting that was devastating local communities.

In 1996/1997 there were clear signs that Sudan was working towards peace. Sudan was opening up to foreign investment and the European Union was actively encouraging European businesses to invest in the country. The IMF was working with Sudan on economic reforms and structural adjustment programmes. There were no sanctions against investment in Sudan by the EU or UN throughout the Company's period of interest. It was in this context, and with the upcoming signing of the Khartoum Peace Agreement in April 1997, that the Company entered into an Exploration and Production Sharing Agreement (EPSA). The KPA secured peace between the Government of Sudan and prominent Nuer leaders and southern stakeholders in Unity State, as well as other factions of the SPLM/A.

In 1996, the Government of Sudan signed the Political Charter with the South Sudanese Independence Movement (SSIM), and the SPLM/A (Bahr el-Ghazal Group). This led to the 1997 KPA, signed by the Government of Sudan with the South Sudan United Democratic Salvation Front (UDSF), comprising of the South Sudan Independence Movement (SSIM), the Union of Sudan African Parties (USAP), the SPLM/A Bahr el-Ghazal, the Equatoria Defence Force (EDF) and South Sudan Independents Group (SSIG).

The SPLM/A United signed the Fashoda Agreement, which was an addendum to the KPA.<sup>9</sup> The KPA was a significant marker for peace in Sudan's history as it provided for a referendum for the people of South Sudan to exercise the right of self-determination and wealth sharing. Riek Machar said of the KPA: "If we are not ready to live as equals, then let us separate peacefully".<sup>10</sup> In summary, it was intended that the KPA would benefit the whole of Sudan, including the ten southern states, economically and politically.

The Agreement contained stipulations for freedom of religion, constitutional rights, and fundamental human rights. It set out rules for the judiciary, for the enhancement of democracy and for the establishment of the powers of the Federal State and of the individual states, including those of southern Sudan. It established the principle of wealth sharing between the Federal State and the individual states, particularly as regards mineral wealth. Provision was made for Federal social initiatives to be made in the southern states and for the management of issues concerning security within the State's territory. In particular, the Agreement stipulated that the Federal State was responsible for security in the country as a whole and that individual states were responsible for security and public order within the state. These agreements set forth the eventual secession of the south as enshrined in the 2005 Comprehensive Peace Agreement and eventual independence for South Sudan in 2011.

Chapter 4 of the KPA set out several provisions for wealth-sharing, including oil revenues,<sup>11</sup> as part of the Federal Government's "*comprehensive economic and social plan to develop the country in general and to bridge the gap between the various States in particular*".<sup>12</sup> In the wealth-sharing mechanisms, the KPA also referred to the need for rehabilitation of war-affected areas.<sup>13</sup> Annex 3 to the KPA provided that 25 per cent of revenues would devolve to the Federal state (Federal Union), 35 per cent to the surrounding states (the Coordinating Council for the South) and 40% to the producing state. Thus, income from oil was to be shared between the Federal state and the states, with oil projects being managed at a national level with "the participation of the states in the management of such projects". Under Chapter 6 of the KPA, the South Sudan Defence Forces (SSDF) was to "remain separate" from the National Army and "the size of the Sudanese Army in south Sudan should be reduced to peace time level".

In 2002, the IGAD process was revitalized with the appointment of Kenyan General Lazaro Sumbeiywo leading the mediation process between the Government of Sudan and the SPLM/A under John Garang. This process had significant external support from outside agencies. The US was the dominant power, driven by its own foreign policy concerns and economic interests.

"Though the Clinton administration had been involved in the conflict by indirectly providing resources for the SPLA in the mid-1990s, in 2001 the Bush administration made Sudan a priority. Even before the need to work with Sudan on the "War on Terror" revealed itself, oil companies and others in the U.S. were lobbying Bush to remove the sanctions on companies doing business in Sudan from the June 2001 Sudan Peace Act. In August 2001, the administration publicly announced that it did not approve of the sanctions. After the terrorist attacks one month later, the administration made it clear that it planned to work with Sudan's government in joint counter-terrorist efforts".<sup>14</sup>

In addition to the US and IGAD member states, the renewal of the peace process was heavily supported by the United Kingdom and Norway, whilst the EU financed it. Over a period of four years, the process led to a series of mediated talks in Kenya (Nairobi, Karen, Nakuru, Nanyuki, and Naivasha), all of which led to the signing of the CPA in January 2005. The CPA, however, saw the SPLM/A as the sole signatory with the Government of Sudan at the expense of other ethnic southern groups. This approach was divisive as it took away any semblance of democratic process from the outset in South Sudan's state building process.

The 2005 CPA benefited from the cumulated experience of the previous peace processes, which had been a constant over the decades. It is important to acknowledge that the central issues under discussion leading up to the CPA – self-determination, the relationship between state and religion, power and wealth sharing, and security arrangements – had been points of discussion in previous

negotiations. Thus, negotiations started from well-established positions and the challenge for the mediators was to develop a common ground on the main principles underlying the detailed arrangements in the protocols<sup>15</sup>

### III. EXTERNAL INVOLVEMENT: COLD WAR – COMMUNISM TO CHRISTIANITY

External involvement in Sudan has pivoted and evolved against a background of shifting international and local priorities since colonial times. American interest in Sudan has shifted dramatically over the last seventy-years. The Cold War saw a manipulation of USA and USSR sympathies and latterly, Sudan became a battleground to prevent the spread of perceived extremist ideology from taking root.

Sudanese allegiances for any side were never predetermined. Former Sudanese President Nimeiri's promotion of socialist goals on coming to power in 1969 brought him ideologically closer to the Eastern Bloc, but the attempted coup by the Communists in 1971 and subsequent reprisals saw a break away from Eastern Europe. In 1972, there was a resumption of diplomatic relations with the USA, which was followed by a period of strengthening and normalisation of relations with the West. George Herbert Walker Bush visited Sudan in February 1972. Following this visit, he became a strong advocate for the US fostering official relations with Sudan. Until 1981, US military aid to Sudan totalled \$63 million, but between 1981 and 1985 it increased dramatically to \$350 million. Sudan became the largest recipient of economic and military assistance in all sub-Saharan Africa.<sup>16</sup>

In contrast, the SPLM/A under John Garang was closely aligned to Mengistu Haile Mariam, Ethiopia's former Marxist ruler, before he was ousted from power in 1991. SPLM/A recruits were sent to train in Cuba from their refugee camps in Ethiopia in the 1970s/80s.

During the Cold War, Washington had backed the Government of Sudan. The collapse of the Soviet Union in the 1990s, alongside Khartoum's support for a more militant Islam and Saddam Hussein in the First Gulf War, saw the political alliances with the US firmly shift. The SPLM/A now fought a government that had poor relations with the USA, who subsequently saw an ally in the southern Sudanese rebel movement. These themes played into the religious narratives that would soon dominate US involvement in Sudan.

The key leaders of the SPLM/A were some of the best educated in the land and represented the great peoples of south Sudanese tribes: Dr Riek Machar from the Nuer; Dr Lam Akol from the Shilluk; and Dr John Garang from the Dinka. The SPLM/A was never a coherent fighting force as it represented too many disparate and self-interested parties. From its inception in 1983 until the time of the Nasir Declaration in 1991, the SPLM/A policies and practices ran counter to the expectation of many of those who joined.<sup>17</sup> It split into many different and competing factions.

The geographic size and the distinct nature of south Sudanese society shaped the SPLM/A over time. Tribal divisions, ethnic dimensions and contests of power framed its development. "Ethnic mobilisation – and tribal conflicts were the result of political contestation, not a cause. Political agitation along ethnic and tribal lines would not have been effective had it not combined with other issues and been manipulated by those in power".<sup>18</sup> Alliances were self-serving and opportunistic rather than ideological. Power shifted constantly in the SPLM/A as it also did with external relations.<sup>19</sup>

John Garang proved adept in manoeuvring shifting global alliances. He saw an opportunity with the post-Cold War global political environment and changed tactics. He downplayed his Marxist sympathies and the excesses of his campaign, "ready to charm those eager to believe in a better future for Sudan. The SPLM/A spoke of the hope of peace, development, equality and of religion. Describing the suffering

of an oppressed Southern Christian minority, the victim of resurgent slavery from the Islamist North, was extremely potent stuff. It won influential backers in the US”.<sup>20</sup> John Garang found a receptive audience willing to become benefactors and mouthpieces for his cause.

The violence of the SPLM/A was somehow overlooked, or overshadowed by the greater cause of protecting fellow Christians:

“On the left, the largely Democrat-supporting Congressional Black Caucus pushed the crisis in the South to the highest levels of politics. On this one issue they found a common ally in traditional rivals, for both sides of the political divide became supporters of the South. On the right, the evangelical Christians enraged by the persecution of fellow believers also became vocal critics of Khartoum. They were a vital support base of the Republicans.”<sup>21</sup>

Without question, the American religious lobby group became the most ardent and vocal ally for the south Sudan SPLM/A cause: “the conflict in Sudan remained, ‘Africa’s forgotten war’ – until, that is, the American religious community engaged the cause.”<sup>22</sup> John Garang’s communist sympathies were overlooked as he stressed the Christian character of many south Sudanese and highlighted efforts by Khartoum to impose Sharia law upon the whole of Sudan. His words captured the attention of the Evangelical Americans while the militarist instrument that was the SPLA, intolerant and averse to democratic methods and principles, was overshadowed by the greater calling to protect fellow Christians. The fact that many southerners had also been subject to SPLA violence was ignored.

#### IV. RELIGION, SLAVERY and SECESSION

Sudan’s identification as an Arab or African state, and the role of Islam in Sudan were unresolved questions since the country’s independence in 1956. Christian missionaries had first appeared in Sudan in the 1800s and have remained a constant presence in the south.<sup>23</sup> However, the divisions between Christian and Muslim were not as clearly defined as between north and south. Both religions were represented respectively in each region, as are majority animist and traditional beliefs.

Although the relations between the churches and the SPLM/A were weak for much of the 1980s, partly because of the Ethiopian connection and the SPLA’s Marxist orientation under the tutelage of the Derg regime in Ethiopia, the situation changed rapidly in 1989 with the creation of Operation Lifeline Sudan (OLS). This was the biggest UN-led relief and rehabilitation programme in the world at the time. Now that Western aid agencies were flooding into SPLM/A’s territories, it could no longer afford to suppress the churches outright as they represented unfettered access to aid and resources.

John Garang convened a meeting between Bishop Paride Taban of the Roman Catholic Church, and Bishop Nathaniel Garang of the Episcopalian Church, which resulted in the formation of the New Sudan Council of Churches.<sup>24</sup> The name of the NSCC seemed tacitly to take on the SPLM/A’s core concept of “New Sudan”. Soon after, other churches were brought into the NSCC, including the Presbyterian Church of Sudan (PCOS), the Africa Inland Church (AIC) and the Sudan Interior Church (SIC). The NSCC was supported by a group of international church organisations chaired by the national Council of Churches of Kenya, and included the Sudan Catholic Bishop’s Office, Norwegian Church Aid, DanChurch Aid, Christian Aid, the Mennonite Central Committee and the All African Council of Churches.<sup>25</sup>

It was claimed that Christian movements were to some extent the mirror image of the National Islamic Front that they were railing against. South African Frontline Fellowship ran a newsletter titled: ‘*The Challenge of the Crusaders.*’ Frontline Fellowship described the SPLA as the ‘Christian forces’ and the

Sudan army as ‘the Muslim army’.<sup>26</sup> A Christian stronghold in southern Sudan against Islamic expansion in the north was viewed as thus established, with external support and patronage notably from American faith based lobby groups and especially so, following the September 11 attacks in 2001.

The presence of the UN Operation Lifeline Support humanitarian aid mission propelled Sudan onto the international humanitarian agenda from 1989 onwards. However, as human rights lawyer Nina Shea<sup>27</sup> has observed: “What was missing was an appreciation for the religious basis of the conflict. To Sudanese in the south and the Nuba mountains, the religious dimension was clear: Khartoum intended to eradicate the non-Muslim presence in the country. Yet this was not appreciated by the West”.<sup>28</sup> The framing of the conflict along Judeo/Christian values by powerful lobby groups in America provided a turning point for international action in Sudan. These groups proved powerful allies in the narrative struggle of Christians against the persecution of ‘Islam’ in Sudan.

Faith-based networks are powerful activist groups, particularly in the USA.<sup>29</sup> America’s Sudan policy began in the early 1990s and accelerated after the passage of the International Religious Freedom Act (IRFA) in 1998. The IRFA made it a policy of the US government not only to condemn violations of religious freedom, but also to promote and assist other governments in the promotion of the fundamental right to freedom of religion. By “standing for liberty and standing with the persecuted”, the Act affirms that the US would use and implement appropriate tools in its foreign policy apparatus.

The IRFA provided the scaffolding for religious freedom advocacy and the legislation provided the legal basis to pursue action and publicity. The Sudan cause brought the support of evangelicals including the Congressional Black Caucus, Catholic Bishops, Jews, Episcopalians, and secular human rights activists:

“With creativity and verve the Sudan activists employed a variety of tools - publicity, protest, grassroots mobilization, divestment pressure, direct humanitarian aid, and legislative sanctions - to alter the trajectory of Sudanese history. This campaign culminated in the passage of the Sudan Peace Act in 2002, which set the stage for a historic 2004 peace treaty ending civil war between the Khartoum regime and Southern rebel groups. Thousands of former slaves have been manumitted, refugees are streaming back and relief supplies now flow to famine plagued areas once cut off by the regime, providing succor to a people long forsaken by the international community.”<sup>30</sup>

The religious fervour with which the actions of faith-based groups mobilised was extraordinary. As Professor of Political Science, Allen Hertz observed, “the fate of besieged people in Sudan, to a remarkable degree, continues to rest on the mobilization of American religious constituencies”.<sup>31</sup> Slavery was a key issue with which the faith-based lobbying mobilized and were able to draw on powerfully emotive stories from Sudanese people who claimed to be victims of slavery. Baroness Cox from the UK House of Lords was a similarly powerful advocate for the anti-slavery movement in Sudan. She spoke to congregations in America about her numerous trips to Sudan, including stories regarding the rescuing of slaves, which held her in unquestionable heroic status to receptive American audiences. This was despite the criticisms of her actions by global anti-slavery groups who viewed her methods of buying and releasing slaves as a damaging and self-fulfilling strategy.<sup>32</sup> In the wake of the September 11 attack on America, Baroness Cox had argued that, years before the US was targeted, “Jihad Warriors”, inspired by the same ideology as Osama bin Laden, had targeted Christian communities in Sudan, Indonesia and the Philippines.<sup>33</sup> This was a powerful message to send at that time and one that did not go unheeded.

Southern forces manipulated the role of fighting for religious freedom for political advantage, at the same time as they continued their campaigns under the guise of Christian liberators. The wars divided people along ethnic lines and the church was not immune from these divisions.

Although leading religious figures in southern Sudan may not have openly promoted divisive ministries the following was noted: “While individual clergy have had their own political sympathies and pastors on the ground have empathised with their flocks, the churches as bodies have remained united in calling for an end to the killing, a peaceful resolution through dialogue, peace and reconciliation in some cases at great personal risk.”<sup>34</sup> Another view reveals the complexities: “Pastors have blamed pagan elders for blessing military campaigns, while elders have countered that educated Christian elites have presided over more destructive wars than the spear feuds of the past. These competing explanations co-existed because, however much outsiders may see them as a monolithic group, individuals within Nuer communities have multiple identities and competing agendas and conduct most of the politics of mobilising and governing militias at that local level on the basis of more parochial motives.”<sup>35</sup>

Although religious actors and institutions in south Sudan have played a constructive role throughout the conflicts, questions have been raised as to whether they have been effective and at times, struggled to translate their legitimacy and influence into broader peace.<sup>36</sup> Religious actors and institutions have played important roles as peace-makers, including the bringing together of Nuer and Dinka elders culminating in the Wunlit Peace Agreement of 1999, however, they have failed to achieve lasting peace and reconciliation. The churches were able to draw on their strong international links to help bring attention to their cause however and the most receptive audience proved to be the United States.<sup>37</sup> In the US, “key backers were the powerful Evangelical Right, who saw independence as part of a wider battle against Islamic Extremists.”<sup>38</sup>

## V. HUMANITARIAN AID

Sudan was the largest recipient of aid in sub-Saharan Africa in the 1980s. During the 1990s humanitarian emphasis began to shift from relief to development. The aid industry was attempting to move to more sustainable methods to establish longer-term peacebuilding in Sudan. UN Operation Lifeline Sudan (OLS) ran from 1989-2005. It was a unique operation as it was a tripartite agreement between the UN, Government of Sudan and the SPLM/A. Aid would become synonymous with the conflicts in Sudan as aid was taken by the SPLM/A and used in its military campaigns against the Government of Sudan and internecine conflicts in the south: these conflicts pre- and post-dated Lundin’s oil operations in Block 5A.<sup>39</sup>

OLS were not the only humanitarian presence in Sudan. The presence of so many NGOs is underscored by the writer Volker Riehl’s reference to New Sudan being the first ‘NGO-istan’.<sup>40</sup> On 3<sup>rd</sup> February 2001, the Nairobi based correspondent from the influential German *Sueddeutsche Zeitung* reported that UNICEF had built a headquarters for the SPLM/A in Rumbek (Bahr-el-Ghazal). According to Volker: “It is surprising how international agencies such as UNICEF have today taken sides in the potpourri of ‘good and bad’ in south Sudan. It is doubtful, however, whether UNICEF would agree to pay for the building of any Government of Sudan building in Khartoum.”<sup>41</sup>

International involvement in south Sudan waxed and waned considerably throughout the 1990s-2000s as competing global events shifted attention away. Despite widespread reporting and recognition of SPLA violence during the 1990s, the American government under Clinton continued to support the SPLM/A. US support was channelled through various entities and agencies, including selected USAID assisted NGOs like Norwegian People’s Aid, which a later Norwegian government commission found was closely related to the political and military strategies of the rebel movement.<sup>42</sup>



Peter Adwok Nyaba, a former rebel officer wrote about his years with the SPLA that high-ranking officers seized most of the food and other supplies. They then made the civilian refugees work for the rebel movement as porters and servants in return for it.<sup>43</sup>

## VI. AMERICAN INVOLVEMENT

There was a distinct pro-SPLM/A faction within the Clinton administration. Reports of international NGOs in SPLA-controlled areas assuming anti-Arab and anti-Sudanese prejudices abounded:

“Genuine solidarity relations between the aid community and the SPLA were never realized but a climate of opinion developed among many aid workers that they were collectively involved in a struggle against the Arab regime in Khartoum. The most significant of these was Operation Lifeline Sudan (OLS), a large consortium of aid agencies which took form in 1989 and operated under UN auspices flying into SPLA territories from bases in Kenya and northern Sudan which became a crucial mechanism of support for the movement. The OLS practice of providing food to people in SPLA-controlled areas but refusing the same service for SSDF-captured territories because of its links to the Sudanese government is a case in point. Often this meant that a community which abhorred the SPLA nonetheless was forced to put up with it because the people could not long survive having its food source cut off even after local inhabitants had sometimes joined with the SSDF to be rid of the SPLA.”<sup>44</sup>

Influential political figures in the US administration throughout the late 1990s continued to condemn Riek Machar for his rebellion against John Garang, and also for his alliance with the National Islamic Front government in the north. Salva Kiir – who succeeded Garang following his death in a helicopter crash, was perceived as having no such sympathies. Eric Reeves criticised the US government at this time for moral equivalency for equating the faults of the leaders of southern Sudan with those of Sudan.<sup>45</sup> He argued that the former were simply defending their country while the latter should be viewed as criminals.<sup>46</sup> This dichotomy became deeply rooted and normalised as the prism through which south Sudan was viewed and treated by America thereafter.

An influential group of US lobbyists played a pivotal and formidable role in US policy approach to south Sudan. Their work was never humanitarian in nature but rather devoted to the independence of south Sudan and the defence of the SPLM/A and its leader, John Garang. It was said its members “knew little of the internal political dynamics of southern Sudan, had little interest in fact-based analysis, justified the most blatant misrepresentations in support of their principles and commitments and never acknowledged that their hero was a life-long supporter of Sudan’s unity, as well as a mass murderer.”<sup>47</sup>

John Garang’s ability to navigate US government and lobbyists to garner support was an impressive feat. Not least because he was able to pivot from his former Marxist patrons during the Cold War to garner much needed political and financial support from America once the iron curtain had fallen. His American supporters were able to repackage him as a liberal democrat and pursue a narrative that fitted well with evangelical Christians: the SPLM/A was defending persecuted African Christians against an Arab Islamic expansionist government in Khartoum. The complicated backdrop of warfare, hoarding of aid, violence, starvation and forced displacements of civilians by the SPLM/A in revenge or in pursuit of their goals, was conveniently lost against the simplistic repackaging of northern Islamic threat against the persecuted Christian South.<sup>48</sup>

In 1995, the USA became increasingly active in supporting frontline states that had an antagonistic relationship with Khartoum. This approach was justified by the Government of Sudan's association with Islamic groups and fear of extremist Islam that pervaded international relations at this time. In order to apply pressure on Khartoum, the Americans openly supported the SPLA. In 1997, President Clinton signed an Executive Order imposing economic and trade sanctions on the Government of Sudan and in August 1998, the USA directly bombed a pharmaceutical plant in Khartoum, claiming it was producing chemicals. An independent investigation later showed that the US suspicion was unfounded.<sup>49</sup> In 1999, Clinton signed an order allowing the USA to support the SPLA directly.<sup>50</sup>

The new Bush administration in the early 2000s invested heavily in pursuing peace in Sudan based on its own understanding of the conflict and its religious dimensions. John Danforth, a former U.S. senator and ordained Episcopal priest, was appointed in 2001 as Special Envoy for Peace and headed US involvement in Sudan. After September 11<sup>th</sup>, a few days prior to Danforth's appointment, the USA resolved that its peace was dependent on the outcomes of conflict in places such as Sudan. In this vein, the US – along with its partner the UK - established a new strategic, security alliance. This suited the agenda of the Government of Sudan, which could be assured about US involvement in peacemaking, as well as that of Garang, who was confident the Americans would support him on key issues given their involvement and support of the Christian agenda already being pursued by American lobby groups.

Over the intervening years, under the guidance of Danforth, a series of peace agreements and ongoing discussions post-KPA, would come into play that would eventually lead to the signing of the Comprehensive Peace Agreement in 2005. The USA placed pressure on the Government of Sudan to force them to agree to a peace process with the SPLM/A, including threatening sanctions on Sudanese companies and denying funding from global bodies such as the IMF if the Government of Sudan did not engage in the negotiations or restricted humanitarian access to relief agencies.<sup>51</sup>

John Garang was a powerful figure and has been described as a “towering figure, around whom the entire peace process was largely built, and indeed upon which US policy in Sudan was largely based.”<sup>52</sup> This meant the view from the ‘south’ was skewed to fit the agenda of the SPLA and of the elites which were part of the peace process, while ignoring other factions such as the SSDF. There was method and reward in both the SPLA and Government of Sudan keeping other parties out of peace negotiations. It allowed the ruling elites to maintain their control whilst conferring international legitimacy on their power. This ensured inherent divisions were embedded within the foundations of the peace agreement that would see the creation of the new state six years later: divisions that persist and highlight the personal agendas, grievances and motivations.<sup>53</sup>

## VII. LINKS TO EVANGELISM IN THE UNITED STATES

The Bush administration came to office in January 2001 and expressed early on its interest in resolving the Sudan conflict. Bush appointed his USAID director, Andrew Natsios, as special envoy for humanitarian assistance to Sudan in May 2001. Natsios, belonging to a conservative Calvinist Presbyterian church, describes himself as “pretty conservative theologically.” The subsequent employment of John Danforth the former U.S. senator and Episcopal priest in September 2001 as Special Envoy for Peace in Sudan underscored the importance of religion in America's approach towards the region.

On the second day of his presidency, Bush directed senior staff to focus on bringing an end to the war in Sudan. Bush declined to comment on what motivated him to focus on Sudan, however, a pillar of his support base, evangelical Christians, was imploring him to take up the cause. They had long been “concerned about the persecution of Christians in southern Sudan.”<sup>54</sup>

The most controversial position of the United States Commission on International Religious Freedom (US CIRF) and the conservative religious lobby on Sudan, was that the US should provide assistance to the rebel SPLA. The US CIRF recommendation of aid to the SPLA was made in 2000. In its 2001 report, the US CIRF scaled back the recommendation (in line with congressional changes) to recommend support for the National Democratic Alliance (NDA), which it referred to as “the political opposition in Sudan.” This description is misleading. The NDA comprised military as well as political opposition. The SPLM/A was by far its largest member under Garang. Initially the aid was sought in the form of an amendment to the appropriations bill for the fiscal year 2000, which began on 1<sup>st</sup> October 1999. The amendment, sponsored in the US Senate by Senator Sam Brownback and in the House of Representatives by Donald Payne, Frank Wolf, Tom Tancredo, and others, proposed that the President at his discretion, could supply food aid to the SPLA. The move to give food aid to the SPLA was met by the resistance of most of the American operational NGOs involved in relief activities in northern and southern Sudan as it was well known by this time that humanitarian aid could sustain conflict and be a substitute for government and opposition responsibilities regarding the population.<sup>55</sup>

These American organisations were concerned that the U.S. supply of food aid to rebels would become merged—in the mind of the Khartoum government—with their own food-supplying activities to needy civilians. They wanted the appearance of neutrality in the delivery of humanitarian assistance to be preserved, not compromised. President Clinton ultimately decided not to supply food aid to the SPLA. However, the conservative religious lobby succeeded in passing the Sudan Peace Act in the US House of Representatives by 422-2 on 13<sup>th</sup> June 2001. The Sudan Peace Act was sponsored by Senator Tom Tancredo, a Christian Evangelist. However, in October 2002, in the light of Bush administration hostility to any capital market sanctions, the House passed another version of the Sudan Peace Act, one that omitted controversial sanctions. This passed the Senate and was signed into law by the President on 21<sup>st</sup> November 2002.

The Sudan Peace Act “demonstrated the clear resolve of the United States to promote a lasting, just peace; human rights and freedom from persecution for the people of Sudan”.<sup>56</sup> It was a fundamental part of the process that led to the Comprehensive Peace Agreement in 2005 and later in 2011. Despite this, a later African Union report identified the root causes of the on-going conflicts as attributed, in part, to the fundamental flaws of the CPA. Namely that it followed the dominant paradigm of ‘liberal peace building’, which in practice tends to privilege ‘negative peace’ with its preoccupation with ending violence.<sup>57</sup> There was a central focus on ending the north-south conflict by international actors - as this was the prevailing external view of the conflicts, and a complete failure to address longstanding south-Sudan grievances and problems, many of which lay deep within the SPLM/A structure. Further conflict was therefore inevitable.<sup>58</sup>

## VIII. CONCLUSION

Any reading of Sudan’s history demonstrates the sheer complexity in attempts to unravel singular or connected causal factors. This vast land encompasses different peoples, cultures, traditions and religions across an often-unforgiving landscape. Alliances were fluid and opportunistic. External interference has dramatically shaped its historical trajectory and continues to do so today. Shifting allegiances has been constant, although navigating these interests remains challenging.



What is clear is the origins of the many different conflicts pre-and post-date Lundin's time in Sudan. To claim the Company is involved in any of the conflicts during its time in Sudan shows a complete lack of understanding of its history and subjective reading of advocacy reports that were clearly influenced by the powerful SPLM/A propaganda machine in pursuit of their own self-interest.

## Chapter 2: Land Ownership, Famine, Drought, Floods and Displacement

### I. INTRODUCTION

Lundin has been accused of suspected complicity in the displacement of people in order that it might carry on its business of oil exploration. This chapter examines how Sudan's laws, its conflicts, and environmental conditions both natural and man-made, resulting in floods, drought, and food shortages, together with the provision of aid, all had an impact on the movement of peoples. This chapter provides a contextual background to the situation in which the Company was operating in Sudan.

All states compete with their citizens over the use of land. Motorways, railways, energy, and community development projects for which the state compulsorily purchases land from those with legal rights, are a feature of life in all nations. Sudan's development of its natural resources in the form of oil was legitimate, lawful and in the interest of the State and the states, as established in the 1997 KPA. The Petroleum Wealth Act of 1998 placed the ownership and regulation of petroleum firmly in the hands of the national government. Moreover, the United Nations General Assembly consistently supported developing countries' rights to regulate and control the exploitation of their natural resources.<sup>59</sup>

The extent of Lundin's involvement in the State's development of its natural resources was extremely limited. The Company was a minor contributor to the overall drilling activity in the area known as the Muglad-Sudd Rift Basin (Muglad Basin) in Sudan. The basin is situated within southern Sudan and covers an area approximately 750 km long and 250 km wide. During the period 1997-2003, 235 exploration, appraisal and development wells were drilled in southern Sudan. The Company drilled just four in Block 5A, accounting for only 1.85% of the total number of wells drilled in the Muglad Basin.<sup>60</sup> Two of the wells were exploration wells (Thar Jath-1 and Jarayan-1) and two were appraisal wells (Thar Jath-2 and 3).<sup>61</sup> Lundin did not produce any oil or gas at any stage from its two discoveries in Block 5A.

The majority of discoveries (39) were made by the Greater Nile Petroleum Operating Company (GNPOC) in Blocks 1, 2 and 4.<sup>62</sup> GNPOC was the dominant operator in this period and drilled 140 exploration and appraisal wells (accounting for 64.81% of the total wells drilled in the Muglad Basin). Whereas activity within Block 5A was at an early stage with minimal exploration activity and low expenditure compared with the other blocks in the Muglad Basin.<sup>63</sup> See the map showing wells from 1997-2003 and the limited extent of Lundin's activities in Sudan in Annex 1.

### II. SUDAN: GEOGRAPHY

The landscape of southern Sudan is vast and sparsely populated. Sudan before its division was the largest country in Africa: covering over 2,500,000 square kilometres. The country formed eight per cent of the African land mass and was counted among the ten largest countries in the world. There is arid desert to the north and semi-arid lands to the south. The two main constituents of the Nile flow into southern Sudan, joining at Khartoum then flowing as one to Egypt. This arterial confluence has had agricultural, cultural, and historical significance for millennia. It is a conduit for trade, the movement of people between north and south and for commerce as well as conflict, conquest, natural resource exploitation and slavery. Arab groups have entered Sudan at various times from the east and traders have also travelled eastwards through the Sudanese savannah along trade routes to Mecca. These movements over history have led to frequent periods of conflict.<sup>64</sup> Demographic data is difficult to collate as current and historical statistical information is unreliable and uncertain. Mortality rates across

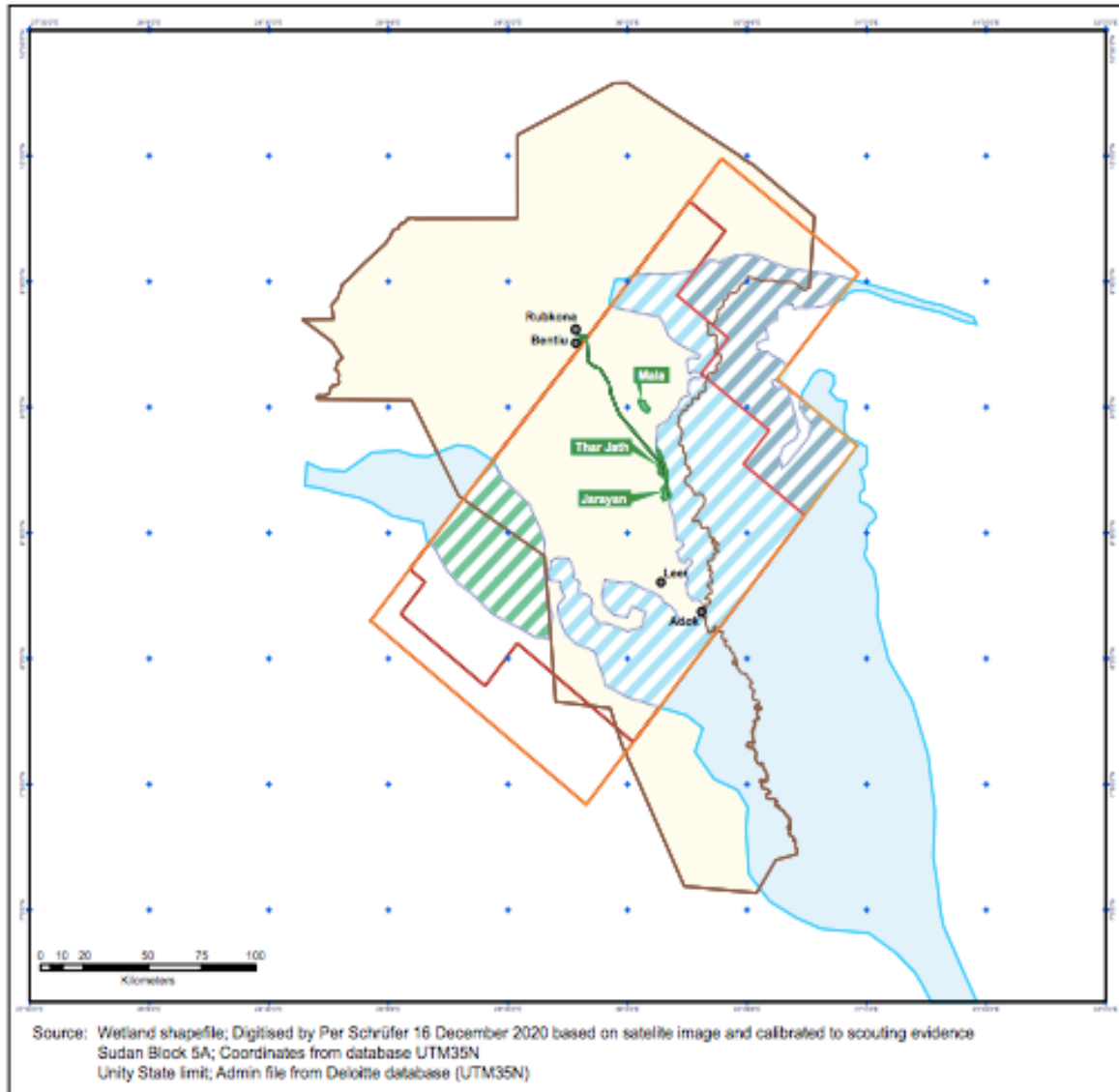
the spectrum are among the highest in the world.<sup>65</sup> Over 70% of the population lives in rural areas. The population density is calculated overall at twenty persons per square kilometre.<sup>66</sup>

Map Showing Sudan and Demarcation of South Sudan<sup>67</sup>



A great tract of the southern part of the country (the Sudd) is flooded for months during the rainy season<sup>68</sup> and there is little in the way of roads or other infrastructure.<sup>69</sup> The swamps are inhospitable, save for wildlife, and the population density of the Sudd is low. It is difficult to calculate precisely the extent of the swamps since it will vary according to whether it is the dry or the wet season. The Sudd, however, is considered to be one of the greatest wetlands of the world. People gather along major rivers, lakes and flood plains. The Dinka and the Nuer people co-exist in the Sudd and depend upon the annual floods and rains to regenerate the floodplain grasses on which their cattle feed. There is, for that reason, a perpetual cycle of movement of people and livestock from higher land, in the wet season, to lower land when the floods subside, and cattle can graze. In relation to Block 5A, as shown in the map below, one-third of the area is swampland, which also covered Thar Jath, the site of Lundin's drilling. During the wet season, a period of at least six months of the year, the flooded area extended to cover the area to the west of Thar Jath. In this environment Lundin operated for only 23% of the period 1997-2003. See the maps below for further information.

### Unity and Block 5A Swamp Calculation



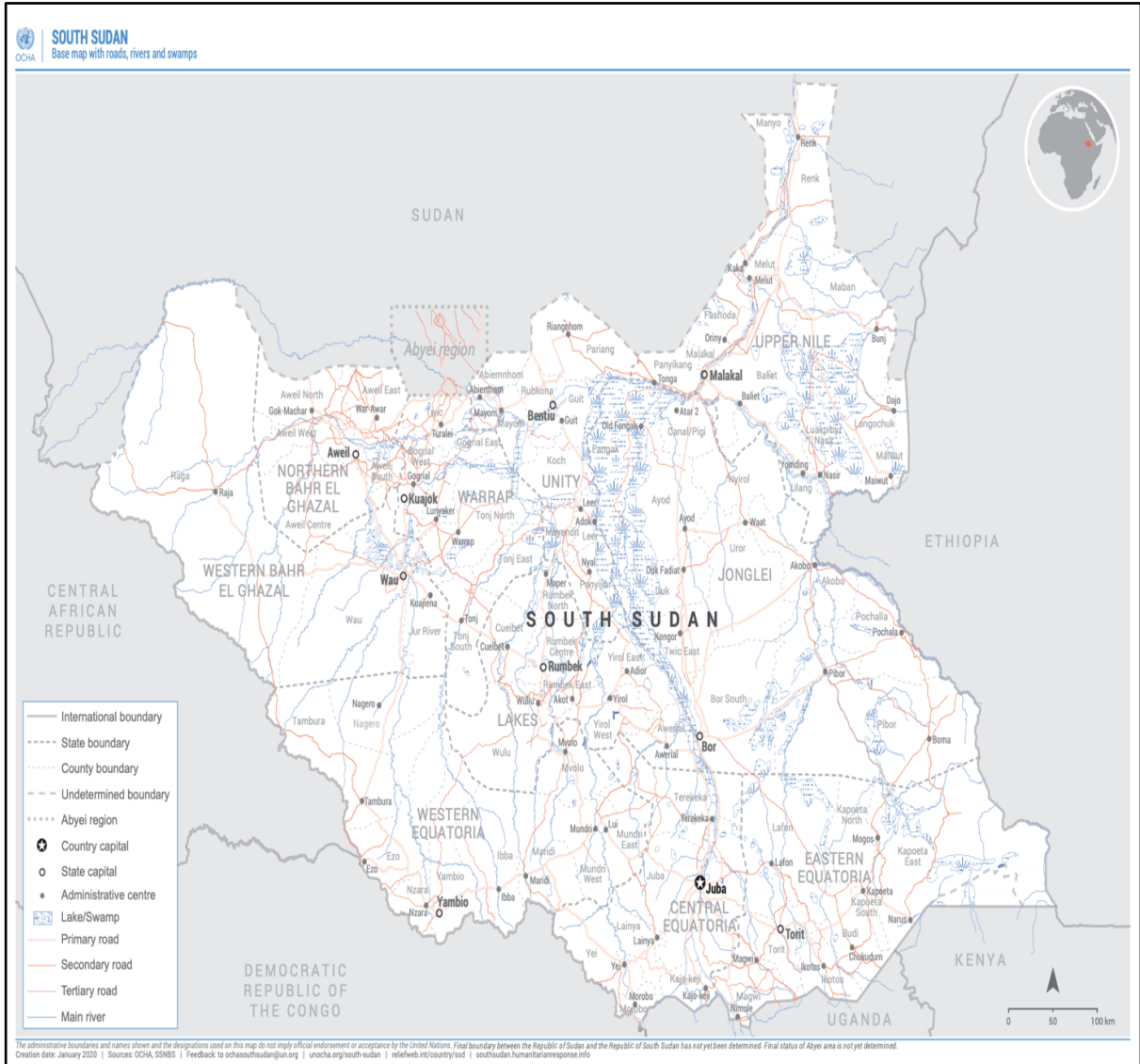
Zone	km <sup>2</sup>	%
Unity State Area	37,302	100
Sudan New Block 5A	20,914	100
Sudan Old Block 5A	30,418	100
Wetland inside Block 5A	7,375	35.3%
Wetland inside Old Block 5A	11,300	37.1%
Wetland and Shrubs	2,466	11.8% <sup>(1)</sup> 8.1% <sup>(2)</sup>
Digitised Swamp and Shrubs		

Calculation of area made with ESRI Arc-View Mapping software

1) New block 5A      2) Old block 5A

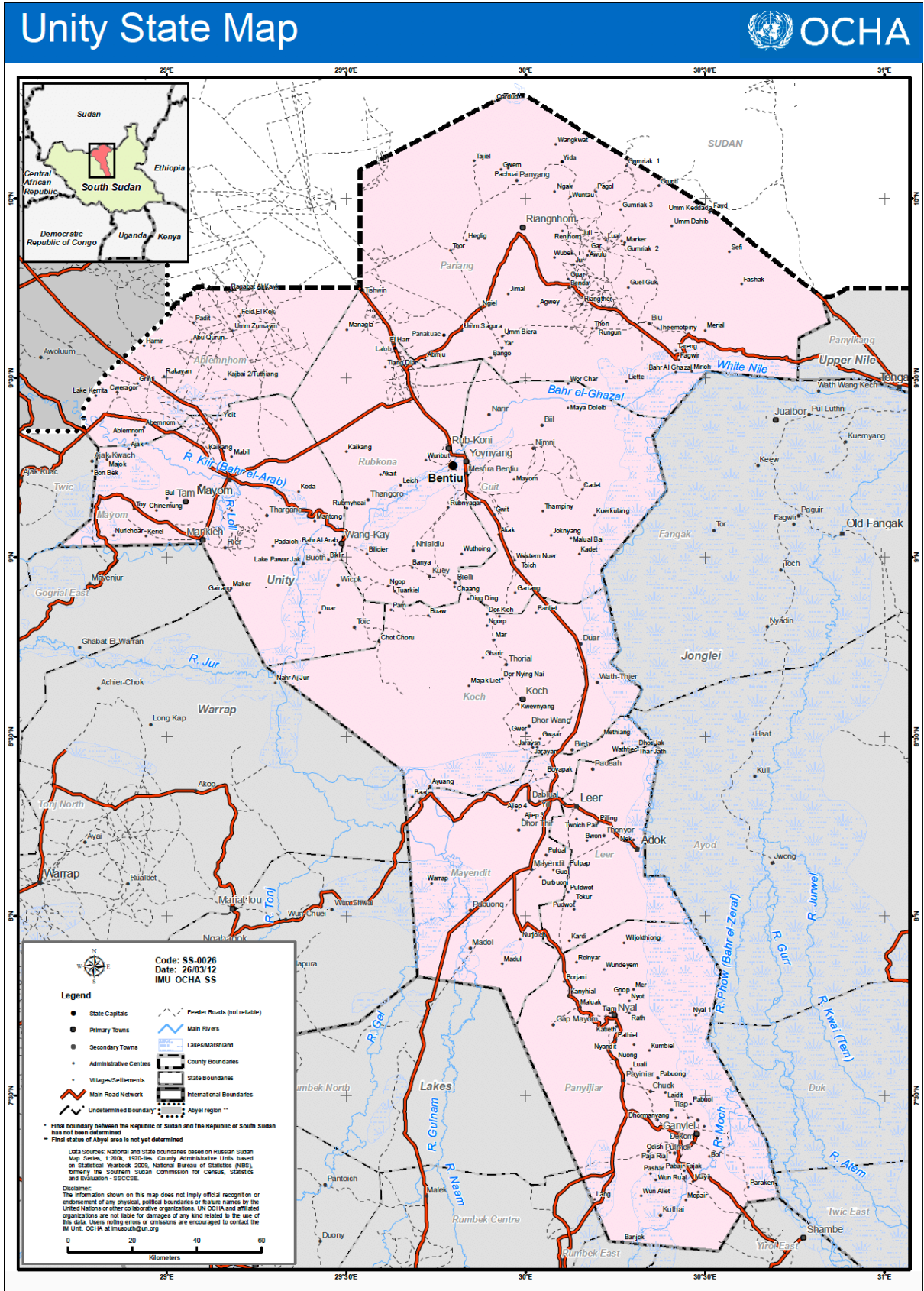
The following maps show (A): South Sudan with neighbouring states (source: OCHA 2020); (B) Unity State (also formerly known as Western Upper Nile) where Block 5A is located (OCHA 2012); (C) Block 5A and (D) Block 5A overlaid on Unity State for scale (dated 2005).

Map of South Sudan (A)<sup>70</sup>

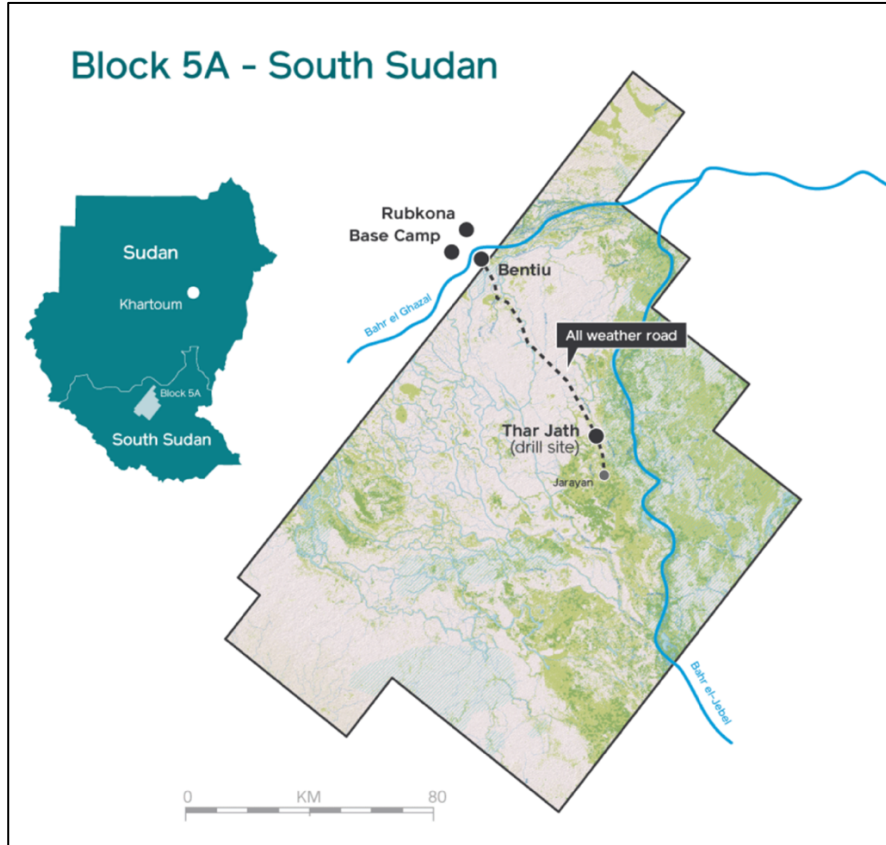




Map of Unity State (B)<sup>71</sup>



Block 5A (C)<sup>72</sup>



Block 5A Overlaid (D)<sup>73</sup>



### III. LAND OWNERSHIP, ALLOCATION AND MANAGEMENT IN SUDAN

More than 95% of Sudanese land legally belongs to the State.<sup>74</sup> The conditions of life in Sudan are such that land use by rural communities and pastoralists is upon land over which they have no legal rights. Instead, these communities have what is described as legitimacy of use.<sup>75</sup> The Government's view of land management is that: "When land belongs to the Government there is generally no problem regarding access or tenure security. If there is a problem, the Government will solve it" (Legality of tenure).

However, land management in the south was viewed differently: "All rural land belongs to the people and is held under customs. To date there is no major problem with this system" (Legitimacy of tenure).<sup>76</sup> Therefore, customary land use whilst considered legitimate, was without legal rights.

The Sudanese Unregistered Land Act, 1970<sup>77</sup> was passed to permit the legal acquisition by the State of large tracts of land for agricultural schemes. The purpose at the time was to enable Sudan to develop its food production more effectively for its people. All unregistered land including that used by rural dwellers and pastoralists, was transferred to the government, permitting it to assign it for development to any public or national enterprise, as well as to farmers on a leasehold basis. The Act applied throughout the country, even in the South where there was no system of land registration in force.<sup>78</sup> Article 8 states: "If any person is in occupation of any land which is registered or deemed to be registered in the name of the Government, the Government may order his eviction from such land and may use reasonable force if necessary".<sup>79</sup> This provision meant that prior users lost the right to use, or be compensated for, land rights incorporated into any planned agricultural programme. Traditional farmers had to be relocated, often to less productive areas. There they may have found little infrastructure and few water resources, causing them in many cases to move again in search of resources. Over decades, the process of continued expanding agricultural production meant that extensive areas were placed under mechanised cultivation in the bid to increase food production.

Whereas entrepreneurs, urban dwellers and elite groups were able to use the legal system to obtain new rights over land through leaseholds, such procedures were not familiar to the great majority of the people, nor well adapted to their needs. The customary system was used by the majority of land users to secure their existing rights. Although these may not have been legally recognised, the rural population considered them legitimate. This gap between the legality of the state's system and the legitimacy of the customary systems was the main reason why tenure over land was not secure.<sup>80</sup> The State was able to impose mechanised farming over large areas of northern Sudan. Thus, thousands of people were expropriated without compensation and lost access to the land where they had lived and made their living. Pastoralist tribes, who were often the poorest and most vulnerable to conflict, lost their tribal homelands as a result of business-driven agricultural activities. The result was that such groups of summarily displaced people were permanently on the move, in turn provoking conflict as they passed through new lands.<sup>81</sup>

### IV. OIL AND MINERAL RIGHTS

A general provision of the Civil Transactions Act<sup>82</sup> provides that the owner of land owns the adjacent soil below it to the extent of its useful limit. With respect to petroleum products, including oil and natural gas, legislation, including the Petroleum Wealth Act 1998 provides that all such products are deemed to be the property of the state, for which no one may search or produce without a licence or lease granted by the government.

The 1998 constitution established that “natural resources under or on the surface of the earth and in territorial waters is public property regulated by law and the State shall provide plans and appropriate conditions for the development of the financial and human resources necessary for utilising such wealth”, provisions similar in a majority of countries in the world.<sup>83</sup> Other legislation recognises that “things discovered” on privately held-land may belong to the land-owner but since 95 per cent of the land belongs to the state a combination of the provisions in the Civil Transactions Act and the Constitution will ultimately prevail against the claims of others.

## V. LIVELIHOODS AND CONFLICT

Overall, Sudan and southern Sudan should have had great potential both in terms of resources and cultivable land. It should have been capable of achieving food self-sufficiency,<sup>84</sup> exporting food to diverse markets and benefitting from the huge quantity of natural resources available. However, for decades it has lacked peace, political stability, infrastructure, capital, and expertise to reach its investment potential.<sup>85</sup>

In southern Sudan, the prevailing way of life is traditional agriculture and the raising of livestock. This leads to acute competition and conflict over natural resources among the various communities. Farmers and nomadic herdsmen in undeveloped rural areas have historically clashed for long-standing reasons, some unconnected with resources, such as tribal divisions and revenge for real and perceived provocations, such as cattle raiding and fighting over fishing rights.<sup>86</sup> By way of example, between 1993 and 1994, conflicts between the Jikany and Lou sections of the Nuer people resulted in 1,500 dead and 75,000 cattle stolen.<sup>87</sup> These clashes were exacerbated by increases in human and animal populations, other outside influences and the devastating effect of the proliferating presence of weaponry.<sup>88</sup> Armed conflict often involved not only aggression directed towards the opposing group but the destruction of property and environment. However, the reality is alliances were fluid and groups rarely defined along clear lines. They were more opportunistic and based around loose groupings of individuals serving their own interests over a greater communal cause. The split in the SPLA in 1991 empowered and increased levels of violence and inhibited access to grazing and fishing areas. This drove and reinforced divisions, competition and mistrust.<sup>89</sup> Block 5A was no exception to this as the local grievances persisted and continued the historic patterns of conflict.

## VI. INSTABILITY

Despite the KPA, the conflicts in southern Sudan bequeathed a widespread shortage of resources, little or poor access to services, and the disruptive presence of armed combatants whose energies swiftly turned from the wider conflict to destructive action within or outside their communities.<sup>90</sup> Refugees from the conflicts, fled into traditionally held territories, increasing competition for resources, fomenting tensions and spawning further violence.<sup>91</sup> There was no effective system of justice that would serve as a deterrent to these activities and the customary laws that had previously held these populations together unravelled.<sup>92</sup>

The prolonged conflicts within and between communities resulted in the destruction of the physical, social, economic, and political infrastructure. Poverty, food insecurity, broken family structures and relationships, greater numbers of IDPs and, inevitably, death and injury followed. In 1983, there were between 6–7.5 million (statistically uncertain) southern Sudanese, by 2000, 3–4 million remained.<sup>93</sup> The inter-factional conflicts in the 1990s are believed by some observers to be responsible for 90% of internally displaced people in Sudan.<sup>94</sup> The impact of these perpetual conflicts was felt in the absence of health workers, teachers, transport and even basic commerce.<sup>95</sup>

None of these services could be financed except by international aid donors, humanitarian organisations and the churches.

Following on from the poor harvest in 1997, 150,000 people moved to Bahr el Ghazal.<sup>96</sup> The whole region was struck by severe food shortages, famine, with significant loss of human life. Rains arrived late in the affected areas and were followed by severe floods, which destroyed crops on 100,000 hectares of land.<sup>97</sup> During the Bahr el Ghazal famine, food aid was dropped in an attempt to prevent all the civilians from starving. It was later found that rebel military commanders, clan leaders and local tribal chiefs had appropriated most of the aid.

## VII. DROUGHT, FLOODS, FAMINE AND AID

In his 2001 UN report for the Food and Agriculture Organization, (“Legality and Legitimacy: A Study of The Access to Land, Pasture and Water in Sudan”), Paul de Wit found that “access to land and other resources” was “the root cause of a wide number of present and latent conflicts”.<sup>98</sup> From the 1980s and through the 1990s, droughts were an increasingly frequent problem, accompanied by the desertification of Sudan. This led to the movement of people seeking to improve their socio-economic conditions and basic chances of survival. Increased conflicts for water, grazing land, and fishing rights, particularly between the major southern ethnic groups, the Dinka and Nuer, were also a reason for and consequence of displacement.<sup>99</sup>

Tribal and inter-factional conflict were the main causes of displacement.<sup>100</sup> The “People-to-People” peace process, which began in 1998, was established to stop these destructive conflicts in the south. The disruption caused by the fighting affected food supply, leading to hunger for hundreds of thousands of people. A report from 1998 refers to how heavy flooding compounded these food shortages experienced by a population already affected by conflict in Western Upper Nile (WUN) and Unity State.<sup>101</sup> The availability of international humanitarian aid affected displacement in that it became part of the reason why people moved to areas and chose to stay.<sup>102</sup> Desertification occurs as a result of severe environmental degradation caused by agricultural production and livestock rearing. Droughts have been endemic in Sudan, causing conflicts over dwindling available resources, such as water and grazing land for decades. Whilst the reduction in cultivable land, has led to soil erosion, loss of soil fertility and infestation. This, in turn, led to the adoption of pastoralism by a large part of the population as a means to carve out a sustainable living, necessitating movement by the people in search of better conditions. The practice of burning old grass to enhance the fertility of the land was also prevalent in southern Sudan, as noted by Lundin when refuting allegations by Christian Aid of a scorched earth policy:

“Burning of land in South Sudan, as in many other African countries, serves for agricultural purposes where high grass is burned in dry seasons in order to turn into fertilizer in rainy seasons. People in the area are nomadic and move according to seasons and agricultural requirements which can differ from year to year.”<sup>103</sup>

Chart Showing Droughts in Sudan<sup>104</sup>

**TABLE 11**  
**History of drought and impact in Sudan 1886-2011**

Years of Drought	Areal Extent	Name and Damage	Source
1684	Sennar region	"The great famine"	O'Fahey and Spaulding (1974)
1835-38	Central Sudan	"Years of famine"	Hill (1970)
1836	Central Sudan	Cholera spread through country	Hill (1970)
1885	Central and eastern Sudan	Slight famine	Al-Oudal (1983)
1888-89	Central, northern, eastern, and western Sudan	Hundreds of thousands died of hunger and disease. People sold their children as slaves to save their lives and later bought them back with higher prices.	Slatin Pasha (1896) Duncan (1952) Farwell (1967) Churchill (1899) Holt (1970) MacMichael (1934)
1890	The Nile area	Locusts and mice consumed the products	Farwell (1967) Duncan (1952)
1906	Affecting all Sudan	Severe famine	
1913	Localised; Mainly northern Sudan	Poor rain, corn brought from India and issued free of charge in distressed areas and cheaply elsewhere	MacMichael (1934)
1914	Central Sudan	"The year of the flour" (flour brought from India because of poor rains)	Henderson (1965)
1927	Central and eastern Sudan	Slight famine	Al-Oudal (1983)
1940	Localised (part of Sudan)		
1967--- 1973	Localised (part of Sudan)		Teklu (1991)
1980--- 1984	Localised (part of Sudan)		Teklu (1991)
1984	Localised (part of Sudan)	Severe famine: 8.5 million people were affected and 7.8 million livestock were lost	Teklu (1991)
1985--- 1990	Localised (part of Sudan)		Teklu (1991)
1987	Affecting all Sudan	3.45 million people were affected	Teklu (1991)
1988	Affecting all Sudan	2.5 million people were affected	Teklu (1991)
1990	Localised (part of Sudan)	600 000 people were affected	
1991	Affecting all Sudan	8.6 million people were affected	
1992-93	Localised (part of Sudan)		
1996		160 000 people were affected	
1997-98	Localised (part of Sudan)	1.0 million people were affected	
2000	Localised (part of Sudan)	2.0 million people were affected	
2003	Localised (part of Sudan)	325,056 people were affected; food shortage in some areas	
2007-08	Localised (part of Sudan)	565,335 people were affected	
2009	Localised	Famine affecting part of South	
2011	Affecting most of South	food shortage in some areas	

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The conflicts in the south began largely in towns, forcing the inhabitants into rural areas, and were characterised by confrontations between the two populations of Dinka and Nuer, often ignited by perceived inequality of resources manifested by the theft of cattle, women and children and over grazing rights.<sup>106</sup> Aid became a factor in the perception of inequality as people fought to control it. Aid also became a major factor in supporting and sustaining the conflicts in south Sudan over time. Factional and (intra) tribal fighting are at the root of displacement in the 1990s, as are the self-serving interests of many factional group leaders.<sup>107</sup> Aid became a main driver of the south Sudanese economy either through provision of food and resources, as well as providing jobs for those with requisite skills. Cattle raids and grazing clashes amongst the Nuer and Dinka were responsible for more deaths and suffering than the conflicts between the Government of Sudan and southern rebels.<sup>108</sup> These clashes disrupted what cultivation was possible because the opportunities to farm were diminished and fields, which were not in the vicinity of dwelling places, were abandoned and left unused. This had the resultant effect of increasing food insecurity in later years.

## VIII. CONCLUSION

There is no single reason for the movement of people in Sudan. Movement was caused by a combination of natural and political reasons and to contend that oil was somehow responsible is to disregard all the other social and environmental conditions and influences that existed and combined to cause instability.

Block 5A was a vast, sparsely populated territory. Lundin operated intermittently in one small, remote part of it and withdrew, suspending its operations for long periods of time. Between 1997 and 2003, the Company was a minor contributor to the overall drilling activity in the 'Muglad Basin' and operated on average less than three-months per year (23%) in Block 5A due to a combination of seasonal constraints (wet versus dry season) and suspensions due to instability in the area.

Lundin never progressed beyond exploratory and appraisal drilling and seismic soundings. Not one barrel of oil was ever brought commercially to the surface. The footprint left by these activities was miniscule in comparison to the size of the Block.



## Chapter 3: Humanitarian Aid: NGOs, the SPLM/A, The Sudan Relief and Rehabilitation Agency and New Sudan Council of Churches

### I. INTRODUCTION

None of the advocacy reports analysed in this Report refer to the level of cooperation that was necessary between NGOs (Christian Aid, ECOS, Amnesty International and Human Rights Watch) and the rebel movement, the SPLM/A, in order for them to carry out their work in southern Sudan. The SPLM/A created a powerful propaganda machine that had international resonance particularly around the issues of religious persecution and references made to ‘oil wars’.

None of the reports set out the nature of the relationship between the NGOs, the Sudan Relief and Rehabilitation Agency (SRRRA) and the New Sudan Council of Churches (NSCC) – both of which were intimately linked with the SPLM/A and referred to as the “relief” and “spiritual” wings of the rebel movement. Ultimately, this lack of transparency impacts the reliability and impartiality of the NGO reports.

This chapter provides information on the humanitarian aid situation in Southern Sudan that saw cooperation with the SRRRA and the NSCC and highlights the SPLM/A’s level of influence on outside agencies.

### II. SPLM/A AND OPERATION LIFELINE SUDAN (OLS)

“Unprecedented recognition” of the SPLA “both in Sudan and internationally” was extended by Operation Lifeline Sudan, which began in 1989. OLS was a consortium of UN agencies and approximately 35 NGOs operating in southern Sudan to provide humanitarian relief due to years of famine and drought. This organisation was set up with the agreement of the Government of Sudan, which agreed that humanitarian aid should be provided throughout Sudan, including rebel held territories. The OLS “provided aid resources into the heart of SPLA-held Sudan (while aid to the [refugee] camps in Ethiopia was also increasing).”<sup>109</sup>

OLS agreed on ground rules with the SPLM/A, which gave considerable legitimacy to the rebel movement. This institutionalized relationship was made operational by a Memorandum of Understanding (MoU), which solidified the SPLA’s position as the sole legitimate force in the south.<sup>110</sup> The SPLM/A, which negotiated this MoU through its humanitarian wing, namely the SRRRA, started to tax the International Accredited Organizations as though it were a government. In order for assistance agencies and organizations to operate in the southern insurgent-held areas, they had to agree to the SPLA’s terms.<sup>111</sup>

Aid funnelled through OLS was being manipulated by the SPLM/A to be used for military spending, which served to further the conflict against the Government of Sudan and internecine conflicts in the south.<sup>112</sup> The SPLA had also started to siphon money from aid operations.<sup>113</sup> It was noted at the time that: “The US has been the principal supplier of food to the NGOs which in turn supply the areas that are the principal garrisons for the SPLA. The SPLA has always kept a very large supply of Dinka displaced civilians near these garrisons, providing itself with a significant food source.”<sup>114</sup>

The OLS has been described as a “propaganda coup” for the SPLA and as “a vehicle for much more favourable publicity, as journalists and diplomats could now visit most parts of the SPLA-held areas in

relative comfort and safety. It was an opportunity that previous liberation movements had only dreamed of.”<sup>115</sup>

### III. SIGNIFICANT INTERNATIONAL AID TO THE SPLA

The SPLM/A benefitted from the significant aid projects provided by foreign countries. The US Government budget for fiscal year 2000 included significant aid provisions for Sudan and the SPLM/A.<sup>116</sup>

In the first five months of 2002, “the United States designated over \$26 million in foreign assistance to the southern sector of Sudan. This money was officially allocated to health-care services, food relief, infrastructure development, and water and sanitation services.”<sup>117</sup> However the SPLA was able to control much of the distribution of these resources because any entity, individual or organization working in the “liberated” zones of the south had to pass through the SRRRA, its humanitarian agency. This arrangement “allowed the SPLA to take credit for services provided to local communities; foreign assistance facilitated the good name that the SPLA was overseeing the distribution of public goods, resulting in an increase of the group’s civic legitimacy.”<sup>118</sup>

During the period between 1997 and 2002, Norwegian People’s Aid paid for the satellite telephone charges of John Garang (the leader of the SPLA from 1983 to 2005) in the amount of USD 1 million.<sup>119</sup> A 1999 documentary by Norway’s NRK (the national broadcaster) alleged that Norwegian People’s Aid allowed the “SPLM to use its planes to transport weapons and landmines to camps in the bush.”<sup>120</sup> In 2000, Norway also provided ‘cash’ payments to the SPLM/A for peace negotiations.<sup>121</sup> The SPLM/A’s ability to access funds from foreign agencies contributed to its ability to continue its conflicts and international propaganda. 66

### IV. THE SUDAN RELIEF AND REHABILITATION AGENCY (SRRRA)

The SRRRA has its origins in 1986 at the Itang Refugee camp in Ethiopia.<sup>122</sup> Originally, the SRRRA, with its office in Nairobi designated itself as an NGO, but later became known as the humanitarian wing<sup>123</sup> or “relief wing of the SPLA.”<sup>124</sup> Since 1989, it had played an important role in regulating contacts with foreign aid agencies.<sup>125</sup> The SRRRA was a “non-profit humanitarian organization impartial and independent on paper but still answering directly to the leadership of the SPLM/A and staffed largely by seconded or retired SPLM/A officers and officials.”<sup>126</sup> The SRRRA was largely seen as the service-providing organ of the SPLM/A.<sup>127</sup> It was acknowledged that the SPLM held power of approval over NGO decisions to hire and fire staff, with preference given to local staff, often affiliated to either the SPLA or the rebel group’s humanitarian wing, the SRRRA. The SPLM also imposed arbitrary taxes on NGO operations, including levies on relief flights. In some cases, the SPLM and SRRRA decided to control NGO assets, movements of NGO staff, and project approval.

The SRRRA played a crucial role in the diversion of humanitarian aid to the rebels but the creation of the NSCC and local NGOs also provided more independent interlocutors to international counterparts.<sup>128</sup> The SRRRA became “officially” independent from the SPLA in March-April 1994.<sup>129</sup> However, although nominally independent, “the SRRRA was responsible for distributing food to needy southerners in the ‘liberated’ zones...and would routinely skim off food and distribute it to soldiers instead.”<sup>130</sup> This was not surprising since most of the SRRRA personnel were SPLA officers drawn from the security unit.”<sup>131</sup>

The SRRRA played a crucial role in terms of the issuance of visas in SPLA-controlled areas.<sup>132</sup> Visas were required to visit these areas by international NGOs and could be obtained upon application in Nairobi through the SRRRA, by agreement with the SPLM/A.<sup>133</sup> These visas generated income for both the SRRRA and the SPLM/A. Any visit to southern Sudan was thereby monitored and managed by the SPLM/A.

“The SRRRA’s autonomy as a relief agency was in doubt from the start, as its office in Nairobi doubled as a liaison office for the SPLM/A, but NGOs aiming to work inside SPLA-controlled Sudan have no option but to work through this office, which approves all projects and handles travel.”<sup>134</sup>

The ability of the SRRRA and SPLM/A to control the travel, duration and location of the NGO members visiting SPLA-controlled areas was evident.<sup>135</sup> Such control inevitably impacted upon the reliability and impartiality of the subsequent reports published by the NGOs.

## V. THE NEW SUDAN COUNCIL OF CHURCHES (NSCC)

### (i) ORIGIN AND LINKS TO THE SPLA AS THE “SPIRITUAL WING OF THE MOVEMENT”

In 1989, key church leaders approached John Garang and the SPLM/A about constituting a new council of churches with a “spiritual and administrative mandate for the liberated areas of southern Sudan”.<sup>136</sup> In January 1990, John Garang agreed to their proposal, which had several advantages for the SPLM/A:

“It improved its [the SPLM/A’s] credential with the industrialised countries, by contriving simultaneously to suggest religious freedom and Christian identity, in contrast to the newly-installed Islamic regime in the North. It hoped this might stimulate western countries to grant aid to the South. At the same time, NSCC would provide convenient channels for assistance particularly from Christian organisations abroad. There was also the role of Christianity as a reinforcement of popular resolve in the struggle.”<sup>137</sup>

On 17<sup>th</sup> January 1990, SPLM/A Radio announced the formation of the New Sudan Council of Churches.<sup>138</sup> Formed in Torit, the NSCC was intended to be a “coordinating body formed to facilitate the collective action of South Sudan’s various church denominations...to compensate for the Sudan Council of Churches’ inability to represent its member churches in rebel-controlled areas.”<sup>139</sup>

In the public announcement, the “NSCC was described by the spokesman of the SPLM/A as ‘a spiritual wing of the Movement’, suggesting a concern to ensure that churches did not become centres for political dissent.”<sup>140</sup> From the “beginning, the ‘spiritual wing’ was seen very much as a means of obtaining material assistance. NSCC began with a strong relief agenda.”<sup>141</sup> Alex de Waal explains that this “has been viewed as the point at which the SPLA gave Christians official sanction, and freedom to operate.”<sup>142</sup> John Garang was keen to push for closer ties with the churches to increase his political outreach throughout southern Sudan but also to be able to connect directly with the food and financial aid that was dispersed through the churches.

It has been suggested that the SPLM/A tolerated the NSCC because leaders of the movement assumed the Council would prove a powerful public relations ally, both inside and outside the country.<sup>143</sup> According to African Rights, the SPLM/A “hoped this might stimulate western countries to grant aid to the South. At the same time, NSCC would provide convenient channels for assistance particularly from Christian organisations abroad.”<sup>144</sup>

The early years of the NSCC were “fraught with administrative difficulties and division among the churches.”<sup>145</sup> In response, partner agencies supplied funds, advice and personnel in many cases.<sup>146</sup> From 1990, the headquarters of the NSCC was based in Nairobi and it kept its Secretariat in Torit until 1992 when it had to be evacuated to Nairobi due to fighting between the SPLA and the Government of Sudan.

Following the fragmentation of the SPLA in 1991, the NSCC launched a Peace Desk in 1992 though the majority of the endeavours undertaken by the Council focused on relief and aid disbursement.

#### (ii) LEADERSHIP

The first Chairman of the NSCC was Bishop Paride Taban, Catholic Bishop of Torit, who is a long standing partner of Pax. The Vice-Chairman was Nathaniel Garang. In 1990, they agreed to the appointment of American Roger Schrock from the Church of the Brethren as Executive Secretary. Schrock was a committed pacifist who “brought a new and challenging biblical and theological approach” that would profoundly shape the future development of the NSCC.<sup>147</sup> Schrock played a key role in the “People-to-People” peace conferences.

#### (iii) MEMBERSHIP AND FUNDING

The NSCC drew its membership from the churches in southern Sudan, namely the Roman Catholic Church, the Episcopal Church of the Sudan, the Presbyterian Church of the Sudan, the African Inland Church, Sudan Interior Church, and the Pentecostal Church of the Sudan as an associate member. The first committee of the NSCC was held in Ethiopia in 1989.<sup>148</sup>

The NSCC Secretariat drew its support from international and local partners. By 1999, it had an annual budget of over three million US dollars, according to one report.<sup>149</sup> Significant sums of money were sought annually by the NSCC from international funders to facilitate peace conferences for the purpose of “on-going reconciliation” in southern Sudan.<sup>150</sup> NSCC updates from 2000 show direct coordination with the SPLM/A in relation to undertaking such peace conferences in their areas of operations, which would have included obtaining visas from the SPLM/A for travel.<sup>151</sup>

#### (iv) NSCC, THE INTERNATIONAL COMMUNITY AND NGOS

The NSCC held sway over individual congregations and church members and became a sought-after partner by the international community including NGOs.<sup>152</sup>

The NSCC partnered with organisations such as Norwegian Church Aid, DanChurch Aid,<sup>153</sup> Christian Aid, and the Mennonite Central Committee as well as religious groups to win financial and material support for clergy, church members, and the greater Sudanese community.<sup>154</sup> A “substantial amount of the NSCC’s political prowess lay in its ties with international actors, both religious and secular, in addition to the social networks it cultivated in Sudan.”<sup>155</sup> The NSCC was expressly thanked in Christian Aid’s Scorched Earth report, published in March 2001. Moreover, financial records from the year 2000 show that Christian Aid financially supported NSCC.<sup>156</sup> Christian Aid provided funding and support for the NSCC’s “People-to-People” peace conferences, which took place in Sudan from 1999.<sup>157</sup>

## VI. THE NSCC AND ITS RELATIONSHIP WITH THE USA

Under the early executive directorship of Dr Haruun Ruun, a Sudanese national who became a naturalised U.S. citizen, the NSCC was able to build a relationship with “American churches and agencies that funded peace initiatives.”<sup>158</sup> Rev Tom Glenn, a parish associate of Shandon Presbyterian Church explained that: “The New Sudan Council of Churches really thrived because of that and were able to be the sponsoring agency for a lot of the work for peace.”<sup>159</sup> The NSCC developed especially close links with American evangelicals, through its skilful framing of the civil war as a religious conflict.<sup>160</sup>

Dr. Ruun was a key figure in the international movement of the NSCC and was instrumental in public campaigns against oil firms in Sudan.<sup>161</sup> Dr. Ruun's father was a chief of the 3 million strong Dinka tribe and as a result carried tribal cachet crucial to the southern Sudan political leadership.<sup>162</sup> Dr Ruun resigned his post at the NSCC in 2006 to become special advisor to the President of the interim government in southern Sudan.<sup>163</sup>

Samaritan's Purse, a Christian relief and development organization, was at the forefront of efforts to place Sudan on the U.S. foreign policy agenda. It was founded by Franklin Graham, described as George Bush's closest religious confidante.<sup>164</sup> President George W. Bush declared in 2001 that religious "persecution and atrocities in Sudan" would top his foreign policy agenda.<sup>165</sup> To end Sudan's civil war, with it the persecution of Christians in southern Sudan, would be the primary objective of U.S. foreign policy towards Sudan up until and even after the signing of the Comprehensive Peace Agreement on 9 January 2005.<sup>166</sup>

## VII. USAID, 'STAR', THE SUDAN PEACE FUND, THE NSCC AND CHRISTIAN AID

In 1997, USAID<sup>167</sup> set up the Sudan Transitional Assistance Rehabilitation programme (STAR), with the aim of strengthening local capacities and structures and improving human rights and democracy. With the support of USAID and other foreign donors, development activities were launched in the south, which enabled the SPLM/A to enhance its legitimacy both locally with southerners and most importantly with western audiences.<sup>168</sup>

At the end of 2002, USAID established the Sudan Peace Fund (SPF), a large programme to encourage and support local initiatives for reconciliation, focusing on economic growth and rehabilitation in communities that had been ravaged by inter-tribal conflict, and for resettlement of internally displaced people. The SPF programme was co-ordinated through a consortium of agencies, including PACT, the NSCC, Christian Aid and the African Union's Inter-Africa Bureau for Animal Resources (AU-IBAR).

## VIII. THE NSCC, SPLA AND THE PEACE CONFERENCES

In the late 1990s, the NSCC established the People-to-People peace processes to address the recurring and increasing number of conflicts amongst the southern warring factions. The 1991 split in the SPLM/A underscored the conflicting interests of the key factional leaders and multiple splinter groups, whose motivations are unclear to date. The peace processes were designed to address conflict amongst the Dinka and Nuer communities.<sup>169</sup> These peace processes involved a series of peace conferences held in southern Sudan and abroad, which involved the cooperation of the SPLM/A. The SPLM/A mandated the NSCC to lead peace and reconciliation efforts in the south, as well as provide chaplains to the armed forces, during a peace conference in Yei, 1997. The result of the Yei meeting was thirty-five Dinka and Nuer chiefs meeting in Lokichokkio in Kenya to discuss conflict and peace in the south. The 'Loki Accord' emerged from this meeting and demanded an end to the conflicts taking place among the different tribes. It also demanded that all commanders halt hostile actions<sup>170</sup> and laid the groundwork for the Wunlit peace conference in March 1999.<sup>171</sup>

The aim of the peace conferences was "to collaborate and cooperate in the search for just and lasting peace and freedom for the peoples of New Sudan."<sup>172</sup> The Yei Declaration, which resulted from the meeting in 1997 called for "ways and means through which the Church can pursue reconciliation efforts and unity among the political/military groups struggling for the liberation of Southern Sudan."<sup>173</sup>

The collaboration between the NSCC and the SPLM/A (referred to as a Movement) is underlined in a NSCC Project Proposal for January-June 2000:

“Peacemaking is the central and most fundamental need in southern Sudan. Until there are agreements for reconciliation and lasting peace, all humanitarian and development assistance is wasted because of ongoing hostilities, conflicts and war. Thus, NSCC, in collaboration with traditional leaders and the Movements, has placed reconciliation and peacemaking at the centre of its mission.”<sup>174</sup>

An outcome from the peace conferences was the establishment of a Dinka-Nuer West Bank Peace Council with three members from each district attending.<sup>175</sup> The organising meeting for Peace Council Members took place on 7<sup>th</sup> March 1999. It included Chief Peter Ring Patai – Jikany West (Western Upper Nile) and Chief Tung Guar Kuei Cuong - Leek (Western Upper Nile), both of whom were referenced in the Christian Aid<sup>176</sup> and ECOS reports on the situation in Sudan. These individuals were also plaintiffs in the case brought against Talisman in 2001 in America.

This case saw the Presbyterian Church of Sudan and others filing a lawsuit against the Canadian oil and gas producer, Talisman Energy, under the US Alien Tort Claims Act (Talisman Energy case), claiming that Talisman aided the Government of Sudan in the commission of genocide, war crimes and crimes against humanity. The claim against Talisman was for financial compensation. The case was later dismissed by the court on the basis that the Claimants had failed to establish that Talisman “acted with the purpose to support the Government’s offences.”<sup>177</sup> In other words, the evidence relied upon did not support the claims and allegations pleaded.

The Presbyterian Church of Sudan is the largest church among the Nuer and has historic links with the Presbyterian Church in the USA. The Presbyterian Church was also part of peace efforts in the 1990s. For example, the Akobo Peace Conference in 1994 was sponsored by the Presbyterian Church of Sudan and by Reverend Matthew Mathiang Deang who was also a plaintiff in Talisman and was central to these peace and reconciliation efforts.<sup>178</sup>

The Wunlit Peace Conference took place in March 1999. Salva Kiir, the second highest ranking officer in the SPLM/A and Bahr el-Ghazal,<sup>179</sup> who rose to head the SPLM/A when John Garang was killed in a helicopter crash in 2005 and who later became President of South Sudan, guaranteed the security for the conference. He and Riek Machar also participated in the opening and closing remarks of the conference at Wunlit but beyond this, their participation was minimised to allow the communities to discuss their grievances and suffering.<sup>180</sup> The reconciliation negotiated at Wunlit came after years of internecine strife. Grazing rights, abductions, reclaiming land and resources were all key issues addressed and priorities for the working groups to continue their reconciliation efforts.

The Wunlit conference, as with the other peace initiatives in these “People-to-People” processes, reflected a practice initiated and organized by the NSCC in which commanders would arrange security, local chiefs would primarily negotiate settlement and local church and traditional religious leaders would bless the reconciliation effort.<sup>181</sup> Getty images show SPLA soldiers providing security for the conference preparation in Thiet and dancing in celebration with their weapons at the closing ceremony highlighting their presence and involvement.<sup>182</sup>

The subsequent People-to-People peace conference held in Waat whereby Christian Aid and World Vision, amongst others, were thanked as sponsors demonstrates the international involvement in the southern peace processes at this time. It underscores the level of conflict driven by southern factions against southern Sudanese that demanded intervention to help end the conflict.<sup>183</sup> While the conferences did not resolve the differences amongst the conflicting southern factions, in fact the conference at Liliir saw the creation of a new armed faction,<sup>184</sup> they did seek to resolve ongoing localised, community conflicts.

## IX. CONCLUSION

Southern Sudan is a vast area of sub-Saharan Africa that has experienced years of natural and politically driven disasters that have brought intervention on a significant scale from the world's humanitarian agencies. The SPLM/A used these humanitarian disasters to build crucial international relationships with the humanitarian agencies involved to provide them with valuable resources. Through unprecedented international intervention they were able to create a powerful propaganda machine that had international resonance. Narratives around religious persecution and later 'oil wars' ensured allied responses from organisations aligned with these causes: even if the ideological and spiritual elements of the 'Movement' were found wanting.

## Chapter 4: Constructive Engagement, Cooperation and Transparency - Lundin's Operations in Sudan

*“Lundin Oil cannot and would not operate in the area without the blessing and acceptance of the local population. Neither would the Company tolerate any human rights violations within its sphere of control.”<sup>185</sup> Lundin Oil in Sudan, May 2001*

### I. INTRODUCTION

This chapter explains the background of Lundin's investment in Sudan and how it operated under a policy of constructive engagement as recognised by the EU and UN in the expectation and continuation of peace and with the support of the local population. When allegations were levelled against the Company as a result of alleged human rights abuses by the Government of Sudan, it carried out immediate checks and verification processes that contradicted the advocacy reports and engaged in co-operative measures with all relevant and responsible agencies in Sweden and internationally.

In 2003, the Company sold its interest in its concession known as Block 5A to one of its concession partners, Petronas Carigali. Block 5A never became an oil producing asset during the Company's time in Sudan even though it made a discovery at Thar Jath.

### II. LUNDIN'S INVESTMENT IN SUDAN

In Sudan, all natural resource exploration and production activities are undertaken and governed by Exploration and Production Sharing Agreements (EPSA). The EPSA defines the roles and obligations of all parties to the agreement and commonly defines the work programme to be undertaken during the exploration phase of the contract. The agreements also set out the terms and conditions for any hydrocarbon production, should exploration be successful.<sup>186</sup>

Lundin's interest in Sudan started in the early 1990s, when its affiliated company Red Sea Oil Corporation (RSOC)<sup>187</sup> signed an EPSA in December 1991 with the Sudanese government regarding the Delta Tokkar offshore Block in the Red Sea. Chevron had made a non-commercial discovery in the area in the 1970s; however, RSOC's drilling of a delineation well on this block never encountered commercial quantities of oil. Lundin gave up this concession in May 1997.<sup>188</sup>

In March 1996, Lundin was invited by the Government of Sudan to discuss the creation of an international consortium to search for oil in Blocks 1, 2 and 4 in the southern part of Sudan. While the Company was not part of the eventual consortium in these particular areas, it was also invited by the Government of Sudan to examine neighbouring Block 5A.<sup>189</sup> The block at that time was purely an exploration block, with a single dry hole and no proven petroleum system.

The Government of Sudan had signed a Political Charter on 10<sup>th</sup> April 1996 with factional groups in southern Sudan with the aim of resolving “the conflict in Sudan through peaceful and political means” and for the sharing of “power and national wealth” for the benefit of the citizens of the country both North and South.<sup>190</sup>



In August 1996, Lundin entered into a Memorandum of Understanding with the Government of Sudan regarding exploration for oil in Block 5A.<sup>191</sup> The final agreement that gave the Company the right to search for oil in Block 5A was signed on 6<sup>th</sup> February 1997. The terms of that agreement meant that 80% of the value of future oil production would be allocated to Sudan. During the spring of 1997, a consortium was formed, including Lundin, the Malaysian company Petronas, the Austrian company OMV and the Sudanese company Sudapet, consortium which would eventually receive 20% of the oil it produced. Lundin, who acted as operator for the consortium, first entered Block 5A in March 1997 to carry out a number of scouting trips.

Shortly thereafter, on 21<sup>st</sup> April 1997, the Khartoum Peace Agreement was officially entered into by the Government of Sudan and the groups present in parts of southern Sudan where oil operations were to take place.<sup>192</sup> The agreement contained a mechanism for revenue sharing in relation to the oil, set out in Annex 3 of the KPA with provision for 25% of revenue to go to the federal state (Federal Union), 35% to the surrounding states (Coordinating Council for the South) and 40% to the producing state. The KPA was a far-reaching document as it committed the national government not only to provide a fair allocation of revenues but also to hold a vote on southern self-determination at the end of an unspecified time period.

All parties to the KPA provided assurances that they would refrain from armed conflict. The area came under the control of the South Sudanese Independent Movement (SSIM), under the leadership of Riek Machar, a signatory to the KPA. The KPA was also signed by Kerubino Kuanyin Bol on behalf of the SPLM/A Bahr el-Ghazal. All signatories to the Agreement were described as “parties to the conflict in Sudan”.

Before initiating any activities, Lundin held discussions with local representatives in Block 5A, who assured them they were welcome in the area, and so the Company reasonably expected to be operating in a peaceful environment. The Company entered Block 5A on the back of the KPA believing its resulting revenue would assist in the development of the country, an approach recognised internationally as “constructive engagement”.

“We are completely convinced that our presence is positive for the people and that we contribute to peace and prosperity, and with time democracy.”<sup>193</sup> These words of Adolf Lundin, then Chairman of the Company, articulate the policy of constructive engagement. In 1997, there were many recent examples of how countries had successfully harnessed mineral or oil and gas wealth. The opportunity in Sudan presented similar economic benefits, on the footing that peace first be achieved as a building block to investment. The share of oil revenues was a key catalyst that drove the signing of the KPA of 1997 and entitled the southern states to benefit from oil activities.

The KPA excluded the SPLM/A under John Garang from oil revenues. After Lundin left Sudan, the KPA was superseded by the Comprehensive Peace Agreement in 2005, which was made solely between the Government of Sudan and the SPLM/A under Garang to the exclusion of all other parties, notably the Nuers, whose lands were the focus of oil exploration and production activity, thereby creating the state of South Sudan, which now has control of the oil revenues.<sup>194</sup> Ironically, the KPA was more inclusive than the later CPA, in that it included key factions of southern Sudan and provided for them a share in revenues.

### III. EU, SWEDISH AND UN SUPPORT FOR INVESTMENT IN SUDAN

In the 1990s, the European Union adopted an approach that encouraged European firms to invest in Sudan. There were no EU or international sanctions that prohibited a European company from carrying out business in Sudan. The EU adopted a policy of what is known as constructive engagement to develop political and economic ties.<sup>195</sup> In essence, it was a policy created and supported by the UN and the EU, underpinned by the belief that through investment and its engagement with EU firms in Sudan, the country would become politically and economically aligned with the EU. By contrast, it was thought that disengagement would block the path to peace and development.

It was on the back of this policy of European-led constructive engagement that many foreign firms, including oil firms, were encouraged to invest in Sudan to help the country to realise the potential of its natural resources for the benefit of EU-Sudan relations, EU companies, and the people of Sudan who would consequently be enriched by the revenues and the stability created.

At the United Nations level, this constructive approach was recognised in the Report of the Secretary General on "The Causes of Conflict and the Promotion of Sustainable Development in Africa".<sup>196</sup>

- "Development is a human right and the principal long-term objective of all countries in Africa."<sup>197</sup>
- "While economic growth does not guarantee stability, satisfaction or social peace, without growth there can be no sustained increase in household or government spending, in private or public capital formation, in health or social welfare. The strategy for achieving sustainable development through economic growth is now well established. The core components of the strategy include macroeconomic stability and stable investment environment; integration into the international economy; a reliance on the private sector as the driving force for economic growth; long-term foreign direct investment, especially in support of export-led activities..."<sup>198</sup>

The rationale for Lundin's investment in Sudan was aligned with the policy of constructive engagement, endorsed at the EU, UN and Swedish level.

The terms of the EPSA were standard for the industry.<sup>199</sup> They included an initial period of oil exploration in exchange for a minimum work commitment and the carrying of costs, followed by a period of oil production, with cost recovery sought after initial production. The only terms that were specific to the EPSA concerned the 'Sudanisation' of the operations. At the request of the Sudanese Ministry of Energy and Mining, the Company committed itself to hire and train Sudanese nationals with a view to their constituting 50% of the staff within five years of the commencement of operations and 80% within ten years.<sup>200</sup> This was a biproduct of the KPA. The presence of mainly south Sudanese personnel able to assist and work with the Company was a central part of the working arrangement – a requirement which runs completely counter to the notion of Lundin being complicit in the movement of people away from the oil fields.

This approach of national engagement is now considered to be one of the most important aspects of an international oil company's activities in a foreign country and a key requirement of all modern Environmental, Social and Governance (ESG) best practice approaches.

#### IV. LUNDIN'S OPERATIONS

In June 1998, the highland camp used for seismic activities, located 75 kilometres south of Bentiu, was overrun by a local group who occupied the camp for a few weeks and caused substantial material damage. Operations resumed at the beginning of 1999.<sup>201</sup> After two years of scouting trips, collecting seismic data, and conducting environmental studies, the Company started exploratory drilling in April 1999 at the rig site Thar Jath in Block 5A.<sup>202</sup> However, just a few weeks later, in May 1999, the Thar Jath rig site was attacked by a local faction and three guards were killed for reasons unknown to this date. All seismic and drilling activities were discontinued.<sup>203</sup>

Drilling recommenced in January 2001. In March 2001, the Company announced that commercial quantities of oil had been discovered and production tested at Thar Jath. An independent reserve study by Resource Investment Strategy Consultants (RISC) of Perth, Australia, later assigned proven and probable recoverable reserves of 149.1 million barrels of oil to the Thar Jath discovery.<sup>204</sup> Two months later, operations were once again shut down, initially due to the onset of the rainy season but over time because it became apparent that the security situation was not stable.<sup>205</sup>

In December 2001, during a brief resumption of operations, a helicopter used for the seismic campaign was shot at by a local armed group that had been refused access to it as they were carrying arms. On 22<sup>nd</sup> January 2002, the Company announced that as a precautionary measure for security, drilling operations would be temporarily suspended in Block 5A but noted the cease-fire agreement that had been reached on 19<sup>th</sup> January 2002 made it hopeful it could resume operations.<sup>206</sup> The Company made it clear to the Government of Sudan that it would not return to operations in Block 5A until there was a comprehensive and sustainable peace agreement.<sup>207</sup>

Activities never fully resumed until Lundin sold its assets in Block 5A to Petronas on 23<sup>rd</sup> June 2003.<sup>208</sup> It is noteworthy that "a number of other NGOs and international diplomats requested the Company to remain in Block 5A so that it could continue to advocate with the government and local leaders to reach a peace agreement."<sup>209</sup>

#### V. LUNDIN'S INFRASTRUCTURE DEVELOPMENT PROJECTS

When Lundin's drilling activities were suspended in May 1999, the Company focused on constructing major infrastructure sites:

- The Rubkona base camp, adjacent to the airstrip in Rubkona, located outside Block 5A;<sup>210</sup>
- Refurbishment of the Rubkona airstrip, located outside Block 5A, to transport people and equipment into Block 5A, particularly during the wet season;<sup>211</sup>
- The 75-kilometre all-weather road from Rubkona to Thar Jath, in order to transport heavy oil equipment to the rig site;<sup>212</sup> and
- The bridge over the Bahr el Ghazal river at Rubkona.<sup>213</sup>

All infrastructure projects were carefully planned and the subject of prior environmental studies.

As explained in Lundin's History in Sudan, 1997-2003:<sup>214</sup>

“The route for the road was planned to avoid as much as possible passing through any villages. Because of the benefits of transportation, many people actually moved closer to the road. After the road was ready, it was frequently used by the local population as it provided a direct access to the market in Rubkona and to Bentiu where many of the humanitarian organisations were based. Given the benefits brought by the all-weather road, there was a strong desire from the local population to construct further roads.”

“To facilitate transport of people and equipment from the state base camp to the new all-weather road, a permanent river crossing was built in early 2000 just south of Rubkona. A pontoon solution was chosen because it would not disrupt the water flows or have an impact on the fish stock. This bridge provided a safe and easy passage between Rubkona, Bentiu and the Block 5A area and was regularly used by the local population and NGOs.”<sup>215</sup>

See photos below:



The Rubkona base camp and airstrip.



The all-weather road to Thar Jath.



Bridge across Bahr el Ghazal.



Inhabitants and Lundin using the all-weather road between Rubkona and Thar Jath.

## VI. COMMUNITY ENGAGEMENT

In 1999, Lundin commissioned a socio-political assessment of the area around Block 5A:

“The study, conducted both at the Lundin head office in Geneva and in Sudan, was based on an analysis of reports on the political and human rights situation in Sudan, on interviews with company representatives in the head office and in Sudan, and on meetings with members of the Government of Sudan and humanitarian organizations. It also included a visit to the concession area.”<sup>216</sup>

The Company believed that community engagement was vital to the economic success of the concession and that its investment had a positive impact on the local community. These community engagement projects provide a powerful counter-narrative to the inaccurate portrayal of the Company and its actions by certain advocacy groups and NGOs. Lundin’s community development projects had the sole aim of contributing to the welfare of the local populations, particularly those situated in the concession area. In order to achieve this, the Company carried out consultations with representatives from the local population, tribal leaders, representatives of the state and the Government of Sudan, and other relevant stakeholder groups to determine key needs. This assessment was developed into a full-fledged Community Development and Humanitarian Assistance Program (CDHAP) in 2001.<sup>217</sup>

As explained by the Vice President of Corporate Responsibility:

“In order to ensure that its projects were relevant, Lundin had consulted with a number of local actors, in particular non-governmental organizations (NGOs) that were active in the area. With their assistance, it identified areas of need where it felt it could make a contribution, such as the supply of fresh water, health, education and capacity building.”<sup>218</sup>

A footnote to this report explains that:

“The uniqueness of Lundin’s approach did not go unnoticed. Indeed, in a meeting with representative of an international NGO, Dr Riek Machar, who had then defected from the Government of Sudan, stated that Lundin was different in that it had consulted with the local people and tried to involve them in its activities.”<sup>219</sup>

Through the CDHAP, Lundin wished “to demonstrate to the local and central authorities that it was concerned with the interests and welfare of the population and was prepared to make significant contributions, despite the fact that it would not obtain any revenues from its activities for a number of years.”<sup>220</sup> Even during the Company’s temporary suspensions of activities in 2001 and from 2002 onwards, services to the community continued to be rendered in the two main towns of the area, Rubkona and Bentiu, and in surrounding villages, such as Thoan.

Examples of the Company's community development projects included the following:

a) **Fresh water supply**

- Water tanks were installed along the AWR and water wells drilled. Containers were distributed to the population and existing water wells repaired.
- Construction of water filtration units in Rubkona and Thoan to take drinking water from the Bahr el Ghazal river to service the needs of the local population.

b) **Education**

- Distribution of equipment such as pens, paper, and blackboards to schools in the area, before providing more substantial support for buildings and for teachers in the form of bonuses.
- Building and/or supporting six schools by the end of 2001, in Kwerger/Dorang, Kwosh, Thar Jath, Koo, Thoan, and Adok, with the number of pupils totalling 585.
- Construction of a permanent school in Thoan.
- Recruiting and supporting the training of 24 women from all over the area as qualified midwives, by enrolling them in midwifery school.
- Hiring of local staff for its operations. A programme to train vector control specialists and computer analysts was also initiated.<sup>221</sup>

c) **Health**

- To prevent the spread of disease spreading more significantly during the rainy season communicable diseases such as malaria, diarrhoea, respiratory infections, bilharzia, river blindness; Lundin distributed water, blankets, mosquito nets, tarpaulins, and soap to the local population, sprayed huts and swamps to control mosquitoes, constructed latrines, and facilitated vaccination programmes carried out by health organisations.
- Between five and eight Sudanese doctors, as well as more than a dozen paramedical staff – all locals – were employed by Lundin. They worked in mobile tent clinics, temporary straw clinics, as well as in hospitals in the area. Word spread about these clinics and thousands of patients were treated by the Company's medical staff.
- A permanent clinic was built in Thoan, which was larger than the mobile tent clinics and had a greater patient capacity.<sup>222</sup> Near on 12,800 patients received treatment at the Thoan clinic.

d) **Capacity Building**

- Lundin distributed farm tools and fishing tackle to local entrepreneurs. In particular, the Company collaborated closely with an international NGO based in Rubkona which helped thousands of families in the area with their farming and fishing techniques and provided tools to enable people to cultivate their own land.
- The Company funded an artificial limbs factory in Khartoum and transported Southerners to be fitted with new limbs.
- A drop-in centre and orphanage for internally displaced street boys in Khartoum was funded by the Company. The drop-in centre still exists today and is fully funded by the Lundin family. The orphanage (known as Lundin House) has become a day school.

- Two veterinarians were engaged to run a vet station in Thoan in order to tend to local cattle, and a number of mobile vet clinics and a veterinary station were set up with eight local para-veterinarians trained by the Company. Numerous livestock were treated by the veterinarians and para-veterinarians with vaccination and vector control campaigns. Breeding programmes were established for the improvement of livestock.
- A programme was established to train local people to work in key occupations, such as paramedics, veterinarians, nurses, and brick layers.
- A brick-making factory employing 48 villagers was established in Thoan, providing bricks for local construction. Over 100,000 bricks were produced in a period of one month.
- A women's development centre was set up in Thoan.
- A nursery garden, maintained by two locals, planted over 150 shade trees.

These projects are similar to the focus of international aid agencies, operating in the region at this time. For example, Veterinaires sans Frontieres-Switzerland (VSF-CH) were operating animal health projects in Western Upper Nile; as did the German Agro Action organisation, providing agricultural and livestock assistance.<sup>223</sup>

Sweden was also a notable contributor of humanitarian aid to Sudan and channelled the bulk of its financial assistance through other bodies, such as the 'Health Pooled Fund' (HPF) and the United Nations Population Fund (UNFPA).<sup>224</sup> Contrary to the claims of the NGOs there is evidence of Lundin's commitment to support and provide much-needed infrastructure for the local population that clearly undermines the allegations the company has faced.

## VII. LUNDIN'S CODE OF CONDUCT AND STAKEHOLDER ENGAGEMENT

Mindful of the potential impact of oil operations and the environment, Lundin developed a Code of Conduct.<sup>225</sup> A video made in 1998 showcases its operating philosophy that in order for the Company to be successful, people on whose land it is situated must benefit from its presence.<sup>226</sup> The Code of Conduct was finalised and adopted by the Company's Board of Directors at its meeting on 21<sup>st</sup> February 2001. It formalised the Lundin's philosophy and has since served as a guide for the Company's activities worldwide.<sup>227</sup> It recognises the Company's responsibilities towards employees, host countries, local communities and the environment. In the Code, the Company "committed itself to act in a fair and honest way, to observe both national and international laws, and 'to act in accordance with generally accepted principles on the protection of human rights and the environment.'"<sup>228</sup>

After the implementation of the Code of Conduct, the Company decided: "that in view of the competing claims being made about the impact of oil in the region, it needed not only to widen the scope of these contacts but also to alter the content of its discussions to include socio-political issues."<sup>229</sup>

## VIII. LUNDIN'S PEACE CONTRIBUTION

Although Lundin generally refrained from getting involved in the political affairs of a country,<sup>230</sup> Carl Bildt, who was the UN Secretary-General's Special Envoy for the Balkans from 1999 to 2001 and a member of the Company's board volunteered to use his vast experience to promote peace in the region.

Bildt met with a number of high-level representatives from all sides, as well as representatives of the key nations acting as peace mediators, such as Kenya, Norway, the UK, the USA and <sup>231</sup> Sweden as a member of the Inter-Governmental Authority on Development (IGAD) Partners Forum Support Group for Sudan was also involved in the peace process. During the 1997 peace discussions, Sweden provided significant support including contributions to the IGAD peace fund.<sup>232</sup> Sweden was publicly and actively engaged and directly supported events taking place in Sudan to ensure peace, which provided a clear lead for Lundin to follow.

Key Company consultations in relation to peace were held with an array of stakeholders, from the Sudanese government, local government, local Nuer communities, the Swedish government, the humanitarian community, the UN Commission on Human Rights, NGOs, think tanks, the media, negotiators, including representatives of southern Sudan, the national and local government of Unity State among others.<sup>233</sup> Many of these meetings are set out in the Company's account of its actions in "Lundin History in Sudan: 1997-2003" which is a full record of the steps taken.<sup>234</sup> Unlike the SPLM/A and certain advocacy groups, none of these agencies advocated for the withdrawal of oil companies. The summary below sets out Lundin's commitment to peace, respect for human rights, the need for a long-term political solution in Sudan and the stance that peace between the parties was essential for economic development of Sudan and its activities:

- May 2001: Press conference at which Lundin set out its responses to various allegations made by Christian Aid in its report "Lundin Oil in Sudan". Unity State governor John Dor stated that people in the area were happy with what the oil companies were doing.
- July 2001: Meeting with Sudanese President Omar al-Bashir and the Minister of Foreign Affairs, Mohamed Osman Ismail.
- July 2001: Meeting with Riek Machar (Nuer leader, former Vice President of Sudan and subsequent Vice President of South Sudan).
- January 2002: Series of meetings with President al-Bashir, the Sudanese Minister of Energy and Mining Awad Ahmed El Jazz, the Sudanese Minister of External Relations Chol Deng.
- January 2002: Meeting with Mustrif Siddiq, Under-Secretary of the Ministry of Foreign Affairs, previously responsible for negotiating the Nuba Ceasefire Agreement.
- January 2002: Meeting with Peace Advisor in the Presidency of the Government of Sudan, Dr Gazi Salahuddin Atabani
- January 2002: Meeting with Riek Machar to discuss "1 Sudan 2 Systems" solution.
- February 2002: Meeting with Minister El Jazz to emphasise the Company's position that the only solution was a long-term peace agreement.
- March 2002: Meeting with Riek Machar and Bol Gatkuoth Kol, a representative of the South Sudan Relief Agency, to discuss how the Company and other oil companies could contribute to the peace process.
- 4<sup>th</sup> March 2002: Letter to Sudanese Ambassador to Sweden, H.E. Youssif Saeed concerning the importance of a sustainable peace.
- 19<sup>th</sup> March 2002: Letter to Dr. Ghazi Salahuddin Atabani, Peace Advisor in The Presidency of the Government of Sudan about the agreement signed by the Government of Sudan on the protection of civilians.
- 13<sup>th</sup> June 2002: Letter to H.E. Ambassador Yousif Saeed in relation to the current peace process resulting in a ceasefire agreement.
- 23<sup>rd</sup> June 2002: H.E. Ambassador Yousif Saeed noted Lundin's willingness to assist in the peace process, and its "noble goals". The Ambassador also stated that he knew that the Company was "not in any way involved in politics" but that it was "working for development in Sudan".
- July 2004: Teleconference with Riek Machar, in which Lundin continued to advocate for peace.



## IX. WORKING WITH THE SWEDISH GOVERNMENT

Lundin maintained a dialogue with relevant Swedish authorities as to their operations in Sudan upon entering the country and continued that dialogue when criticism of their presence was published by the media in 2001. At no stage did the government advise, direct, or otherwise intervene to halt the Company's exploration and appraisal activities.

On 21<sup>st</sup> February 2001 in the Swedish Parliament, Foreign Minister Anna Lindh answered questions on the presence of oil companies in Sudan and allegations made of a cordon sanitaire and forced displacement in Western Upper Nile.<sup>235</sup> Ms Lindh stated: "The Swedish government expects all the companies, including those active in the oil sector, to conduct their business so that the conflict does not worsen or lead to human rights violations."<sup>236</sup> Referring to the EU's engagement with Sudan in trying to further peace efforts, Ms Lindh explained that "the EU has just over a year ago resumed political dialogue with Sudan" and Sweden had paid approximately 95 million SEK in aid to Sudan in 2000.<sup>237</sup> She informed the Swedish Parliament that the UN Special Rapporteur "does not conclude that the oil companies should leave Sudan".<sup>238</sup>

On 21<sup>st</sup> March 2001, Lundin issued a press release welcoming the statement by Anna Lindh and the fact that she wanted a "Government enquiry into the company's operations in Sudan." The press release explained that Lundin had contacted Mr Gerhart Baum, the United Nations' Human Rights Rapporteur in Sudan, in order to offer assistance to shed light on the alleged violations of human rights in connection with the construction of a road to the Company's exploration drilling site in southern Sudan. Adolf Lundin, as Chairman of the Board, welcomed all initiatives to clarify the situation in Sudan and stated that: "allegations of human rights violations are in disagreement with perception of Lundin Oil's employees working in Sudan. Since the allegations are very serious, we are using every effort to investigate these events."<sup>239</sup>

Adolf Lundin wrote on 26 March 2001 to Anna Lindh and welcomed "active Swedish and European involvement both in terms of humanitarian efforts in the country and policies it applies to achieve a stable peace." He wrote that it was "important to obtain information directly from the site" and that a journalist from Sweden had already visited the area and had given "a picture very significantly different from that previously dominating the Swedish media." Lundin also invited the Swedish Ambassador to Sudan to visit its operations to acquire an independent opinion of the situation in the area.<sup>240</sup>

It is noteworthy that in a resolution of 20 April 2001, the UN Security Council did not request or demand foreign oil companies to leave the country. The UN Special Rapporteur was instead given an extended mandate and stated that he was prepared to visit the oil fields to create his own picture of the situation. Lundin invited him to visit its site of operations.

The UN Security Council (of which Sweden was a member between 1997-1998) could have adopted recommendations (non-binding) or decisions (binding) under Article 25 of the Charter, with or without sanctions on Sudan and its oil activities, but critically did not do so. The Security Council had not even considered any recommendations or decisions of that kind. This was against a backdrop of knowledge of what NGOs were reporting about southern Sudan and the activities of the oil companies. This knowledge came via the NGO Working Group on the Security Council, which included major NGOs, such as HRW and Amnesty International. Neither the Security Council nor any other United Nations body called on Sudan or the oil companies to cease their operations or to leave the country.

The Minister of Foreign Affairs, Anna Lindh replied on 25<sup>th</sup> April 2001 to Adolf Lundin, referring to the Resolution and underlining the “Swedish government’s support for the UN’s continued involvement” and that the Special Rapporteur was “prepared to visit oil areas to be able to create his own picture of the situation” and that she would therefore “await UN Report conclusions” before requesting a “particular investigation or Swedish official visit.”<sup>241</sup>

In answer to questions on Christian Aid’s Scorched Earth report in a further debate in Parliament on 2<sup>nd</sup> May 2001,<sup>242</sup> Ms Lindh explained:

“When it comes to what is happening in Sudan, the oil and the possible Swedish investigation, the situation is that the UN Rapporteur has only made a brief description of conditions in Sudan. He criticizes the business, but he also notes that he himself has not been there. Since he himself has not been there, he does not dare to make any recommendations in the most sensitive areas, namely: Do companies stay, or should they leave? That is one of the most important questions we had in the Swedish debate. The Special Rapporteur is now on his way to southern Sudan to get a picture of the situation and is then coming back with a report with recommendations. I had hoped it would have been completed by today. I still want to see the UN report, and read through their recommendations before deciding on a Swedish investigation. If we get enough clear recommendations from the UN, perhaps no Swedish investigation is needed?”

“As for Sudan, we must return as soon as we have seen the information from the Special Rapporteur. It is true that there are many organizations and media that have portrayed the situation. But it is still the UN, which is the guardian of international law. Therefore, we want to await the UN report.”<sup>243</sup>

Neither the UN nor the Swedish government in the spring of 2001 or anytime thereafter made any requests or demands that Lundin cease its activities in Sudan.

It was not until many years later in 2010 that the Swedish Prosecution Authority embarked on an investigation into the Company’s operations in Sudan. This was notwithstanding the fact that Lundin had made its own investigations and found the substance of the NGO allegations about the Company to be untrue.

## X. INTERNATIONAL AGENCIES

A World Bank publication from 2003 makes the point that: “The conflict began before the discovery of oil in commercial quantities. Oil is therefore not a prime cause of the conflict, but the future distribution of oil revenue is one of the main outstanding issues in the IGAD peace negotiations.”<sup>244</sup>

The UN relief organisation Operation Lifeline Sudan was concerned with having “full access to all areas of the country in order to be able to provide humanitarian relief in the case of crises.” Lundin’s Vice President of Corporate Responsibility explained: “As the company had itself offered assistance to internally displaced people fleeing from areas of natural or man-made catastrophe, it shared the view of the OLS that unrestricted humanitarian access was required and raised this issue in its meetings with Government and Nuer representatives.”<sup>245</sup>

In March 2001, the UN Special Rapporteur Gerhart Baum visited Khartoum and Nairobi. The statement he gave at that stage was made shortly after the release of the recently published Christian Aid report. Mr Baum did not however visit Block 5A. The Special Rapporteur did not request that the activities of the oil companies stop, nor did he hold them responsible for the matters upon which he reported in his oral statement to the UNCHR.

Following the Special Rapporteur's visit, Lundin's CEO issued a statement in which he noted with regret the Rapporteur's failure to visit Block 5A to see for himself the true state of affairs on the ground and his reliance upon "biased and unsubstantiated evidence."<sup>246</sup> Both Carl Bildt and the Vice President of Corporate Responsibility continued to meet and engage with the Special Rapporteur.

EU Ambassadors visited Sudan and Block 5A between 6-8th May 2001. Unlike the UN Special Rapporteurs, the EU Ambassadors visited the locations of the alleged displacements, including Thar Jath within Block 5A. The trip was prompted by the civil society allegations of oil related displacement and the objective was to investigate and verify based on first-hand observations and took place without any representatives from the Government of Sudan.

A report dated 23<sup>rd</sup> May 2001 from Pereric Hogberg, at the Swedish Ministry for Foreign Affairs summarised the findings of the EU Ambassadors following their visit to Sudan from 6-8<sup>th</sup> May 2001. He explained that the delegation found no evidence that Sudanese government troops had been forcing people to flee their villages in the oil fields or that the government of Sudan carried out a scorched earth tactic to prepare for the oil industry. The mission noted that the oil companies had improved the infrastructure, which had improved local people's access to marketplaces, health and water.<sup>247</sup>

The Special Rapporteur re-visited Sudan from 2-14 October 2001 and again did not request that the activities of oil companies and, in particular, those of Lundin, cease.

The Special Rapporteur visited Bentiu, just outside Block 5A, on 7 October and was received by representatives of Lundin. He did not, despite the Company's request, visit any of the Company's places of work, operational sites or travel along the road, which was alleged to be linked with the displacement of people. Instead, he visited Pariang situated in another consortium's Block. In the town of Rubkona his time was not spent with the Company. Lundin's Vice President of Corporate Responsibility wrote to the Special Rapporteur after his visit to express her disappointment that he had not visited their sites or viewed the community work. However, it must be noted the Special Rapporteur did not hold the Company, nor oil companies in general in any way responsible for the conflict. He acknowledged that: "the SPLM/A controls access to 80% of the people in southern Sudan, it does not necessarily represent all of them".<sup>248</sup> On 29<sup>th</sup> October 2001, the Vice President of Corporate Responsibility wrote to the UN Special Rapporteur on Sudan extending an invitation for a further visit so that he could see the concession area.<sup>249</sup>

Lundin engaged with local NGOs whose mission was to assist the population through local humanitarian or development projects as well as NGOs based outside Sudan promoting special interests such as human rights and religious rights. The Company funded local organisations' projects (even on a confidential basis after it had become too risky for the NGOs to be associated with oil firms). Working with agenda-driven NGOs became more difficult, especially with those who dogmatically viewed any involvement of oil as contrary to establishing peace.

Both Amnesty International and the Church of Sweden believed in the benefits of constructive engagement with companies operating in Sudan and met with Lundin representatives on a number of occasions.<sup>250</sup> The Company invited representatives from both organisations to visit its concession area, but because of the suspension of oil activities and the subsequent sale of assets, these visits never materialised. Nonetheless, some of their views and recommendations were taken into consideration and, where appropriate, integrated into the Company's business conduct.<sup>251</sup>

Following the publication of Christian Aid's Scorched Earth report on 13th March 2001, on 19<sup>th</sup> March 2001, Lundin issued its policy for operations in Sudan. It was emphasized *inter alia* that the Company would support initiatives that could lead to a lasting peace. The next day, the Company's CEO arrived in Sudan together with the filmmaker and journalist Bengt Nilsson, a Swedish journalist who knew the area well. The purpose of the trip was for the CEO to check the truth of the accusations with his own eyes, with an experienced journalist. This trip included visits to Rubkona and Bentiu and is well-documented. There were no signs that villages were cleared, burned or destroyed.

During the CEO's stay in Sudan, a Board meeting took place on 22<sup>nd</sup> March 2001 by telephone.<sup>252</sup> A representative of Christian Aid was invited to the meeting to give a more detailed account of the accusations in Scorched Earth. The allegations were taken seriously by Lundin. Christian Aid was informed of the findings made by the CEO but this information appeared to fall on deaf ears. The following day, Christian Aid published a press release in which its allegations were made again.

On 22<sup>nd</sup> March 2001, in an interview with German media, Sue Garrood who worked for the aid organisation German Agro Action (with offices in Bentiu, Rubkona and Mayom) confirmed the findings made by Lundin that were in contrast to what had been claimed by Christian Aid. When asked if the people in the area held the oil companies responsible for being forced to flee, Sue Garrood replied: "They never mention the oil companies and we have in this area 3,000 households that we are giving seed tools and agricultural extensions and they are not coming in saying "oh it's terrible we have been displaced because of the oil," they will come and say, "we have been displaced because of the factional fighting."<sup>253</sup>

In an interview on 9<sup>th</sup> April 2001 the journalist Bengt Nilsson who visited Sudan with the CEO, Nilsson stated: "The battles had nothing to do with road construction. The expulsion is instead a result of guerrilla attacks and the counter-attacks of the pro-government militia. I've got a consistent picture."<sup>254</sup>

In May 2001, Lundin published its response entitled "Lundin Oil in Sudan."<sup>255</sup> This response countered in detail the allegations made by Christian Aid and was based on investigations undertaken by the Company, which included the accounts of its employees, NGOs and local people's first-hand observations on the ground. This document analyses each of the inaccuracies and misrepresentations set out in the Scorched Earth report and is publicly available. In spite of the comprehensive rebuttal issued by Lundin, Christian Aid continued to spread their message with no regard for the information provided.

## XI. CONCLUSION

Lundin entered Block 5A on the commitment of peace, both on the back of the Political Charter and the KPA, at a time when its home country Sweden promoted constructive engagement through encouraging investment. Constructive engagement was recognised by the EU and UN as a policy, which was intended to encourage peace. In the wake of this policy, many foreign oil firms were encouraged to invest in Sudan.

There were no EU or international sanctions that prohibited a European company from carrying out business in Sudan. Lundin engaged deeply with the local community through various community contributions and in 2001 rolled out its Community Development and Humanitarian Assistance Program. The Company also directly addressed allegations of human rights abuses, reflected on its own conduct and role in the country and consistently communicated information transparently about its operations to all local and international stakeholders. Contrary to the claims of the NGOs there is evidence of Lundin's commitment to support and provide much-needed infrastructure for the local population that undermines the allegations the company has faced.

When allegations were made against Lundin, it carried out immediate checks. It cooperated with relevant and responsible agencies in Sweden and internationally. In May 2001, the Company published its response, "Lundin: Oil in Sudan" which countered in detail allegations made by Christian Aid.

At no time did the Swedish government advise, direct or intervene to halt the oil operations. Neither did the UN make any such demands. EU Ambassadors in Sudan found that there was no evidence that the Government of Sudan had driven people out of villages pursuant to a scorched earth policy. They found that accusations made by civil society groups were inaccurate and based on hearsay rather than on objective observations.

## Chapter 5: Amnesty International: Sudan – The Human Price of Oil, May 2000

### I. INTRODUCTION

In May 2000, Amnesty International (Amnesty) published “Sudan: The Human Price of Oil” (The Human Price of Oil), an 18-page report on the effect of the operations of the oil industry in Sudan.<sup>256</sup> The report declares it was published “to make clear the link between the massive human rights violations by the security forces of the Government of Sudan and various government allied militias, and the oil operations by foreign companies.”<sup>257</sup> Without identifying any particular acts by oil companies, Amnesty International put the case that it “believes many foreign companies tolerate human rights violations by turning a blind eye to the human rights violations committed against local communities by government forces or government-allied troops” in an effort to “control, protect or destroy the oil production capacity.”<sup>258</sup>

Amnesty International produced a report that is part advocacy and partly an attempt to encourage corporate responsibility for the improvement of human rights of the citizens of Sudan. The underlying presumption is that oil companies are cavalier and turn a blind eye, and yet Amnesty makes these statements based on limited discussions with the companies they criticise. Crucially, they fail to acknowledge that the information and material they use, represents one side of the conflict - the SPLA’s and other rebel commanders. There is a major inherent contradiction in what is advocated by Amnesty International, as the oil companies in Sudan were clearly not there to “control, protect or destroy the oil production capacity.”

A careful review of The Human Price of Oil reveals that despite its claim “to make clear the link” to human rights violations as a result of the oil operations of the foreign companies, the report fails to deliver. The report declares that it is intended to establish a dialogue with oil companies, raising concerns about the responsibility the companies should have in promoting a better human rights environment in the area where they are active in extracting oil.<sup>259</sup> For that reason and on the basis of the observations set out below, the report should not be relied upon as evidence in an international criminal investigation, or trial, as it was never written for this purpose or intended to be used in such a manner.

### II. CONTRADICTIONS

Amnesty International recognises in its section entitled “Background to the Problem” that Sudan has been at war with itself for much of the last half a century and that the conflict was fought not only between the Sudanese government and the SPLA but involved other factions.<sup>260</sup> The report acknowledges that the conflict that accounted for the majority of the casualties, was between the various factions allied with the government or the SPLA, that frequently changed sides depending on their perceived personal interests, the possibility of more power or simply the supply of arms, as opposed to ideological differences.<sup>261</sup> As the report maintains “more people have lost their lives in inter-factional fighting amongst Southerners than in armed encounters with government forces.” To put the context of this kaleidoscopic conflict into one that holds foreign oil companies as responsible is a clear misrepresentation of the history of Sudan.

The report does not address the rights of the Government of Sudan to the oil discovered within its sovereign territory and the entitlement of the state to exploit it for the benefit of its economy. The report is critical of the fact that the development of the oil fields provides the state of Sudan with ‘new-found wealth’ that gives it the ability to purchase arms without taking into account that a majority of the revenues were to flow back to the southern states, under the terms of the KPA.<sup>262</sup> Amnesty International’s stance in parts of the report is avowedly anti-government and does not grapple with the rights of a state over its territory. Such complex issues are avoided, although they are central to the situation in Sudan.

Rather than establishing the clear link it proclaimed in its title and introduction, The Human Price of Oil concedes that Amnesty International takes no position for or against oil exploration or commercial enterprises *per se*, and that it is not always possible to draw a direct, causal connection between oil exploration or a company’s activities and human rights violations in its geographical area of activity.<sup>263</sup> Instead, Amnesty International states that it is *concerned* that oil exploration *may* be used as a justification for the forcible displacement of local populations pursuant to human rights violations committed by security forces. The report also does not provide any reasons or address the question of why such violations might in any way be pursued by an oil company, nor what purpose this would serve.

### III. LUNDIN

As far as Lundin is concerned, the report does not provide any linkage evidence between the events on the ground and any of the Company’s actions. Rather, the report relies on second-hand accounts from journalists with known partisan links and an interview with a militia commander. In short, Amnesty International’s report, which seeks to vilify an entire industry against a backdrop of inter-tribal conflict, lacks objectivity and rigorous methodology. Contrary to its statements, Amnesty International seems to have turned a blind eye to this lack of objectivity in its report and the ends served by the sources it relied upon.

### IV. FLAWS IN METHODOLOGY

Amnesty International’s report fails to withstand proper scrutiny as a source of evidence in a criminal investigation for the reasons set out below.

#### (i) Partial Reporting: One Biased Interviewee (Peter Gadet)

The report refers specifically to only one interview, conducted with a partial source – who was a party to the conflicts, Peter Gadet.<sup>264</sup> Peter Gadet’s value as a source is questionable insofar as he has been placed on the EU’s sanctions list following reports of atrocities committed in 2014.<sup>265</sup> The US also added him to their sanctions list in May 2014.<sup>266</sup> The partiality of the report can be seen from the fact that Amnesty International failed to disclose the detail of the true background of this source. Such disclosure, had it been made, would have caused impartial observers to look critically at Peter Gadet’s allegations against the Sudanese government and foreign oil companies and concluded it was nothing more than self-serving propaganda. It is noteworthy that Amnesty International’s condemnation of the alleged use of child soldiers does not extend *in this report* to Peter Gadet, who was accused just a month later by the NGO of having led forces, who reportedly used child soldiers below the age of 18 in combat. If that information had been included in the report on the oil industry, it would have inevitably led to the questioning of the reliability of the source.

No information is given as to how, or why, the sole interviewee, Peter Gadet, as a rebel commander was selected. The interview took place in October 1999 in Wicok village and would have required whoever conducted it to liaise with the SPLA for access. The report does not inform the reader as to how this was achieved, nor the circumstances in which the interview was conducted or recorded. Wicok is not a location within Lundin's Block 5A.

In the report, Peter Gadet is the source of putative information on displacement from villages around Koch (not situated near the All-Weather Road) and Leer caused by fighting between different Nuer factions.

### (ii) Lack of Balance in Reporting

Amnesty International did not interview a representative of the Government of Sudan for the purpose of researching or writing its report nor any of the oil companies active in the concession blocks and visits the relevant sites. Its almost exclusive focus on allegations of government involvement and the commission of human rights abuses demonstrates a lack of impartial reporting and distortion of the situation.

The report states that it is designed to “establish a dialogue with foreign oil companies regarding the protection and promotion of human rights where they are active in extracting oil.”<sup>267</sup> It refers to Amnesty receiving “inaccurate” letters from the Company and other companies active in the area stating there to be: “no settlements in the oil-rich areas and that allegations of mass displacement are therefore inaccurate”. The report does not however engage with the oil companies’ responses in any meaningful way. Instead, it summarily dismisses the claims without investigation, stating only that “this is clearly not so”, notwithstanding the plainly biased source it was relying upon for information.

Amnesty's description of the conflict perpetuates the narrative of a north/south civil war and portrays the SPLM/A incorrectly as victims of Khartoum's machinations, rather than looking into the complexity of the situation, where inter-tribal and inter-factional fighting were rife. This lack of understanding and balance is one of the reasons why international courts do not rely on such information in criminal proceedings. See Chapter 9.

Amnesty presents a selective telling of the story of conflict in Sudan and omits any mention of the underlying tensions in the relationship between John Garang<sup>268</sup> and Riek Machar,<sup>269</sup> as well as various other local leaders that had driven the divisions throughout the 1990s<sup>270</sup> and exploited ethnicity and tribal allegiances to further their own agendas.<sup>271</sup>

### (iii) Lack of First-Hand Reporting, Hearsay and Non-Substantiation of Allegations

Other than the visit to Wicok village and the Gadet interview, the report is not based upon any direct fieldwork or first-hand research in Sudan in 2000. Amnesty did not visit Block 5A, nor did it visit any of the locations cited. It provided only anecdotal observations.<sup>272</sup> Neither does the report explain how information was obtained about these locations.

The report relies upon information from un-named<sup>273</sup> and secondary sources, that are limited and subjective. The report references five news articles;<sup>274</sup> a World Food Programme press release;<sup>275</sup> one documentary video;<sup>276</sup> John Harker's Report; and a Talisman letter from its CEO.<sup>277</sup> Amnesty's reliance on hearsay contained in newspaper articles to support serious allegations of international crimes demonstrates a poor and inadequate forensic approach.<sup>278</sup>



The documentary video referenced in Amnesty's report is: "Blood for Oil in Southern Sudan" by Damien Lewis<sup>279</sup> in which Lewis and Baroness Cox are hosted and provided with information by one party to the conflicts – the SPLA. Their justification for siding with a party to the conflicts is notably absent from the film.

Allegations concerning individuals killed and displaced as well as the use of child soldiers by some of the oil companies to provide security are made in the report without footnoting or referencing sources. Unsubstantiated allegations are made about security for Lundin<sup>280</sup> and an alleged "pattern of gross human rights violations in those areas in which foreign oil companies have exploitation rights."<sup>281</sup> Other allegations made are not substantiated by the sources cited in Amnesty's report.<sup>282</sup>

Amnesty International does not document, reference or footnote the "numerous reports" it claims to have received of "massive forcible displacements of populations, testimonies about government security forces and government-allied troops carrying out aerial bombardments and strafing villages from helicopter gunships."<sup>283</sup> There is therefore no way of scrutinising these unreferenced statements. Amnesty International concedes that it has not been able to confirm these reports due to a lack of access to the area.<sup>284</sup>

Amnesty's report also makes a somewhat disconnected reference to famine and displacement, framing this as an issue exacerbated by the government due to its flight ban. Amnesty attempts to connect these actions to those of oil companies, despite the lack of a factual or legal nexus.<sup>285</sup> Famine is a political issue and one in which the SPLM/A bore heavy responsibility as seen in Bahr el-Ghazal in 1998.<sup>286</sup>

The lack of objectivity and impartiality throughout Amnesty's report is apparent. The making of serious allegations against Lundin on the basis of poor, unattributed sources and non-existent methodology distorts the reality of the situation in southern Sudan. Although Amnesty International claims to take no position "on economic or other sanctions, disinvestment or boycotts,"<sup>287</sup> in fact it produced a highly partisan piece of advocacy, designed for a western audience to engender campaigns against foreign oil companies. As Alex de Waal, a British researcher on African politics has observed: "There is a scarcity of industry standards and professional regulation in the NGO sector."<sup>288</sup> This is evident in Amnesty's report.

Other NGOs which followed in the footsteps of Amnesty International inappropriately relied on its report although it was a document which was never intended to be and is not fit for purpose as a source of evidence in a criminal investigation or trial.<sup>289</sup>

## V. CONCLUSION

The Amnesty report does not provide any linkage evidence between the events on the ground and any action/inaction by Lundin or its representatives. The report relies on second-hand accounts from journalists with known partisan links and an interview with a militia commander, Peter Gadet. The fact that Amnesty does not refer to him and the SPLM/A as its main source of information seriously undermines the credibility of its report.

Amnesty did not visit Block 5A, nor any of the locations it cites, providing only anecdotal observations. Findings against Lundin are made on the basis of poor, unattributed sources and inadequate methodology.

## Chapter 6: Christian Aid: Scorched Earth - Oil and War in Sudan

### I. INTRODUCTION

On 13<sup>th</sup> March 2001, Christian Aid published a report entitled “Scorched Earth: Oil and War in Sudan” (Scorched Earth). This was published four-months after they had the opportunity to directly engage with Lundin about their allegations but chose not to. Christian Aid’s report contains serious and wide-ranging allegations against Lundin and other oil companies operating in Sudan. Examination of its content reveals serious flaws in its methodology that render the document unreliable and inappropriate for use in a criminal investigation or trial.

Allegations contained within Scorched Earth were wholly contradicted by reports commissioned or produced by the Company. From the moment of publication of Scorched Earth, Lundin acted transparently and encouraged visits to its Sudanese area of operations so that those concerned could see for themselves the true state of affairs. These invitations were not accepted.

As a campaigning organisation with a mission to “challenge and change the structures and systems that favour the rich and powerful over poor and marginalised”, Scorched Earth sets out its aims.<sup>290</sup> Oil companies were viewed as guilty adversaries from the outset and its report an advocacy tool.

### II. LUNDIN’S RESPONSE

Following publication of Scorched Earth, Lundin conducted an investigation into the allegations. The Company also forthwith issued its existing “Policy on Sudan” and welcomed a government inquiry.<sup>291</sup> These actions were soon followed by a request to the Government of Sweden to undertake a fact-finding visit to Sudan.<sup>292</sup>

On 22<sup>nd</sup> March 2001, Lundin enabled a Christian Aid representative, Mark Curtis, to participate in its Board of Directors’ meeting held by telephone. In March and April, the Company invited journalists to visit Block 5A to assess the situation for themselves. One of these trips was undertaken by Lundin’s CEO and the independent journalist Bengt Nilsson. Another trip was undertaken by the Company’s Head of Investor Relations together with journalists Anna Koblanck and Paul Hansen from Dagens Nyheter.

The Company’s findings following a fact-finding mission in Sudan were published in the report “Lundin Oil in Sudan” on 16<sup>th</sup> May 2001.<sup>293</sup> This report addressed comprehensively the allegations made by Christian Aid in Scorched Earth, key extracts from which are set out in Annex 2.

On 17<sup>th</sup> May 2001, Lundin held its Annual General Meeting in Stockholm and invited the Governor of Unity State, John Dor, to report upon the fact-finding mission he had undertaken in relation to the key provinces named in the Scorched Earth report, namely Leer, Mayom, Rubkona and Pariang. John Dor had met “individual and [held] group audiences with tribal chiefs, local officials, politicians, and militia commanders.”<sup>294</sup> He noted that various NGOs and “government opponents” had produced reports “based on hearsay and unreliable sources” observing that the only truth to “be unearthed” is “if somebody visits the area.” In relation to the Lundin’s construction of the All Weather Road, he said “this road has brought life back to the southern part of the state that was virtually cut off completely. New villages, schools and Kraals have sprung up along the road. Old ones came back to life.” He claimed NGOs and health workers could now move freely, that a bus service had been established and that an immunisation program against measles and Polio had been facilitated by the road in Leer, Mayom and

Pariang. He referred to the fact that Lundin “in cooperation with the state government ha[d] set a comprehensive rehabilitation program for schools, water wells, hospitals and electricity power stations in the southern province”, even before the Company had exported “a single barrel of oil”, which it never did.

John Dor dismissed allegations of forced displacement and said it was for “fear of Peter Gadet [that] many citizens prefer to take refuge in Bentiu or Rubkona towns temporarily.” He referred to the “feverish campaign against oil companies” which in the end “may end up harming the very people everybody claims to have a moral responsibility to represent.” He concluded by stating that “peace will not come to Sudan because Lundin Oil is given pressure to quit, peace will come to Sudan if Lundin is allowed to extend basic health services, basic education and training, basic social infrastructures to the people in the area.”

Lundin further responded to the allegations in *Scorched Earth* in the spring of 2001 in a number of press releases, letters to shareholders, maps and other communications, based on its first-hand experience and investigations in Sudan. At the same time, the Company offered assistance to any incoming investigation team.

Christian Aid declared in *Scorched Earth* that “all oil exploration and production” should stop “until a just peace is negotiated”, a request not endorsed by other international entities.<sup>295</sup> Lundin explained in the Lundin Oil in Sudan report in 2001, that none of the international bodies involved with Sudan at the time recommended a cessation or suspension of oil operations. As explained in the report: “Withholding oil revenues means withholding from the Sudanese people chances to become more self-sufficient. The international community will never be able to give enough to solve the problems of Sudan. The Sudanese can only count on their own resources, which they can develop with the assistance of foreign companies, to solve the poverty and the ills connected to it.”<sup>296</sup>

### III. INSUFFICIENT INVESTIGATION: SIX INTERVIEWEES, NO LINKAGE EVIDENCE, BIAS AND ANONYMOUS SOURCES

*Scorched Earth* made generic allegations against all oil companies in Sudan. In the Lundin section of the report, Christian Aid relies on only a handful of interviews from biased<sup>297</sup> and un-named sources<sup>298</sup> who provide no linkage evidence to the Company. Aside from four individuals, the report relies on: (i) a press release issued by the Company, which refers to the discovery of oil;<sup>299</sup> and (ii) a press article from a Vancouver publication called “Business Wire”.<sup>300</sup> Surprisingly, Christian Aid did not, at any time, seek to visit Lundin in Block 5A or its office in Geneva.

While NGOs may justify the inclusion of anonymous sources in their reports, the resulting information is not suitable as evidence in court proceedings as it cannot be tested or effectively challenged.

The interviews have no details or records of substantiation. No information is provided of the qualifications of the individuals engaged to interpret the interviews, nor of the accuracy of the accounts provided. There is no ability to test whether the interpreter conducted the work fairly and without bias. Neither have dates of contact with Christian Aid researchers been provided, nor how information was collected and the protocols, if any, which were adhered to when carrying out the interviews. The identity of the interviewers and their competence to conduct the interviews is unknown. No information is provided as to the duration of any of the interviews or how individuals were selected. No information is provided as to the steps taken, if any, to verify the true identity of the interviewees. There is no information as to whether any of the interviewees were ever offered an opportunity to confirm what had been attributed to them.

There is no reference within the report or the footnotes to indicate whether verbatim records of the interviews conducted were made and thereafter, retained. There is no information about how the transcription of the interviews was conducted and whether interview records were translated into English. Much of the information provided is unverified hearsay of unknown degree, reliability and/or origin. Particularly problematic is the report's reliance on newspaper articles and other unverified, secondary sources such as NGO reports. Most of the claims made in the report are uncorroborated. There is no indication within the report that the claims made have ever been independently verified.

#### IV. CHRISTIAN AID'S PARTNERS SUPPORTED THE SPLM/A

Amongst Christian Aid's partners in Sudan, were the New Sudan Council of Churches, the Sudanese Councils of Churches and the Sudanese Relief and Rehabilitation Agency, all of which had direct links or associations with the SPLM/A.<sup>301</sup> The SCC was expressly referenced as advocates in the Scorched Earth report.<sup>302</sup> The SCC was opposed to the oil industry<sup>303</sup> and called for the withdrawal of oil companies from Sudan in a statement issued in late 2000.<sup>304</sup> None of these partners were impartial about the conflict and the reasons for its continuation in southern Sudan.<sup>305</sup> This politically influenced partnership has inevitably impacted the impartiality of the report.

As discussed in Chapter 3, the NSCC was founded in 1991 as an ecumenical organisation to serve Christians in the SPLA-controlled areas.<sup>306</sup> It was opposed to oil companies operating in southern Sudan.<sup>307</sup> In 1995, the NSCC wrote a letter to the oil company Arakis urging them to "disinvest in Sudan", stating that it is "only when the nation is in peace that a conducive atmosphere for investment can become meaningful not only for investors but also for the nation and its people."<sup>308</sup>

In October 1999, the NSCC sent letters to the co-chairs of IGAD following the NSCC Roundtable "to stress the negative impact of sales of oil from the Bentiu oil fields on the conflict in the South and the unequal sharing of revenues. It called for support to the initiative of the United Council of the Church of Canada for the setting up of a Trust Fund (Escrow Account) to receive and hold the revenues for Sudan in trust until there be a just and credible peace when payment to be made distributed fairly between North and South."<sup>309</sup>

Over the years, academic commentators have noted the connections between the NSCC and the SPLM/A.<sup>310</sup> Volker Riehl, in his article entitled "Who is Ruling South Sudan? The Role of NGOs in Rebuilding Socio-Political Order" explained the following: "NSCC is clearly on the side of the SPLM-SRRA. The Chairperson of the SPLM/A, John Garang, once called the NSCC the "spiritual wing of the Movement" and referred to the SPLM as its "civil wing."<sup>311</sup>

Reports from the year 2000 show that Christian Aid financially supported the NSCC<sup>312</sup> and provided funding for the NSCC's "People-to-People" peace conferences in Sudan that began in 1999.<sup>313</sup> The SPLA provided security for at least one of these conferences.

Christian Aid's partners in Sudan were not in any sense, impartial. Each had its own clearly stated political agenda in framing it as a conflict over oil resources, which permeate the report.<sup>314</sup> Crucially, in terms of transparency, none of these connections were laid bare in Scorched Earth.

## V. UNRELIABILITY: VAGUE GEOGRAPHICAL REFERENCING AND LIMITED TRAVEL TO REBEL-CONTROLLED AREAS

Scorched Earth contains only generalised statements about the movement of people as exemplified in this extract:

“In visits to Western Upper Nile in August and November 2000, Christian Aid found thousands of Nuer civilians displaced from villages along this road, hundreds of miles away in Dinka Bahr el-Ghazal.”<sup>315</sup>

These non-specific claims provide no substantive facts or information to establish the causes and exact timing of the alleged displacement. Bahr al-Ghazal is a separate region, where conflict and displacement, were caused by many factors, entirely unrelated to the operations of the oil companies. A report of the Food and Agriculture Organisation of the UN (FAO) records that in 1998 Bahr el-Ghazal was the site of one of the worst famines in recent history. In December 2000, the FAO issued a press release that 3,000,000 people in southern Sudan were facing serious food shortages because of civil war and an emerging drought.<sup>316</sup> The visit of the FAO to Bahr el-Ghazal took place in November 2000, the same month as Christian Aid were apparently there, and its report describes continued fighting in the region as exacerbating the drought conditions. The FAO report of 2001 details Sudan as having suffered two years of serious drought and natural disasters from famine to floods, that caused the massive displacement of peoples.<sup>317</sup> The FAO does not attribute the displacement of people to the activities of the oil companies. Unlike Christian Aid, the context it provides for the displacement of peoples is that of civil war, famine, and drought.

Western Upper Nile is an area the size of the Netherlands (77,283 sq. km)<sup>318</sup> and is difficult to traverse even in the absence of insecurity.<sup>319</sup> Bahr el-Ghazal is over 200,000 sq. km in size. There is however no detail in Scorched Earth as to the precise locations of the researchers’ visits in August and November 2000. Neither is any reference made to the logistical difficulties that would have been met when travelling around Bahr el-Ghazal, given the insecurity at that time and the inhospitable conditions of travel that were well known in this region.<sup>320</sup> In the preparation of the report, Christian Aid did not travel to Block 5A and did not visit the Company’s places of work. Christian Aid’s researchers travelled only to rebel-controlled areas.

## VI. UNRELIABILITY: THE REPORT’S ALLEGATIONS ARE FROM BIASED SOURCES

A significant number of allegations are based on information provided by two individuals, both of whom were involved in the conflicts in southern Sudan, namely Taban Deng Gai and Peter Gadet, the source for Amnesty International. Neither are impartial or reliable sources for the reasons set out below. For ease of reference, an extract of the allegations expressly attributed to Taban Deng Gai and Peter Gadet in Scorched Earth, some of which relate to other oil companies, is set out in Annex 3.

Taban Deng Gai was the former governor of Unity State<sup>321</sup> who, in 2020, was added to the US Sanctions list “for his role in serious human rights abuses”.<sup>322</sup> The late Peter Gadet was a militia commander<sup>323</sup> and a well-known point of contact for information for NGOs and journalists.<sup>324</sup> Prior to South Sudan’s independence, he was on the Board of advisors of the Jarch Management Group,<sup>325</sup> which obtained oil concessions in large areas of South Sudan. Gadet was placed on the EU’s sanctions list<sup>326</sup> following reports of atrocities committed in 2014. See Annex 4.

He was also added to the US sanctions list in May 2014 for “the targeting of civilians and fomenting ethnic violence”, which the US State Department said were “contributing to the mounting humanitarian and human rights catastrophe unfolding in South Sudan”.<sup>327</sup> In 2000, he was alleged by Amnesty International to have “used child soldiers well below the age of 18 in combat.”<sup>328</sup> In 2002, one of the main researchers and writers of *Scorched Earth*, Julie Flint, relied on Peter Gadet as a source of information in a later article in *The Guardian*: “Oil Fuels Flames of War in Sudan.” In “Dying for Oil”, from September 2002, Julie Flint interviewed Peter Gadet and described him as a *charismatic* leader with a great ability to gather his troops. The extent to which either or both individuals provided background information or supplied witnesses to Christian Aid or its partners for the purpose of researching *Scorched Earth* is currently unknown. Furthermore, the extent to which Julie Flint was dependent on Peter Gadet for access to the area and her safety is not detailed anywhere in the report. Notably, no specific dates of interviews with either of these individuals are provided.

The partiality of Julie Flint as an SPLM/A sympathiser is revealed in the obituary she wrote in *The Guardian* when SPLM/A leader John Garang died in 2005. She described Garang as a symbol of dignity and hope for change. She stated the following in relation to the SPLA:

“The SPLA evolved – slowly, and not always surely – from its origins as a brutal, Soviet supported, insurgency towards a movement more genuinely representative of all Sudanese who craved Garang’s “new Sudan” – a secular, pluralist, democratic nation dominated by southerners and marginalised northerners.”<sup>329</sup>

It is noteworthy that by the time the report was published, the SPLM/A had been in various states of conflict with the Government of Sudan and other factions intermittently for decades. No side could be considered impartial. Notwithstanding these obvious concerns, Christian Aid proceeded to rely on these biased sources to ground their allegations against oil companies. Ultimately, Christian Aid explicitly took a stand for the Christian rebel side in the conflict. *Scorched Earth* also relied on the accounts of the SRRRA, which is – as discussed earlier - the relief wing of the SPLM/A.<sup>330</sup> The need to obtain travel visas from SRRRA officials in Nairobi to travel to SPLM/A areas at the time the *Scorched Earth* field trips took place was well known.<sup>331</sup> The extent to which Christian Aid liaised with the SPLM/A and/or the SRRRA in order to obtain such visas and access to the region is unclear, as is the extent to which they travelled under supervision or were monitored by the SPLM/A and/or SRRRA. Ultimately, this lack of transparency and the use of fundamentally biased sources, such as Taban Deng Gai and Peter Gadet undermine the reliability of the report and raise serious questions as to its motive.

## VII. UNRELIABILITY: UNCLEAR TIMEFRAME OF INVESTIGATION

The timeframe for the investigation and fieldwork, including the presence of Christian Aid researchers in Sudan is unclear. *Scorched Earth* refers to representatives of Christian Aid visiting Sudan in August and November 2000.<sup>332</sup> However, several of the footnote references mention interviews having taken place in May 2000,<sup>333</sup> with no further explanation as to who conducted them, how the individuals were selected and whether they were ever given an opportunity to verify the accounts they had provided.

## VIII. SCORCHED EARTH RELIED ON MISLEADING IMAGES

The photographic images in *Scorched Earth* are credited to Crispin Hughes as well as Liba Taylor.<sup>334</sup> Hughes is a photojournalist whose images have been used by Oxfam,<sup>335</sup> with whom he travelled on field

trips.<sup>336</sup> There is however, no reference in Scorched Earth to Crispin Hughes having travelled on any Christian Aid trip to Sudan.

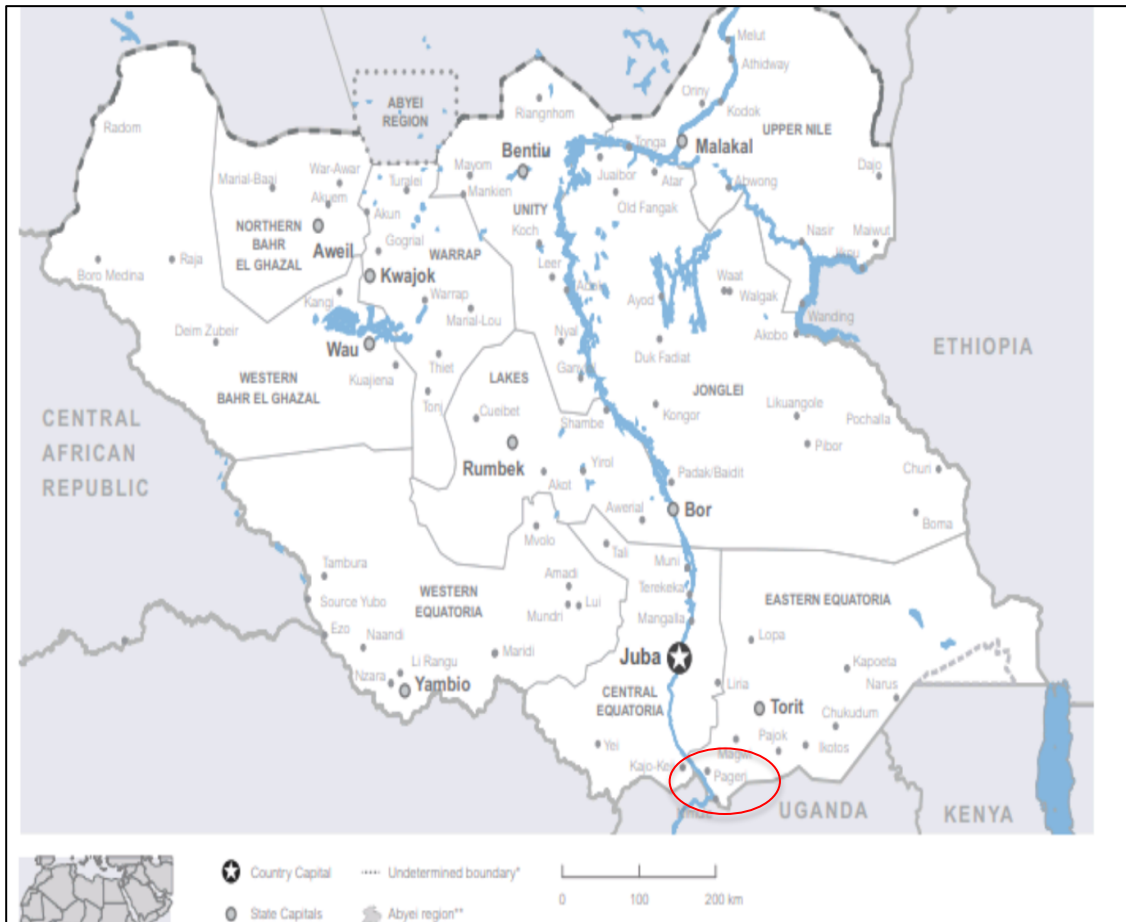
The reliability of the images used is in question. For example, in the summary report,<sup>337</sup> there is an image of two boys standing next to burnt out buildings in a village named Pageri (see map below). This image is replicated in the main report.<sup>338</sup> However, maps show that Pageri is in fact a location close to the border with Uganda, in Eastern Equatoria, not in Unity State.

Scorched Earth references 'The Hutchison Library' as the source alongside the images, but not formally in the credits. This appears to be a general stock image facility, which raises further questions as to whether the photographs used accurately reflect what they purport to portray.

THE HUTCHISON PICTURE LIBRARY was started in 1972 as a collection of photographs by foreign correspondents. Since then we have been dedicated to supplying our clients with distinctive and high quality images to document the people, cultures and places of our ever-changing world.

Today the library has over six hundred thousand images and is constantly updated and augmented with new work by more than two hundred photographers.

Map Indicating the Location of Pageri



**IX. BIASED AND INCOMPLETE REPORTING OF THE GOVERNMENT OF SUDAN’S LIMITATION OF ACCESS TO RELIEF PLANES AND THE SPLA’S ACTIONS**

In the section entitled “Flight Bans and The Denial of Relief”,<sup>339</sup> Christian Aid does not disclose that it was the SPLM/A’s actions as much as the Government of Sudan’s actions to limit access to relief planes and other aid operations: illegal aid flights exacerbated this tension. The report ignores the fact that the SPLM/A were routinely looting relief in attacks across the south.<sup>340</sup>

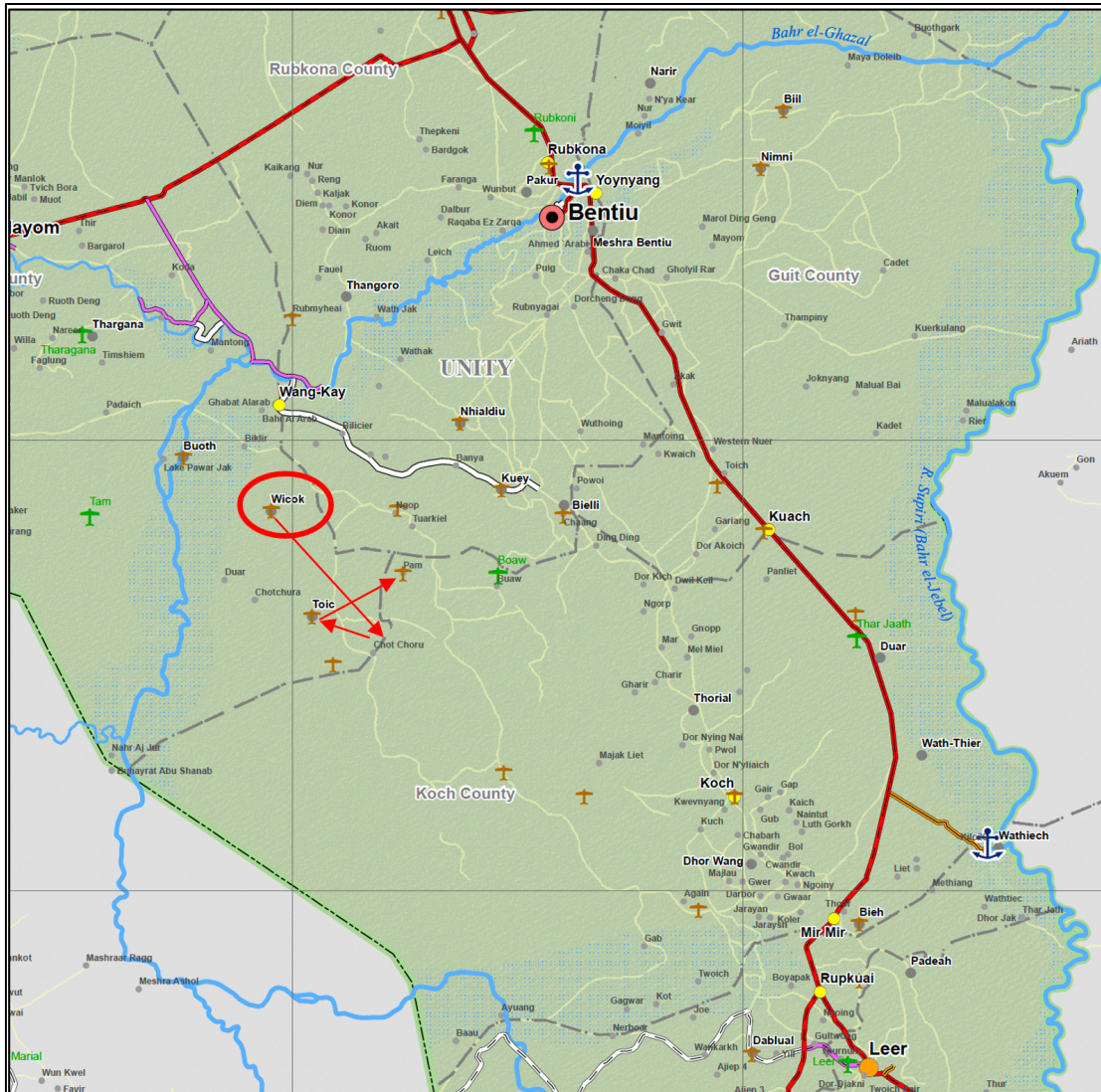
**X. HIDING BETWEEN THE STREAMS**

In April 2002, Christian Aid alongside DanChurchAid, published a follow-up report entitled “Hiding Between the Streams: The War on Civilians in the Oil Regions of Southern Sudan” based on a 4-day assessment trip to Western Upper Nile from 28-31 March 2002. The stated purpose of the visit was to assess alleged displacement and attacks for “advocacy purposes.”<sup>341</sup> The report refers to the area in question being rich in oil, held amongst others, by Lundin.<sup>342</sup>

For this report, Christian Aid partnered with two local agencies: the South Sudan Operation Mercy (“SSOM”) and the SRRA, the humanitarian wing of the SPLM/A. Commentators have alleged that the SRRA was complicit in siphoning aid to the SPLM/A, which in turn fed their war efforts.<sup>343</sup> The SSOM is largely unknown.



The map<sup>344</sup> below shows the locations Christian Aid visited in researching ‘Hiding Between the Streams’. These locations are far from Lundin’s bases and operations.



The report contains unattributed hearsay about the displacement of individuals and unsubstantiated allegations as to the actions of the Government of Sudan. It is replete with generic references.<sup>345</sup>

Furthermore, it does not contain any footnotes or details of any interviews conducted with the unnamed individuals cited.<sup>346</sup> Neither does it contain any linkage evidence between the alleged displacement and Lundin. In its attempts to chart displacement, Christian Aid acknowledges that:

“It is important to note that it is virtually impossible to make an accurate assessment of the numbers of people affected and their precise locations - given that there is constant movement over a very large geographic area.”<sup>347</sup>

Given the generic referencing and lack of linkage evidence to Lundin, the report is not suitable as a reliable source of evidence in a criminal investigation or trial.

## XI. CONCLUSION

Following Christian Aid's allegations, Lundin acted with full transparency, encouraging visits to its Sudanese area of operations – invitations that were not accepted. The Company investigated and comprehensively addressed the allegations in "Lundin Oil in Sudan", published on 16<sup>th</sup> May 2001. The facts on the ground contradicted the claims in the report.

Scorched Earth relies on only a handful of interviews from biased and un-named sources, which provide no linkage evidence to Lundin. The report contains only generalised statements about the movement of people and fails to provide substantive facts or information to establish the causes and exact timing of the alleged displacement. The report contains serious methodological flaws.

A significant number of allegations are based on information provided by only two individuals, both of whom were involved in the conflicts in southern Sudan, namely Taban Deng Gai and Peter Gadet and had their own interests to serve. Christian Aid's partners in Sudan included the NSCC, the SCC and the SRRA, all of which had direct links or associations with the SPLM/A.

## Chapter 7: Human Rights Watch - Sudan, Oil and Human Rights, 2003

### I. INTRODUCTION

On 24th November 2003, Human Rights Watch published “Sudan, Oil and Human Rights” (HRW03), a 752-page report, the main premise of which claimed that “oil now figures as an important remaining obstacle to a lasting peace” and that “oil revenues have been used by the government to obtain weapons and ammunition that have enabled it to intensify the war and expand oil development.”<sup>348</sup> There were no oil revenues from Lundin’s Block 5A concession paid to the Government of Sudan.

The report is a highly selective piece of advocacy on a complex conflict which was in fact driven by many factors in Sudan, such as personal ambitions, the pursuit of wealth, ruthlessly pursued rivalries, questions of ethnic divisions and political ambitions, national identity, structural inequalities and crippling external debt. Lundin’s role in Sudan formed only a small part of the 752 pages and yet it has been the only oil company to be the subject of a *criminal* investigation out of the nine companies cited in the report. This is a clear indicator that there is consensus amongst the world’s prosecution authorities that the report and its premise are not supported by the evidence.

Notably the report, which was based on limited fieldwork, fails to demonstrate a rigorous methodology in terms of both evidence collection and the selection of interviewees. It was never written for the purpose of being adduced in a criminal investigation or trial. For these reasons, it should not be relied upon in criminal proceedings as a reliable source of evidence.

### II. LIMITED FIELDWORK AND SELECTIVE INTERVIEWEES

HRW conducted fieldwork in “southern Sudan, Khartoum, Nairobi and elsewhere from February 1999 to November 2002.”<sup>349</sup> Many of the interviewees were senior figures connected to southern forces. The partiality of such interviewees impacts their reliability as evidential sources. Surprisingly, there are very few interviews with displaced people in the report and no interviews with individuals inside Block 5A. Approximately 150 interviewees are listed in the report,<sup>350</sup> including five outside the time frame stipulated.<sup>351</sup> Block 5A was not visited.

Other locations, from which evidence was gathered, were from within rebel-held territory, which again impacts the reliability of the information obtained. This reliance on partial evidence is emblematic of HRW’s approach in this report, when attempts are made to rely on such material in criminal proceedings.

### III. METHODOLOGY

There are serious deficiencies in the methodology applied in this report as set out below.

#### (a) Compilation of the Report

The report was written by Jemera Rone, a HRW researcher on Sudan, assisted by eleven other individuals.<sup>352</sup> There is no information as to whether any of the eleven assistants travelled to Sudan to conduct fieldwork. Furthermore, there is no information in the report to suggest that Jemera Rone visited Block 5A specifically or conducted any interviews in this area.

## (b) Lack of Rigorous Methodology in the Conduct of Interviews

Most of the interviews conducted took place in 1999. It is notable that apart from five displaced women interviewed in 1999, no other displaced individuals are cited as having been interviewed and none took place in Block 5A. Time on the ground was limited largely to 1999 and mainly from 14-20 August in Bahr el-Ghazal, Nyal and Ganyiel, Western Upper Nile.<sup>353</sup> This was before the construction of the All Weather Road. Other interviews were conducted in Kenya and in USA.

In terms of flawed methodology, HRW provides no information on the following reliability markers:

- How were the interviewees selected?
- Who provided access for the research teams to meet with the interviewees?
- How did the interviewers travel to the location of interview and who accompanied them?
- Who provided security, and how?
- Were visas required for the interviewees? If so, how were they obtained and from where?
- Where were the precise locations in which the interviews took place?
- Was there any protocol in place to govern the conduct of the interview?
- In which language did the interviews take place? Was an interpreter present, if so, how was the interpreter selected?
- What were the qualifications of the interpreter?
- Were questions and answers accurately translated? Were rebel representatives present and/or providing security at the interview?
- What questions were posed?
- Was the interview recorded? If so, how?
- Was any reward, monetary or otherwise offered to the interviewees?
- Were the interviewees offered the prospect or promise of compensation?

The shortcomings of the methodology of this report cannot be cured as Jemera Rone is now deceased.

## IV. LACK OF LUNDIN-SPECIFIC EVIDENCE

HRW03, in terms of Company-specific evidence, includes one interview with the Company,<sup>354</sup> one letter<sup>355</sup> and one fax.<sup>356</sup> A search for references to witnesses who saw alleged actions by the Company, or the effect of those alleged actions, produces few results. Of those identified, they are vague hearsay accounts.<sup>357</sup> This is a contrast to the actual steps taken by Lundin to check facts as to the events taking place in Sudan. It is on this basis that HRW accuses Lundin of 'wilful blindness'<sup>358</sup> to the conflict and asserts that the Company was complicit in the violation of human rights. HRW03 assumes a position on Lundin's activities and thereafter makes unfounded allegations against the company. HRW criticises the Company for a lack of transparency, whilst failing to apply those same standards to its own research and report writing. This is notwithstanding the Company releasing its detailed report in May 2001.

## V. LIMITATIONS OF ACCURATE DATA

HRW03 acknowledge the challenge and limitations of gathering accurate data in the “chaos of war, continual civilian displacement, famine and scarcity, and the skeletal transportation and communications systems”.<sup>359</sup> Accepting that relief agencies produce estimations to support their operations and for requesting donor assistance, HRW03 state figures are “only reliable as estimates in the absence of better information on population”. This position is supported by the WFP in 1999 who also acknowledge the shortage of reliable data in emergency situations as “local leaders or controlling groups learn how the assessment and allocation systems work and how, through manipulation, they may secure more resources”. The WFP cite southern Sudan as an example where this happens.<sup>360</sup>

Despite this, HRW03 refer to various statistics to support their allegations of displacement in the ‘oil fields’ of Western Upper Nile – referenced in the Chapter on Lundin. It is important to reiterate that Lundin did not produce oil so there were no ‘oil fields’ for Lundin’s activities.

For example, HRW reference a report thus: “U.N. OLS (Northern and Southern Sectors), “Joint Weekly Report: October 13, 1999,” Nairobi, October 13, 1999. The 30,000 escaped into the garrison towns of Bentiu (16,000), Rubkona (4,830), and Mayom (2,900). There were others in need in the government areas of Pariang (4,770), Tong and Gezira (900), and Dorkhan and Kuersilik (600). Those in Pariang included persons who fled from the government military operations outside of Pariang in May 1999.”<sup>361</sup>

The UN report referenced by HRW03 does not include these figures.<sup>362</sup> It states:

“WFP cannot access 30,000 food-insecure beneficiaries targeted for monthly food rations. A further 1,200 malnourished children in selective feeding centres in Mayom, Rub-kona and Bentiu face a food shortage when the WFP stocks (10 MTs) held by CARE in the centres runs out.”

The weekly reports before and after also do not refer to these numbers of displaced so it is unclear how HRW established its figures.<sup>363</sup> The reports do not refer to the fighting as linked to oil activities.

The OLS report prior to this, week beginning 6<sup>th</sup> October 1999, also refers to people returning to locations they had previously left, which shows a continual movement of people during these periods:

“A rapid assessment mission consisting of members from UNICEF, WFP, Coordinating Committee of Voluntary Service (COSV) and local counterpart staff was sent to Koch, Boaw and Paboung in Leech State, Western Upper Nile on 28 September 1999. The team reported its findings during an Emergency Preparedness meeting held on 29 September. The team found that the population in Koch that had earlier been displaced by fighting in the area, was beginning to return to the area. There were reports of crops damaged by floods and looted by local militias. In Boaw, the team found a local population hosting large numbers of IDPs. There was concern over the strain the IDPs are placing on the local food security situation of the area.”<sup>364</sup>

In fact HRW03 provides no substantive evidence to support allegations of displacement in Block 5A that they framed in a numerical context. For example, in its section titled: “Lundin Hides the Situation of Armed Conflict in Block 5A”, a WFP press release from July 1999 is referred to but the actual report speaks to the region of Western Upper Nile, not Block 5A. This is a vast region of which Lundin were present in a small section (see Chapter 4). The WFP report says: “War between two rebel factions in this important area of southern Sudan is blocking WFP from delivering food aid to 150,000 people in rebel held towns in the region.”

The report goes on to say: “This is the second year running of major inter-factional fighting in Western Upper Nile. For many months in 1998, access by humanitarian agencies was severely hampered, and important agricultural activities were disrupted. Insufficient rainfall followed by floods exacerbated the situation, causing even more suffering for the population, many of whom died or lost livestock and other belongings.”<sup>365</sup> This press release, as well as the other OLS reports HRW03 reference, do not cite oil activities as the cause of the fighting. In fact the report records “it is the latest chapter in the conflict.”<sup>366</sup>

In the HRW03 section titled: “Numbers of Nuer and Dinka Displaced [sic] from Oil Blocks in Western Upper Nile”, the sources are similarly not possible to corroborate or full details provided to substantiate the figures provided. Of the seventeen sources cited, five are emails from various WFP staff, four are WFP reports that are selectively presented and in one instance wrong – as shown above, six refer to sources not possible to locate.<sup>367</sup> Of the ones readily available, none mention oil as a cause for displacement but rather spoke to general insecurity occurring across southern Sudan at this time.<sup>368</sup>

## VI. ATTACKS ON FOOD RELIEF – NO CONNECTION WITH LUNDIN

HRW describes in outline the effects of attacks by the SPLM/A on food and non-food relief in locations in southern Sudan, which followed from the reduction in donor funding for relief aid.<sup>369</sup> Crucially, however, HRW seeks to conflate these attacks with the activities of oil companies operating in that part of Sudan, in a chapter titled “Human Rights Consequences of Oil Development”.<sup>370</sup>

In reality these attacks were the well-documented inter-tribal conflicts as well as insurgency tactics used then and historically against the civilian population for the benefit of the attackers. They were the result of grievances and conflict between competing factions and reduced donor funding. They had no connection with Lundin’s operations.

Drought, famine and insecurity had been substantial contributory factors to a deteriorating humanitarian situation and movement in search of relief. To focus, as HRW does, on the actions of the Government of Sudan alone as causing the “displacement, disruption and hunger caused by the fighting” is misleading and biased. To include this account in a chapter entitled “Oil Fuels the War” is a clear misrepresentation of the situation on the ground.

## VII. OIL AND WAR – A SELECTIVE PORTRAYAL

HRW03 asserts that the increased oil revenues were used to fund military spending.<sup>371</sup> This assertion ignores, first, the fact that Lundin did not produce any oil during its time in Sudan and second, Sudan’s economic situation in the early 2000s.

Following a long period in which Sudan had been unable to service its international debt and a consequent period in the international economic wilderness, at about the time the new oil refinery at Al Shajarah, South of Khartoum, became operational, Sudan entered into an agreement with the IMF for debt service payments in 1999.<sup>372</sup> The IMF package included conditions such as a reduction of military spending as a percentage of GDP and Sudan acceded to increases in the domestic budget for e.g. civil service salaries, investment in agriculture and the purchase of foreign currency reserves.<sup>373</sup> Even with the increase in governmental revenues in 1999-2002, the dire economic circumstances of the country meant that the increase was sufficient only to keep the country afloat.<sup>374</sup> IMF reports do not support the HRW stance that the revenues funded military expansion.<sup>375</sup>

Oil was an emerging economic resource of the country and was caught up in self-serving narratives to prevent revenues to the government as developed by the SPLM/A and advocacy groups, even though the origins of the conflicts are complex and disputed.

The presence of oil in this equation made for the development of a one-sided narrative among NGOs that could be advanced, namely that the conflict was about oil and companies involved in its extraction were complicit in causing and perpetuating the conflicts and its consequences. It is also important to reiterate that Lundin did not produce any oil during its time in Sudan so to equate oil revenues with the Company's operations is a similar misrepresentation of the facts.

Logistical difficulties in navigating the terrain, the influence of the seasons and the absence of roads in many parts of the country are not addressed in HRW03. The different factions and militia fighting operated across vast distances, often with little or no communications capacity and only intermittent weapons capacity.

HRW's historical portrayal of the conflict, whilst acknowledging SPLM/A actions against the civilian population, presents a one-sided view. Significantly, the report does not state that the SPLM/A were conducting an insurgency against the Government of Sudan but hastens to describe the actions of the government as a "textbook counter-insurgency campaign."<sup>376</sup> In reality, there were conflicts occurring between competing and opportunistic groups, being waged in southern Sudan. The fluidity of these groups and defections affected the balance of power and thus the ebb and flow of the conflict.

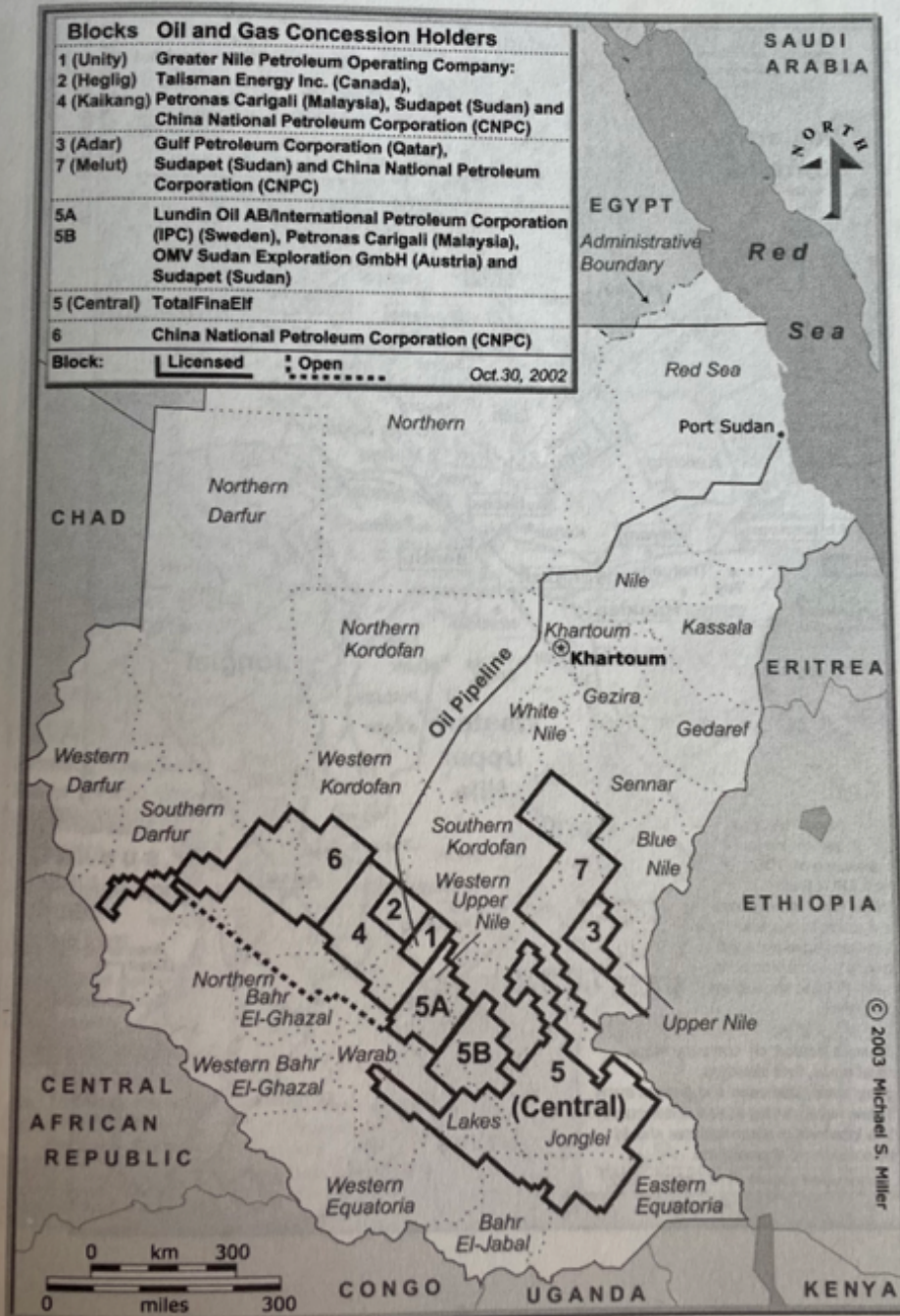
## VIII. DISPLACEMENT

HRW's claims about displacement are based largely on other NGO sources such as ECOS's "Depopulating Sudan's Oil Regions" (2002) and Christian's Aid "Scorched Earth: Oil and War in Sudan" (2001) report. Neither of these documents are based on comprehensive fieldwork. See Chapters 8 and 6, respectively. HRW also relies on a series of UN reports,<sup>377</sup> none of which were based on site visits to Block 5A.

The claims of HRW03 that "oil areas targeted for population clearance are those where a concession has been granted and a pipeline is imminent and/or nearby" is wholly unsupported by evidence and misleading.<sup>378</sup> There is no evidence of clearing people to enable a pipeline associated with Lundin's Block 5A concession. The pipeline was a significant distance from any of Lundin's exploratory activities as the map below shows.<sup>379</sup> Furthermore, Lundin did not extract oil commercially.

Glossaries

**MAP B: OIL CONCESSIONS IN CENTRAL AND SOUTHERN SUDAN AS OF AUGUST 2002**





HRW relied upon reports of the UN Special Rapporteur Gerhart Baum, which it mischaracterised in its sources. None of his official reports state that “oil had fuelled the conflict” in Sudan, as HRW suggests.<sup>380</sup> It is noteworthy that Gerhart Baum did not visit Block 5A and although invited to visit Lundin’s operation, he did not do so. He did not accuse the oil companies of being responsible for crimes, nor call for their cessation of operations. He recognised that oil exploitation was “*necessary for the development of the country*”.

Following his visit in January 2001, the Special Rapporteur, revisited Sudan from 2-14 October 2001 and again did not request that the activities of oil companies and, in particular those of Lundin, cease. The Special Rapporteur visited Bentiu, which is just outside Block 5A, on 7 October 2001 and was received by representatives of Lundin and Talisman, the Canadian company operating in an adjacent concession. He did not visit any of Lundin’s places of work, operational sites nor travel along the road, which was alleged to be linked with the displacement of people. He visited Pariang in Talisman’s Block. His time in Rubkona (also outside Block 5A) was not spent with Lundin. The Company’s Vice President of Corporate Responsibility had specifically requested the Special Rapporteur visit the Company’s sites and wrote to him after his visit to express her disappointment at his failure to visit.

The Special Rapporteur did not hold the Company, or oil companies in general in any way responsible for the conflict. Gerhardt Baum never called for the withdrawal of oil companies from Sudan nor alleged they had committed any crimes.

HRW fails to acknowledge the influence of individuals such as Peter Gadet,<sup>381</sup> who hosted Christian Aid and ECOS research teams.<sup>382</sup> Given his central role in the conflict, his lack of impartiality is evident although not addressed in the report. HRW has not analysed sufficiently the reports upon which it relied and has adopted their pretexts blindly in order to lend support to the campaign against oil companies.

HRW03 also refers to other reports such as Gagnon and Ryle’s 2001 report<sup>383</sup> in an attempt to confirm a “renewed government strategy to displace the non-Arab rural population from rural areas of the oil region in order to secure the territory for oil development”.<sup>384</sup> No acknowledgement is made however of the lack of objectivity in the partial accounts cited within that report.<sup>385</sup>

There were many reasons for the displacement of peoples over the years both natural and man-made.<sup>386</sup> The figures HRW uses to estimate the number of households in Western Upper Nile are taken from the census figures from 1955/56.<sup>387</sup> Since that time, there have been “successive conflicts that resulted in displacement as well as acute levels of poverty, disease and malnutrition, which also causes displacement.”<sup>388</sup> Little heed is paid in the report to the natural movement of people in search of water and pasture for their cattle or the burning of grassland as a land management tool.<sup>389</sup> Such factors do not fit the anti-oil message the report seeks to convey.

## IX. BIAS

Allegations against Lundin are limited and based on anonymous sources or individuals associated with southern factions so cannot be regarded as reliable. The partiality of these accounts and the inherent bias of the interviewees, given their role in the conflict is not acknowledged by HRW. Moreover, many of the same accounts relied on in HRW03 are reused and recycled from other NGO reports.<sup>390</sup>

While HRW accuses Lundin of presenting a “one sided and misleading rendition of what is a complex situation”<sup>391</sup> and failing to disclose “many important facts about its investigations”,<sup>392</sup> such criticisms, and indeed those set out herein, can be levelled at HRW.

## X. CONCLUSION

The report lacks rigorous methodology regarding evidence collection and the selection of interviewees. Its limited fieldwork did not include a visit to Block 5A. The only Lundin-specific evidence is an interview with the Company's Vice President of Corporate Responsibility, one letter and a fax. The allegations are based on anonymous sources or individuals associated with southern factions and are not therefore reliable.

HRW's claims about displacement are based largely on other NGO reports, which also lack comprehensive fieldwork and suffer from methodological deficiencies similar to those detailed in this report. The report conflates issues of alleged displacement, different geographical areas and disparate oil companies. It fails to demonstrate in a probative way wrongful acts by Lundin.

## Chapter 8: The European Coalition on Oil in Sudan (ECOS)

### Unpaid Debt – The Legacy of Lundin, Petronas and OMV in Block 5A, Sudan, 1997-2003

#### I. INTRODUCTION

In June 2010, the European Coalition on Oil in Sudan (ECOS) published a report: “Unpaid Debt – The Legacy of Lundin, Petronas and OMV in Block 5A, Sudan 1997-2003” (“Unpaid Debt”). One of its main purposes was to establish that “Lundin...as a matter of international law may have been complicit in the commission of war crimes and crimes against humanity.”<sup>393</sup> Crucially, on 21st June 2010, District Attorney Magnus Elving at the International Prosecutor’s Office in Stockholm announced his decision to initiate a preliminary investigation into violations of humanitarian law in Sudan from 1997-2003. One of the reasons for this decision was the “recently published report...‘Unpaid Debt’”.<sup>394</sup>

When submitted to proper scrutiny, Unpaid Debt is not a reliable evidential source for the purpose of a criminal investigation or trial. The report lacks transparency, exhibits confirmation bias, portrays a misleading view of the conflict, relies on recycled hearsay sources from other reports and fails to accord sufficient weight to the community work Lundin was conducting in Block 5A and the way in which it operated. It also includes reference to documents and Plaintiffs put forward in the Talisman proceedings to the US Courts, that were held not to link that company to any of the alleged crimes that were committed. Furthermore, the satellite imagery relied upon in the report, in an effort to demonstrate evidence of population displacement, is incorrect and misleading. In short, it is of grave concern that a report of such low quality underpins the Swedish Prosecutor’s decision to open a preliminary investigation in this matter. For the reasons set out herein, and in accordance with international standards of criminal procedure, admission of this report would not be permitted before international courts and tribunals.

#### II. FLAWS IN METHODOLOGY

##### A. LACK OF TRANSPARENCY IN THE RESEARCH AND AUTHORSHIP OF THE REPORT

Information as to who was responsible for researching and writing Unpaid Debt is not provided in the report.<sup>395</sup> This lack of transparency prevents any detailed scrutiny of the potential bias of those preparing and authoring the report, which in turn undermines its probative value as a source of evidence in a criminal investigation. It is not possible to question the underlying source-providers of information or indeed authors/researchers in the context of any future criminal trial.

The funding of the research and writing of Unpaid Debt also lacks transparency. Insufficient detail is provided as to which particular NGOs funded the research. The report states only that: “This ECOS publication was supported by Fatal Transactions.”<sup>396</sup> Fatal Transactions was a network of NGOs in Europe and Africa which believe that “if natural resources are exploited in a responsible way, they can be an engine for peace-building and contribute to the sustainable development of the country.” These NGOs received funding from the European Union but have not been identified – nor is the manner or extent of their support explained.

## B. BIASED, CURSORY AND NARROW INTERPRETATION OF THE CONFLICT IN SUDAN

Unpaid Debt constitutes a central plank in ECOS's concerted effort to work for "compensation and reparation for the injustices caused by Sudan's oil wars." These efforts have included a mischaracterization of Sudan's troubled past and were designed to obtain money from international businesses perceived to have rich treasuries. Indeed, while there were provisions in the CPA to compensate victims of the conflict, ECOS understood there were no chances of obtaining any compensation from parties of the conflict. ECOS thus targeted companies both financially viable and reputationally vulnerable, firstly Talisman,<sup>397</sup> and when that claim failed, Lundin.

ECOS's predetermined approach in Unpaid Debt that injustices flow from so-called "oil wars" for which Lundin should be held responsible is pursued tirelessly from the outset, with no regard for other perspectives on accountability. This confirmation bias undermines the report's reliability.

In line with its aim to seek compensation and reparations, Unpaid Debt sets out a particularly narrow view of the conflict and the role played by oil. The report's claim that it was the exploitation of oil in Block 5A that "set off a vicious war in the area"<sup>398</sup> expressly ignores the true origins and complexity of the conflict and provides the reader with a misleadingly narrow account which fails to address the reality of the conflict and its development – namely, that the conflicts had been on-going *both before and after* Lundin's oil exploration in Block 5A. This entrenched approach undermines the impartiality and credibility of the report.

## C. LACK OF PRIMARY EVIDENCE AND RECYCLED SOURCES

The majority of the material relied upon in Unpaid Debt is taken from a secondary, recycled source, namely Human Rights Watch's 2003 report "Sudan, Oil and Human Rights." There are 66 references in the main text to HRW03 as a source for information in Unpaid Debt. Large tracts of HRW03 have been condensed into a few lines, often simultaneously citing other reports by other organisations. Allegations made in HRW03 are cited uncritically, with no evidence of verification of the accuracy or authenticity of the claims made. This use of layered, unattributed hearsay undermines the probative value and reliability of the report as an evidential source in a criminal investigation.

"New" primary material in Unpaid Debt comes from the following sources: (i) anonymous Government ministers in Khartoum in 2006 – 2008;<sup>399</sup> (ii) a confidential interview with an anonymous senior manager of an oil company<sup>400</sup> and (iii) an archived filmed ECOS interview with Peter Gadet from 2002 who was deeply implicated in the conflict.<sup>401</sup> The report also relies upon selective satellite imagery of the agricultural land use in Block 5A before, during and after Lundin's presence, which is analysed below. Gadet, was also a source of information in Christian Aid's 2001 report, *Scorched Earth* – see Chapter 6. These new sources are deeply problematic as they fail to demonstrate either reliability or impartiality.

The report also seeks to rely on information from the Lundin's Vice President of Corporate Responsibility. However, such reliance is misleadingly selective and taken out of context.<sup>402</sup>

In terms of secondary evidence, the majority of the interviews cited in Unpaid Debt were conducted with southern factional leaders, who later served in the South Sudanese Government after 2011. None of these interviewees are impartial given their direct involvement in the conflicts.

Secondary sources from other advocacy reports are relied upon, namely Christian Aid, Human Rights Watch, Amnesty International and journalists connected to these organisations.<sup>403</sup> Unpaid Debt ignores the obvious weaknesses of relying on unverified, secondary hearsay accounts. Such accounts are cited as immutable truths, without corroboration or further investigation. The use of these sources undermines the probative value of the report and demonstrates its confirmation bias.

Unpaid Debt also refers to an earlier 2002 ECOS report prepared by Diane de Guzman and Egbert Wesselink: “Depopulating Sudan’s Oil Regions, January to March 2002.”<sup>404</sup> This report fails to set out its methodology in terms of either the fieldwork conducted or the interviewing of individuals and recording of their testimonies. The report refers to interviews conducted by Diane de Guzman with “displaced people in Ruweng County and Western Upper Nile in February and March 2002.”<sup>405</sup> These locations were not proximate to the Company’s operations. Ruweng County is closer to Block 1 than Lundin’s operations in Block 5A and Western Upper Nile is vast in size and notably difficult to navigate given the lack of roads. Large parts to the west were SPLM/A territory, as was Ruweng county in the north-east: a fact not referenced in the report. These were areas in which Peter Gadet was operational. Peter Gadet is also referenced in Unpaid Debt from ECOS archive footage in 2002.<sup>406</sup> No indication is given in the report as to how access to Peter Gadet was obtained, on what terms or how his obvious tendency to bias could be mitigated. Reliance on Peter Gadet as a source of evidence against the oil industry in Sudan is unacceptable and inexplicable.

#### D. INADEQUATE INFORMATION ON THE METHODOLOGY

Unpaid Debt does not provide any details of the methodology used in the gathering of the information in the report. The following questions remain unanswered:

- How were the interviewees selected and contacted?
- How was their identity confirmed?
- Who conducted the interviews?
- Which interviewees were not relied upon and why?
- Was an interpreter engaged, and if so, how was that interpreter selected and what professional qualifications did the interpreter have?
- Did the interpreter accurately translate the questions asked and accurately translate the answers given?
- What was the full record of the questions asked of the interviewees?
- How were the interviews recorded and by whom?
- Was the record of interview affirmed by the interviewee?
- Was the interviewee offered or given any reward, monetary or other, for providing his/her account?
- What assistance was provided to find the interviewees, to travel to locations and by whom?

The lack of answers to these questions undermines the credibility, reliability, fairness, and impartiality of Unpaid Debt.

#### E. INSUFFICIENT FIELDWORK IN SUDAN

Unpaid Debt does not detail any fieldwork conducted in Sudan, save for a visit in 2007, in respect of which no details are provided. No interviews conducted from that visit are cited.

There are no details of any visit made by ECOS to Block 5A, Lundin’s site, or the All Weather Road in order to verify the claims that are made in secondary source materials.

#### F. USE OF MISLEADING IMAGES

The sourcing, use, and description of images in Unpaid Debt is misleading. The report does not state that the images included were not taken for the purpose of the report during fieldwork in the region.

### III. LACK OF IMPARTIALITY OF EGBERT WESSELINK

Egbert Wesselink, a Dutch national affiliated with Pax Christi and a vocal critic of the oil industry in Sudan, and the Company, was one of the key individuals behind both Unpaid Debt and the earlier 2002 ECOS report “Depopulating the Oil Regions”, which was authored by Diane de Guzman and edited by Wesselink.<sup>407</sup>

At the time Unpaid Debt was written,<sup>408</sup> Wesselink was a co-ordinator<sup>409</sup> for ECOS and Senior Advisor to Pax Christi International (PAX) an international Catholic Peace movement, which functioned as ECOS’ secretariat, following the latter’s formation in 2001.<sup>410</sup> From 2011, ECOS gradually ceased to function.

No reference is made in either of the ECOS reports to time spent by Egbert Wesselink on the ground in southern Sudan, or more specifically in Block 5A. There are no references to attempts made by Wesselink to corroborate any of the secondary source materials cited in either report. Neither are his close contacts with the SPLM/A detailed in either report. In 2005, he gave an interview in a publication for the Dutch Humanistic Peace Council, where he says, in translation, that he has ‘his data through personal contacts with rebels of the SPLM’.<sup>411</sup> This lack of transparency in Unpaid Debt calls into question the impartiality, and interpretation of events by both Wesselink and ECOS.<sup>412</sup> In reality, ECOS, PAX and Wesselink were allies in the quest for the independence of south Sudan,<sup>413</sup> although silent before and thereafter on the SPLM/A’s involvement in the conflicts.<sup>414</sup>

In 2012, Wesselink purchased shares in Lundin in order to have access to the Company’s Annual General Meetings and be able to address its shareholders.<sup>415</sup> He tabled a number of proposals for resolutions to be presented at the AGM in 2012,<sup>416</sup> in an attempt to force the Company to accept responsibility for the alleged crimes made in Unpaid Debt, all of which were emblematic of his pursuit of the Company. Wesselink also travelled that year to Sudan to engage Lundin and the South Sudanese in a “reconciliation process with Christian overtones”<sup>417</sup> demanding the attendance of the CEO and one of its board members:

“Carl Bildt and Ian Lundin should travel to South Sudan and ask for forgiveness... They should manage the situation in the classic Christian manner, ‘You confess, you repent and you open up for atonement’.”<sup>418</sup>

Wesselink’s evident lack of impartiality coupled with his drive to attempt to force Lundin to accept responsibility for war crimes renders him a biased and unreliable author and source of evidence.

### IV. TALISMAN

#### (i) INTRODUCTION

In 2001, the Presbyterian Church of Sudan and others filed a lawsuit against the Canadian oil and gas producer, Talisman Energy, under the US Alien Tort Claims Act (“Talisman Energy case”). It was claimed

that Talisman aided the Government of Sudan in the commission of genocide, war crimes and crimes against humanity.

According to the claim, Talisman worked alongside the Sudanese Government in the creation of buffer zones around certain oil fields. It was alleged that this conduct effectively assisted human rights violations and the perpetration of international crimes in order to gain access to oil by displacing the population living in the areas around the oil fields and attacking their villages. Talisman had purchased the rights to develop in Blocks 1, 2 and 4 in October 1998.<sup>419</sup>

The District Court of New York dismissed the claim on 12<sup>th</sup> September 2006.<sup>420</sup> In a decision on 2<sup>nd</sup> October 2009, the US Court of Appeals for the Second Circuit affirmed the District Court's decision.<sup>421</sup> The Court of Appeals held that it had to examine international law to decide what standard was applicable in order to establish aiding and abetting liability for human rights violations.

The court determined that under the Alien Tort Claims Act, and in accordance with the standard under the International Criminal Court Rome Statute, the plaintiffs must show that "Talisman acted with the 'purpose' to advance the Government's human rights abuses."<sup>422</sup> The court held that applying international law, the *mens rea* standard for aiding and abetting liability under the Alien Tort Claims Act is "purpose rather than knowledge alone."<sup>423</sup> The Court held that the Claimants had failed to establish on the evidence that Talisman "acted with the purpose to support the Government's offences."<sup>424</sup>

The Court referred to the Plaintiff's extensive reliance on hearsay evidence, which failed to "build the links in the chain of causation" between Talisman and the injuries of the Plaintiffs.<sup>425</sup> The Court determined that the volume of the Plaintiff's evidence rested on a dozen or so pieces of evidence to which they referred repeatedly.<sup>426</sup>

The Court held that in addition to the Plaintiffs' failure to show Talisman's substantial assistance to the Government's violation of human rights, the Plaintiffs failed to present sufficient evidence to find Talisman liable for any displacement from Government attacks on civilians. The claim that Talisman aided and abetted the Government failed for several reasons including the Plaintiffs' failure to present evidence that would raise a question of fact as to whether Talisman performed any act that assisted the Government in violation of international law. In terms this meant that the claim had been based upon allegations that were not supported by the evidence.

Before the June 2010 publication of Unpaid Debt, the US Court of Appeals for the Second Circuit had already dismissed the case against Talisman. This decision was further challenged by the petitioners to the US Supreme Court and their application dismissed in October 2010.

ECOS's report Unpaid Debt seeks to rely on case documents and individuals who were Plaintiffs from the Talisman case as sources of evidence to impugn Lundin and recycled this material into its report. Other NGOs, for example Human Rights Watch – and single-issue campaigners Bloodhound,<sup>427</sup> have also relied on a number of these Plaintiffs as sources of evidence.

## (ii) UNFAIR RELIANCE ON TALISMAN COURT DOCUMENTS

The documents ECOS's relies upon from the court record, "include Talisman's security reports, testimonies from militia commanders who were active at the time, as well as army orders to forcibly remove the population away from the oil areas."<sup>428</sup> These documents became public as a result of the US Court proceedings and were not known to the Company at the time of their creation, a fact conceded by ECOS.<sup>429</sup> More importantly, nor were they even relevant to the Company's operations.

There are 49 references in Unpaid Debt to Talisman court case documents. Reliance upon Talisman court documents in this manner against Lundin is misconceived. For example, when exhibiting a description of Talisman's security structure in 2000 in Unpaid Debt,<sup>430</sup> which had been taken from Talisman's Corporate Social Responsibility Report,<sup>431</sup> ECOS boldly and without foundation asserted that it understood that "Lundin Consortium's security arrangements would have been similar to this structure."<sup>432</sup> This is incorrect as the two companies had separate and different security arrangements.

This willingness to make assumptions without foundation, demonstrates ECOS's lack of rigour in its approach to reporting on the conflict. The use of selective documents in an attempt to cast a shadow over Lundin's actions in Sudan, at a time when the US Court of Appeals had already dismissed the case against Talisman, is unfair.

#### V. NO WEIGHT ATTRIBUTED TO LUNDIN'S COMMUNITY DEVELOPMENT PROGRAMMES

ECOS summarily dismisses Lundin's submissions concerning their advocacy work in support of peace with the Government of Sudan and other stakeholders including Riek Machar, NGOs, IGAD, the Arab League and a number of US organisations. On 8<sup>th</sup> June 2010, the Company issued an open letter to its shareholders in which it refuted "all the allegations and inferences of wrongdoing attributed to Lundin Petroleum in the report." See Annex 6. While Unpaid Debt refers to Lundin's account of its engagement in "extensive discussions with Government representatives requesting explanations regarding allegations of scorched earth, population displacement, aerial bombing, civilian targeting and a number of other human rights violations,"<sup>433</sup> these explanations are dismissed summarily by ECOS, noting only that "no results of these extensive discussions have been reported or observed."<sup>434</sup> ECOS was unable to dispute the undeniable truth of the substantial efforts made by Lundin to bring peace to the region. This attitude reveals ECOS's biased approach. See Chapter 4 for more details of the Company's engagement in peace initiatives.

Lundin's community development work is also dismissed by ECOS without due consideration. The report references the Company's explanation that the Community Development and Humanitarian Assistance Program was 'designed to improve the local infrastructure (road construction), the supply of freshwater (delivery and drilling of water wells), health (mobile tent clinics and refurbishment of hospital), and education (supply of school equipment and meals to over 500 children).'<sup>435</sup>

#### VI. SATELLITE IMAGERY EVIDENCE

A cornerstone of the evidence ECOS relies upon against Lundin is an analysis of several satellite images of areas around the Company's operations and the All-Weather Road.<sup>436</sup> These satellite images refer to a study prepared by PRINS Engineering for ECOS.<sup>437</sup>

At the request of the Company, an independent agency, Hatfield Consultants LLP (Hatfield) has analysed the Satellite Mapping of Land Cover and Use in relation to Oil Exploitation in Concession Block 5A in South Sudan. 1987–2006 (Prins 2009) ("PRINS Report"), referred to in ECOS, to:

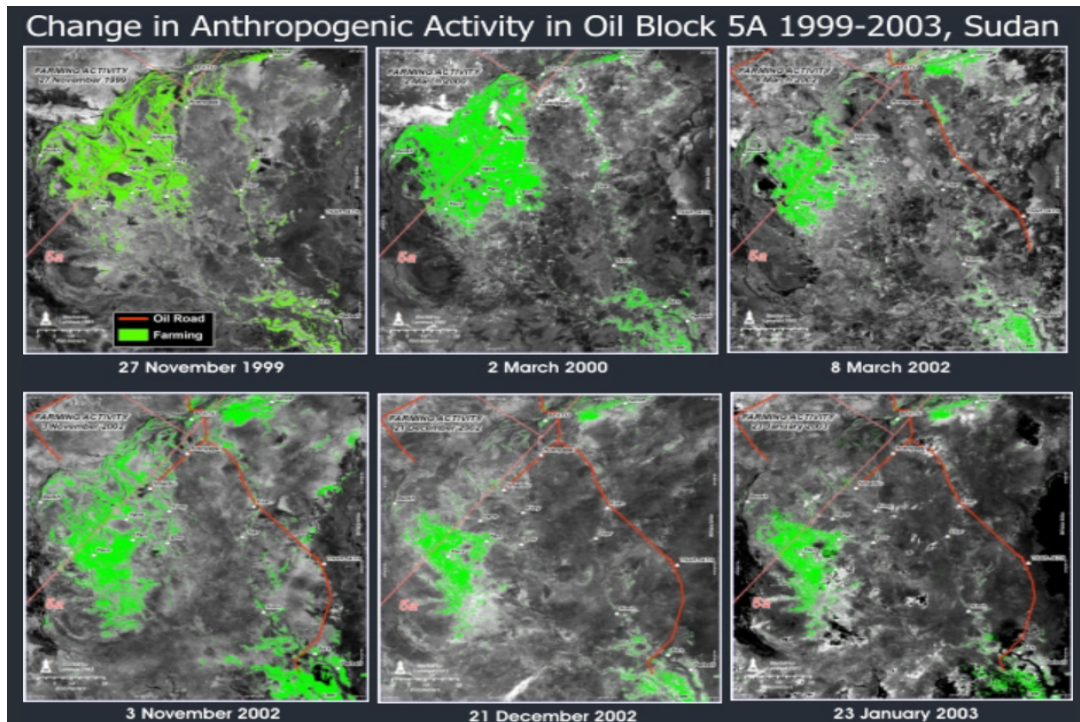
- i. determine the credibility of the report and the consequent accusations;
- ii. attempt to replicate PRINS' findings using academically accepted techniques; and,
- iii. provide a summary of their expert opinion on the weight of evidence present

In short, the Hatfield Report undermines the credibility attributed by ECOS to the PRINS Report.



i. THE ACCUSATIONS FROM THE ECOS REPORT USING SATELLITE IMAGERY<sup>438</sup>

The ECOS report states that the PRINS Report demonstrates that anthropogenic activity in dry regions of Africa can be identified by the use of space-borne sensors that detect land use caused by humans and livestock. ECOS' theory is that during the dry season, human activity will break the soil crust, leaving a surface of high reflectance that can be traced easily by satellites.<sup>439</sup> Lower reflectance, according to the PRINS Report, shows evidence of a decrease in farm activity in the region and, by inference, evidences displacement of civilian farmers in the region of the oilfields.



As part of its methodology, the PRINS Report analysed eight select images taken between 1994 and 1995, then again between 1999 and 2000, and finally between 2002 and 2003. The PRINS Report interprets these images as showing that the surface reflectance has decreased over time. The ECOS report alleges that these images prove that the increase in oil exploration activities in Sudan led to massive population displacement.<sup>440</sup> This conclusion is fundamentally flawed for several reasons.

First, the ECOS report fails to include key qualifications to the methodology explained in the underlying PRINS Report.<sup>441</sup> For example, the PRINS Report indicates that bush fire scars “are present in some images and will locally reduce the reflection from these exposed areas” and therefore “detection of especially areas which are exposed to grazing can be temporally suppressed in the image analysis, giving lower than actual farming activity.”<sup>442</sup> In other words, bush fires create an effect on satellite images that calls into question whether the surface reflection was due to population displacement or simply shows the scars of bush fires. The PRINS Report mentions that this potential confusion is particularly relevant in areas just south of Nhialdiu and along the stream from Bentiu to Kuac, which are more heavily affected by such fire scars.<sup>443</sup> Additionally, the PRINS Report points to other weather patterns that could create this surface reflectance, such as sandy areas shifting due to seasonal changes.<sup>444</sup>

Furthermore, in a section entitled “Verification”, the study admits that no actual field research was conducted to check these conclusions.<sup>445</sup> For that reason, the PRINS Report determined that the changes in land use could not be conclusively attributed to displacement.<sup>446</sup> The ECOS report’s characterisation of these images as “self-explanatory” is therefore misleading, and any claims resting on the PRINS Report are unproven.<sup>447</sup> Further, ECOS’ omission of the satellite images’ limitations further calls into question the report’s overall methodological integrity and demonstrates confirmation bias.

## ii. THE HATFIELD REPORT SUMMARY – THE PRINS REPORT

The Hatfield Report identifies three major methodological issues with the PRINS Report, as well as other issues, which ultimately leads the author to conclude that:

*“Based on my evaluation of the PRINS Report and independent assessment of the methods and challenges of human activity mapping in the study area, I conclude that the PRINS Report is critically flawed in several areas. These flaws render the PRINS Report without any weight.”<sup>448</sup>*

The three major issues relate to: (i) the use of “Albedo”, (ii) selective image selection and (iii) an inappropriate use of the ‘clustering method’. These issues are highly technical, but critical to the reliability of any report which seeks to arrive at meaningful conclusions.

### (a) ALBEDO

Albedo is the portion of energy from the Sun reflected back by the Earth’s surface. It is possible to estimate the Albedo present using satellite data such as that which is found in the Landsat images used by ECOS. However, it is not a reliable measure to determine human activity present in satellite images.

*“Albedo is highly seasonal and affected by other factors such as fire and climate variability in the study area, which can bias the quantification of human activity and provide a false sense of change if not accounted for in methods of data processing and analysis. Timing of satellite image acquisition is critical given strong seasonality, and methods need to follow scientific standards that ensure the results are validated and repeatable.”<sup>449</sup>*

The Hatfield Report categorically states that scientific literature does not support the use of Albedo for mapping human activity. Even if it were to achieve this, the PRINS Report does not even provide the method by which they calculated the Albedo – a crucial omission, which undermines the reliability of the report.

### (b) IMAGE SELECTION

The PRINS Report selected 8 images from a 20-year period in which over 500 were available. The images selected do not follow a consistent pattern such as selecting each on the same ‘anniversary’ date each year. This is critical for the reasons highlighted above – that seasonal changes dramatically affect the Albedo levels in each image. There is:

*“...a risk to incorrectly attribute land surface phenology as change driven by human activity. Using few images over a 20-year period provides little context for the interpretation of the observed patterns and can also lead to a false sense of change.”*

Specifically, the PRINS Report selected images from both the beginning and end of the dry season (a period of over six months), during which time there can be large differences in vegetation reflection, especially in a highly seasonal landscape. As a result, vegetation phenology may be misclassified as a change in human activity, creating a false sense of change. Additionally, a defective Landsat image used in the PRINS Report was gap-filled with a different image acquired two years prior. Gap-filling an image with an image from a separate year may result in a misclassification of a change in human activity

because images from separate years can portray considerably different ground conditions due to potential land-use change as well as inter-annual variation in vegetation phenology.

### (c) CLUSTERING

Image segmentation is a process to break down the elements (i.e. the pixels) of an image to determine its composite parts. Clustering is a method of image segmentation in which the pixels of an image are grouped together when those pixels have similar characteristics/properties. ‘Unsupervised clustering’ is where an algorithm is applied to an image, which identifies pixels with similar characteristics and groups them together, into clusters. This separates the areas of interest from the background of an image. Simply put, it is a way of identifying the features of an image that are perhaps not immediately apparent but once applied to an image highlights groups or clusters. The method is used when the data in an image is unlabelled and one wants to identify groupings based on the similarity of the pixel data.

The Hatfield Report criticises the use of this unsupervised clustering because the PRINS Report manually identifies each of the identified clusters as either ‘human’ or ‘natural’ activity but does not explain how or why the particular groups are labelled in this manner. This flaw is then amplified when applied across each of the eight images, as the existence or appearance of groupings in one image should not be applied to another. The data of one image and the resulting groupings are unique to that image and a comparison to another inevitably generates false conclusions. This is because different images can have a different distribution of albedo values due to the land surface and vegetation phenology.

*“It is not scientifically valid to compare the outputs of unsupervised clustering over time. The standard in the scientific literature for time-series change detection is supervised methods that target specific classes that are defined in the training data.”<sup>450</sup>*

This flaw is even more critical where the images used in the PRINS Report capture a large range of months in a highly seasonal landscape (as outlined above).

### iii. OTHER LIMITATIONS

In addition to the significant flaws set out above, the Hatfield Report identifies several other flaws in the PRINS Report:

- A lack of information and rigour regarding the methods of image processing and calibration, which results in a lack of reproducibility, credibility, and conformity with accepted scientific standards.<sup>451</sup>
- A failure to specify the source of supporting ancillary data (such as map data) or to provide a clear description of how that data was used to validate the conclusions drawn in the PRINS Report. Numerous errors, misleading and erroneous citations were also identified; and
- Conclusions based on selective and subjective analysis not supported by the results, which is not in line with scientific standards.<sup>452</sup>

Each of these flaws on their own is problematic, but combined renders the entire study without credibility. No conclusions should have been made on the basis of the PRINS Report, and the conclusions drawn by ECOS in their adaptation of the report should be dismissed.

It is noted that Hatfield attempted to complete its own independent evaluation of the study area in the PRINS Report by testing three supervised classification methods to try to map human activity. Even when adopting a robust study design to address the scientific flaws in the PRINS Report, Hatfield concluded that the resulting classification accuracy was “very poor” and there was no way to confidently identify active human land use as compared to natural land cover/use using very high-resolution imagery in the study area. The process of interpreting the images resulted in too many errors of omission and commission in the training data. It was therefore not possible to assign human or natural classes with confidence for the purposes of developing training data, which implies that it is not possible to map human activity reliably with any classification method.

The use of satellite imagery is a visually persuasive tactic to lend credibility to the claims made by ECOS in relation to population displacement. However, a deeper examination of the assumptions and methodology of the PRINS Report and the ECOS analysis challenge the conclusions made by ECOS. The Hatfield Report’s evaluation deems the PRINS Report and the consequent conclusions to be entirely without merit. The use of such flawed imagery by ECOS reveals its confirmation bias.

## VII. CONCLUSION

Unpaid Debt lacks transparency, exhibits confirmation bias, portrays a misleading view of the conflict, relies on recycled hearsay sources from other reports and fails to accord sufficient weight to Lundin’s Community Development and Humanitarian Assistance Program and its rationale.

The report also relies unfairly on documents and Plaintiffs from the Talisman proceedings in the USA. Most of the material cited is taken from a secondary, recycled source, namely HRW’s “Sudan, Oil and Human Rights”, to which 66 references are made. The majority of the HRW interviews cited in Unpaid Debt were conducted with southern factional leaders, who later served in the South Sudanese Government after 2011.

The report fails to provide any details on the methodology used to gather information. Secondary sources from other advocacy reports are also relied upon, namely reports from Christian Aid, Human Rights Watch and journalists connected to these organisations. Unpaid Debt ignores the obvious weaknesses of relying on unverified, secondary hearsay accounts. Satellite imagery relied on in the report to demonstrate population displacement is inherently unreliable and misleading.

## Chapter 9: The Status of NGO Reports in International Criminal Trials

### I. INTRODUCTION

This chapter addresses the experience of international criminal courts regarding the admissibility of NGO reports as evidence. International jurisprudence stresses the necessary caution that must be exercised when considering the admission of this type of evidence. Such precedents should serve as a best practice guide for a Swedish court to determine what factors to consider when deciding upon the admissibility of such information as well as assessing its relevance, credibility, reliability and weight. The application of any standards lower than those advanced in international criminal proceedings would be incompatible with the effective protection of the rights of those under investigation. The precedents from international courts and tribunals reflect basic, minimum standards compatible with international law and internationally guaranteed human rights. As Sweden seeks to take on the responsibility of prosecuting international crimes under the laws of universal jurisdiction it ought to apply international standards.

When held to international standards, the considerable evidence of bias, unreliability, flawed research and the absence of accountability in the NGO reports submitted to the Swedish Prosecutor make their use in the criminal proceedings unconscionable. These observations are set out in detail in Chapters 5-8.

### II. INTERNATIONAL STANDARDS - FACTORS RELEVANT TO ADMISSION AND RELIANCE ON NGO REPORTS

Over the years, international criminal tribunals have shown an increasing wariness to rely on reports prepared by advocacy groups, NGOs and international organisations and have generally set strict conditions for their admission, in particular regarding the need for corroboration. International jurisdictions have generally limited their reliance upon such reports to secondary factual issues rather than material issues going directly to the question of the responsibility of the accused. For the purpose of determining the admissibility of evidence, the basic requirements of relevance, reliability, credibility, probative value and authenticity must be established by the tendering party.

A particular problem faced by most, if not all, authors of NGO reports is that they communicate with witnesses through interpreters and there is no guarantee of the correctness of the interpretation of their questions and the answers given.

The jurisprudence found in the international criminal tribunals sets out a number of core considerations that determine whether a Chamber can, in the reasonable exercise of its discretion, admit NGO reports and rely on them for the purpose of its findings. These factors include the following:

- i. The source of the information, including whether it is the result of direct observations or hearsay (and degree thereof) and whether the source is identifiable or anonymous;
- ii. The methodology used and whether it was sufficiently reliable;
- iii. The timing of the report, in particular whether it was contemporaneous with the reported events;
- iv. The possibility to question the author of the report and/or those who contributed information;
- v. The nature of the allegations and statements contained in the report, in particular, whether they touch upon the conduct and responsibility of the accused;

- vi. The disputed or undisputed nature of the evidence;
- vii. The effect on the rights of the accused; and
- viii. The prejudice that the admission of such evidence would cause to the accused.

When assessing the source of the information, in the case of *Katanga and Ngudjolo* before the International Criminal Court (“ICC”), the Trial Chamber held as follows:

“[...] [R]eports emanating from independent private organisations or governmental bodies of third States can be considered *prima facie* reliable if they provide sufficient guarantees of non-partisanship and impartiality. They should further include sufficient information on their sources and the methodology used to compile and analyse the evidence upon which the factual assertions are based. If such particulars are not available, either from the reports themselves or from their author(s), the Chamber cannot assess the reliability of the content of the reports; it is therefore unable to qualify those documents as sufficiently reliable to be admitted into evidence. Moreover, where such reports are based, for the most part, on hearsay information, especially if that information is twice or further removed from its source, the reliability of their content is seriously impugned.”<sup>453</sup>

The basis on which statements and assertions contained in a report are made and the ability to identify and ascertain their reliability are essential to the court’s evaluation of the evidence. In *Boskoski*, before the International Criminal Tribunal for the Former Yugoslavia, the Trial Chamber noted that it would approach the content of a *Human Rights Watch* report with caution considering that aspects of the researcher’s observations may have been influenced by media reports.<sup>454</sup> The Chamber also noted that information contained in the HRW report was not obtained contemporaneously (but 11 days after the events) and that the report was “sourced primarily by unchallenged accounts” which had not “been tested against the other differing accounts which the Chamber has heard”.<sup>455</sup> While the report was ultimately admitted, reliance upon it was minimal because of its evident shortcomings.

Regarding authorship, in *Milutinovic* before the ICTY, OSCE documents for which there was no indication as to who had generated them were not admitted.<sup>456</sup> Insufficient information about the authorship and sources of information within a report prevents the Defence and the Court from being able to test its reliability and credibility.

In *Ruto* at the ICC, the Trial Chamber rejected the admission of a number of NGO reports based on a range of factors, which it held undermined the reliability of the information contained therein.<sup>457</sup> For example, the Chamber did not admit a report on the post-2007 election violence by the Kenya National Commission on Human Rights. Although the Chamber deemed it was relevant, it did not admit the document as “the report [did] not reveal the identity of persons interviewed in preparation of the report and a significant number of the report's findings emanate[d] from other sources, such as newspapers.”<sup>458</sup>

The Chamber also refused to admit a UN report from the OHCHR Fact-Finding Mission to Kenya stating that the “probative value of the document” was “limited by reason of the lack of clarity on how the information was collected, the hearsay nature of much of the content and the anonymity of the sources of information.”<sup>459</sup> The Chamber noted that OHCHR reports, while “compliant with methods suited to the purposes of human rights work, are generally not intended for use in a court of law.” The Chamber also found that “reliance on this report in respect of central questions at issue may not be appropriate and could amount to an abdication of the fact-finding functions of the Chamber.”<sup>460</sup>

The Chamber also refused to admit a report from the International Crisis Group ‘Kenya in Crisis’ on the basis that the probative value of the report was “limited in that most of the sources of information are anonymous and there is little or no information provided as to how the evidence was obtained or the methodology of how the facts were gathered.” The Chamber also held that it would not be appropriate to rely on the report in respect of matters that were central to the case.

In order to assess the reliability of the source of information, a court must also assess the degree to which it constitutes hearsay. While hearsay evidence is not inadmissible *per se* before international criminal tribunals, it is generally accepted that its character as hearsay can affect its weight and reliability.<sup>461</sup> This is particularly so where the hearsay is several times removed and when the source is anonymous. The reliability of hearsay is a prerequisite for the attribution of probative value as the Appeals Chamber explained in *Aleksovski*:<sup>462</sup>

“[...] Since such evidence is admitted to prove the truth of its contents, a Trial Chamber must be satisfied that it is reliable for that purpose, in the sense of being voluntary, truthful and trustworthy, as appropriate; and for this purpose may consider both the content of the hearsay statement and the circumstances under which the evidence arose; or, ... the probative value of a hearsay statement will depend upon the context and character of the evidence in question. The absence of the opportunity to cross-examine the person who made the statements, and whether the hearsay is “first-hand” or more removed, are also relevant to the probative value of the evidence. The fact that the evidence is hearsay does not necessarily deprive it of probative value, but it is acknowledged that the weight or probative value to be afforded to that evidence will usually be less than that given to the testimony of a witness who has given it under a form of oath and who has been cross-examined, although even this will depend upon the infinitely variable circumstances which surround hearsay evidence.”<sup>463</sup>

When assessing the probative value of hearsay evidence, it is necessary to know the source of information, the identity of the initial source, how the source learned about the facts and the number of intermediaries through which the information has passed.<sup>464</sup>

The fact that the source of the information is unknown or anonymous is of primary importance in deciding upon the admissibility and use of such reports. The ICC Pre-Trial Chamber in *Mbarushimana* held that although the use of anonymous witness statements and summaries of anonymous witness statements is not excluded in principle at the pre-trial stage for purposes of confirmation of charges, such evidence may be taken to have a lower probative value in order to counterbalance the disadvantage that it might cause to the Defence.<sup>465</sup> In assessing information in documents produced by Human Rights Watch, the Chamber stated that it would approach the matter on a case-by-case basis and that, as a general principle “the Chamber finds that information based on anonymous hearsay must be given a low probative value in view of the inherent difficulties in ascertaining the truthfulness and authenticity of such information. Accordingly, such information will be used only for the purpose of corroborating other evidence.”<sup>466</sup>

The anonymity of the source of the information or claim contained in the report is also highly relevant to the admissibility and weight of such evidence. In criminal proceedings, anonymity prevents effective verification of the reliability of the source and renders confrontation of such evidence all but impossible.<sup>467</sup> The careful and circumspect approach of the *Gbagbo* Chamber at the ICC to such evidence illustrates the manner in which it is typically approached at the international level.<sup>468</sup>



In that case, the Chamber explained that although there was no general rule against hearsay evidence, such evidence “will usually have less probative value. Reliance upon such evidence should thus be avoided, wherever possible. This is all the more so when the hearsay in question is anonymous, in the sense that insufficient information is available about who made the observation being reported or from whom the source (irrespective of whether the source is a witness interviewed by the Prosecutor or a documentary item of evidence) obtained the information.”<sup>469</sup>

The Chamber explained that reliance on anonymous hearsay prevents the Defence from being able to investigate and challenge the trustworthiness of the source of the information.<sup>470</sup> It also prevents the Chamber from being able to determine probative value and determine whether or to what extent anonymous hearsay in documentary evidence corroborates other evidence of the same kind. This is because it will usually be too difficult to determine whether two or more unknown sources are truly independent of each other.<sup>471</sup> Heavy reliance on NGO reports and press articles with regards to key elements of the case “cannot in any way be presented as the fruits of a full and proper investigation by the Prosecutor.”<sup>472</sup>

The degree of hearsay of the proposed evidence will also be a factor relevant to assessing the admissibility and, if admitted, the weight and reliability of the evidence. In *Milutinovic* at the ICTY, the Trial Chamber found that reports offered in evidence contained no explanation of the conditions or duration of interview, number of interviewed persons and similar details, and that they constituted second-hand hearsay which weakened any probative value they might have had.<sup>473</sup>

Sufficient indicia of reliability have to be evident from the reports themselves or by the witness through whom the statement is tendered can give such evidence.<sup>474</sup>

In cases where reports contain no explanation of the conditions or duration of interviews, or the number of interviewed persons and which have constituted second-hand hearsay, their admission has been denied.<sup>475</sup>

In *Strugar* before the ICTY, the Chamber refused to admit reports prepared by an NGO cataloguing damage since the Prosecution led no evidence as to the way in which these reports had been prepared.<sup>476</sup> In *Djordjevic*, OSCE documents were not admitted in evidence since there was not enough information concerning the circumstances in which they were compiled.<sup>477</sup> In *Karemera*, before the ICTR, the Chamber refused to admit NGO reports since the method of enquiry used to produce the reports was not clear, as the Prosecutor had failed to provide any such explanation.<sup>478</sup>

Consideration of the timing of the information collection process is also highly relevant to the question of admissibility. Where information was collected some time after the events concerned, Chambers have been particularly reluctant to rely upon such information assuming that it would lose its immediacy, credibility and reliability. In *Boskoski*, a report prepared two years after the event was not admitted into evidence.<sup>479</sup>

Indications of the Prosecution’s *own* efforts to verify and corroborate the evidence contained in NGO reports are also important considerations. The absence of such indication would constitute a strong factor militating against the admission of the report as unverified. The remarks of the *Gbagbo* Pre-Trial Chamber are revealing in this regard as set out above.<sup>480</sup>

The possibility for the accused to question the author of the report is an important consideration as regards the admissibility and weight to be given to such evidence and to the fairness of proceedings.<sup>481</sup> In *Boskoski, Gotovina, Milutinovic* and other cases before the ICTY, the authors of NGO reports tendered in evidence were called to testify regarding the process of collecting information and preparation of their reports. This provided the Defence with an opportunity to test the credibility and reliability of the reports they had prepared.

The ability to question or cross-examine the author of such a report cannot however make up for the Defence's inability to question (and, as the case may be, challenge) those who provided that individual with the underlying information on which he/she based the report.<sup>482</sup> The actual words spoken by interpreters in relaying questions and answers will be highly significant and whether or not there are recordings of the interviews.

Requests for admission of reports detailing alleged crimes have thus been denied on the basis that, *inter alia*, the reports set out allegations of criminal conduct made by people who claimed to be the victims of, or witnesses to crimes, and the court had no opportunity of hearing any of the people upon whose statements the reports were based. As a result, the tribunal was not in a position to assess the reliability of factual connections contained therein.<sup>483</sup>

In *Milutinović*, the Trial Chamber applied this principle to the question of admission of *Human Rights Watch* reports tendered through the lead HRW interviewer and author of the reports. The Trial Chamber – noting in particular the anonymity of the interviewees – denied admission of the report on the basis that it was not “in a position to assess the reliability of the factual contentions contained therein.”<sup>484</sup>

The Trial Chamber specifically held that:

“neither the report’s acknowledgement of [the] problems, nor the opportunity to cross-examine one of the authors and editors of the report, can adequately replace the opportunity to test the reliability of any of the person’s making the statements. The Trial Chamber does not have sufficient material to satisfy it of the general reliability of the information on which this report is based.”<sup>485</sup>

Also relevant to the question of the admissibility and weight of such reports is the question of the nature of the allegations contained therein. Whilst Chambers have sometimes relied upon reports to establish secondary, background or contextual, facts relevant to the case, they have been extremely reluctant to rely upon such reports to establish facts directly relevant to establishing the responsibility of the accused. When admitted, international criminal tribunals have generally relied on such reports for the purpose of establishing facts that were not in dispute between the parties or did not form a significant part of the defence case.

Furthermore, the effect the admission of the evidence would have on the fundamental rights of the accused to confront and challenge the case against them is also directly relevant to the admissibility of such reports. Consideration of the overall fairness of proceedings must therefore guide the judiciary when deciding whether or not to admit such evidence and whether to rely on any such report. As a result, international criminal tribunals have said on multiple occasions that they would not rely on such reports unless corroborated.<sup>486</sup> Such evidence is not reliable, on its own, to serve as a sole basis for any factual finding.<sup>487</sup> Moreover, before admitting evidence, a Chamber must be careful to ensure that it is not unfair to admit the disputed material.<sup>488</sup> In this context, a Chamber will need to consider two questions: (i.) what causes the prejudice; and (ii.) what is the prejudice.<sup>489</sup>

The approach of the ICC Pre-Trial Chamber in *Ruto* is particularly helpful in this regard,<sup>490</sup> noting that the general rule on admission is subject to the Chamber's power to exclude evidence, which may include for reasons of fairness, expeditiousness and public policy.<sup>491</sup>

### III. CONCLUSION

A Swedish court seeking to try international crimes should have regard to international jurisprudence on the admission and weight to be attached to NGO reports. When prosecuting international crimes under the laws of universal jurisdiction, Sweden ought to apply the same standards as applied in international courts and tribunals. Evidence of bias, unreliability, flawed research and the absence of accountability make any use of the NGO reports in criminal proceedings unconscionable.

## Chapter 10: Public Scrutiny of the Company from 2006 and the 2010 Investigation

### I. INTRODUCTION

This chapter considers the changing political context in which the Company's activities in Sudan have come under scrutiny in Sweden by certain politicians following the Company's departure from Block 5A in 2003. The chapter also addresses the opening of the investigation by the Swedish Prosecutor and its course to date.

### II. PUBLIC SCRUTINY OF THE COMPANY FROM 2006

Between 1994 and 2006, the Swedish Government comprised the Social Democrats who were running a minority government with confidence and support from the Green Party (Miljöpartiet) and the Left Party (Vänsterpartiet); collectively known as the Red-Greens (in Swedish, "De Rödgröna"). The Red-Greens were the Government during the entire period of the Company's involvement in Block 5A from 1997 to 2003. As described in Chapter 4, during this time, Sweden supported a policy of constructive engagement in Sudan.<sup>492</sup> When, in 2001, Christian Aid's allegations attracted enormous publicity and led to questions in Parliament, the Swedish Foreign Minister contemplated publicly initiating an investigation but ultimately no investigation was commenced. Neither did the Swedish Prosecutor open an investigation.

In the 2006 election, the Red-Greens lost their majority to the Centre-Right Alliance Coalition, who appointed Carl Bildt as Foreign Minister. Carl Bildt had been a board member of Lundin since 2000 but had resigned from this role in 2006 following his appointment as minister and sold his shareholding in the Company.

At this point, certain Red-Green politicians began a campaign against Lundin, publicly accusing the Company of complicity in international crimes in Sudan. This appeared to be a means by which to attack Carl Bildt and thus the Centre-Right Alliance Coalition, notwithstanding his active and well-documented peace advocacy efforts in Sudan and his high reputation as a former Prime Minister and UN Secretary General Special Envoy to the Balkans.

The Social Democrat Members of Parliament Morgan Johansson and Peter Hultqvist were the most vocal in this attack.<sup>493</sup> Carl Bildt was referred to the First Committee on the Constitution (Konstitutionsutskottet or KU) in January 2007, and an examination was requested of his holding of shares and options in the Company.<sup>494</sup> As a result, the Committee held public questionings of Carl Bildt on 17 April and 30 May 2007. Public questioning of Prime Minister Fredrik Reinfeldt was held on 19 April 2007, followed by the Company's CEO on 16 April and 8 May 2007.

During his questioning, Carl Bildt informed the Committee that he had travelled to Sudan twice as an "independent director" for Lundin in July 2001 and January 2002. These trips were part of meetings regarding the political developments in Sudan and the greater region. He confirmed that the meetings did not concern concrete business transactions, discussions of which the members of the Board do not generally attend, but instead concerned his participation in supporting a peace process.<sup>495</sup>

Carl Bildt described meeting the President of Sudan and informing him that Sudan would not be able to take advantage of its oil resources if it continued with the war against the south.<sup>496</sup>

During his time with the President, he emphasised that if the President wanted to develop his country's oil resources, he would have to participate in the peace process. Carl Bildt also clarified that he was not involved in the negotiations of the contract between Sudan and Lundin for oil exploration and highlighted that such contracts were not part of the Board's role.<sup>497</sup>

In his public questioning, Carl Bildt clearly stated that companies operating in a high-conflict zone – if they are working in line with accepted Corporate Social Responsibility (CSR) principles and are actively engaged with a range of stakeholders - help to raise the standard of living for local populations.<sup>498</sup>

Despite Carl Bildt's clear testimony and Morgan Johansson's own party's support for constructive engagement at the time the Company was operating in Sudan, Johansson, who was serving as a member of the Committee, maintained his deeply critical stance stating that: "Carl Bildt should understand that it is not appropriate for a foreign minister to have financial interests in a company like Lundin Petroleum, which has received widespread criticism from human rights organizations for its operations in Sudan [regarding] involvement in displacement of peoples."<sup>499</sup>

Morgan Johansson went on to make the defamatory statement that Lundin is a "company with an extremely bad reputation when it comes to human rights. In Sudan, the company is linked to displacement and attacks on the civilian population."<sup>500</sup>

In addition, Peter Hultqvist submitted several official written questions (interpellations) to the Swedish Parliament. His first question, posed on 2 March 2007, asked whether Carl Bildt intended to take any action against international companies that continued their involvement in Sudan.<sup>501</sup> His second question, submitted on 29 March 2007, asked whether Carl Bildt would appoint an investigative mission to Sudan similar to the one conducted in Canada in respect of the oil company Talisman (see John Harker's 2000 report: Human Security in Sudan: The Report of a Canadian Assessment Mission, January 2000).<sup>502</sup> The third question, submitted on 18 April 2008, specifically targeted Lundin. Hultqvist asked whether Carl Bildt would take any measures referring to the Lundin's Block 5B concession, stating that the Company had initiated drillings together with Sudapet in January 2008, in Block 5B.<sup>503</sup> He also asked if the Company had complied with the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones.<sup>504</sup>

In 2008, Peter Hultqvist wrote an inflammatory article entitled "Bildt's Oil Connections are Financing Genocide" ("Bildts oljekontakter finansierar folk mord").<sup>505</sup> Not only did Hultqvist condemn profits from oil operations as "blood money" that "finances war, abuse and devastation", but he also alleged that Carl Bildt's interest in Lundin and contact with Bashir directly damaged the credibility of Swedish foreign policy.<sup>506</sup> All these statements contradicted the previous Swedish Government policies (led by Hultqvist's own party) encouraging constructive engagement in Sudan and failed to take into account that Lundin did not, at any stage, make any revenue from oil extraction during its time in Sudan.

With the publication of ECOS's "Unpaid Debt" report in June 2010, the Social Democrats and the Left Party continued to raise the matter in Parliament, stating that Lundin should fulfil "its obligations under the [2005] CPA and pay reasonable compensation to the victims of the war in Block 5A."<sup>507</sup>

These allegations were made three months before the 19 September 2010 general election in Sweden.

A few weeks later, more politicians came out against Lundin. Thomas Bodström, the Social Democrat who had previously acted as the Minister of Justice from 2000 to 2006, issued a statement arguing that: “Carl Bildt should take a “timeout” because there is significant doubt that he can represent Sweden in the government”. Bodström would later become plaintiffs' counsel in the investigation against the Company.

Two days later, Prime Minister Fredrik Reinfeldt responded to these criticisms of Carl Bildt, focusing on the fact that the claims were typical of a party entering an election period. Fredrik Reinfeldt told the news agency TT that “[i]t shows that this is an election year, when even the lawyer Thomas Bodström takes time away from his preparations to move to the U.S. to try to politicize party lawsuits.”<sup>508</sup>

Other Social Democrats joined in the attacks on Carl Bildt,<sup>509</sup> and the Social Democratic Group in European Parliament (PES), demanded that Bildt “take a time out”.<sup>510</sup> The Left Party demanded his resignation.<sup>511</sup>

Five days before the general election in September 2010, the film “Carl Bildt – A Trustworthy Man?” (“Carl Bildt – en trovärdig man?”) was released by Left Party member Maj Wechseltmann, a candidate for the European Parliament in 2009.<sup>512</sup> Wechseltmann had bought footage from another filmmaker, Bengt Nilsson, from his trip to Sudan in 2001, which she used “in an extremely dishonest way”.<sup>513</sup> According to Nilsson, the documentary contains a large amount of falsified information, with the sole purpose of discrediting Carl Bildt.<sup>514</sup> For example, Wechseltmann presented interviewees as victims of the Government forces when, in reality, they had been attacked by the SPLA, something that Nilsson had explained to her. Nowhere in the documentary does Wechseltmann even mention the SPLA. Nilsson thus concludes that “[w]ith her falsified version of the war in Southern Sudan, Maj Wechseltmann joins the strong Christian lobbying group that tries to make the war appear as if the SPLA was without blame and barely active [...] This is a forgery of history that is part of a much larger plan that deals with the power struggle between Christianity and Islam in Africa.”<sup>515</sup>

Notwithstanding these attempts to discredit Carl Bildt by linking him to the allegations made against Lundin, the Centre-Right Alliance coalition won the 2010 election, although no longer with an outright majority. However, certain Red-Greens politicians continued the campaign against the Company.

In October 2011, Wechseltmann released another documentary entitled “You Decide!” (“Det är upp till dig!”).<sup>516</sup> The documentary features individuals associated with ECOS and the “Unpaid Debt” report, namely Egbert Wesselink (ECOS/PAX) and Phil Clarke (MSF/Bloodhound). The film also purports to feature Rev. Matthew Deang, a plaintiff in the US Talisman court case and linked to the ECOS report. However, closer scrutiny reveals that the individual featured is in fact James Ninrew, not Matthew Deang, an error left uncorrected by the film-maker. James Ninrew was also an interviewee in the ECOS report and a plaintiff in the case against the oil company Talisman. He has been at the forefront of the initiative led by Egbert Wesselink to encourage the prosecution of Lundin and the pursuit of an associated financial claim.

Wechseltmann also refers to the Darfur crisis, and includes a lengthy segment on celebrities who had engaged in that cause, even though Lundin had sold its shares in Block 5A the year the conflict in Darfur (a different and distant region of Sudan) started. Statements from interviewees are also taken out of context and selectively edited to make it seem (incorrectly) as if Carl Bildt was not telling the truth during his questioning by the First Committee in April 2007.

Dagens Nyheter, a Swedish daily newspaper was highly critical of the documentary stating that "Wechselmann has combined images and reports together, but it is often unclear where they come from".<sup>517</sup> The daily Aftonbladet reported that the film had too few references to sources and used an editing technique for storytelling that focused more on effect than on precision.<sup>518</sup>

The next general election took place in 2014, which the Social Democrats won by a small margin. They have been ruling in a minority coalition ever since. Morgan Johansson became (and remains) the Minister of Justice and Peter Hultqvist became (and remains) the Minister of Defence.

It is disturbing that there has been a willingness by prominent politicians – notwithstanding their own party's position when in government and in the face of comprehensive and detailed refutation by Lundin - to make serious allegations against the Company and indirectly Carl Bildt without independent evidence or inquiry. The seriousness of these allegations requires that they be made with considerable caution in their expression, particularly given (i) the highly politicised conflict situation in Sudan, (ii) the multifaceted motivations of those backing both Christian Aid and ECOS reports and (iii) the fact that from 2010 onwards, an investigation was being pursued by the Public Prosecutor. Regrettably, that caution has been lacking.

### III. THE 2010 INVESTIGATION

The Swedish Public Prosecutor is obliged to act, and be seen to act, independently and objectively when considering whether or not to open a preliminary investigation into alleged crimes.<sup>519</sup>

Opening a preliminary investigation into complicity in international crimes allegedly committed outside Sweden, raises profound questions, *inter alia*, as to (i) the credibility and motivations of ECOS in preparing the Unpaid Debt report, (ii) the nature of Sweden's obligation, if any, to investigate allegations of crimes abroad, (iii) the expertise and capability on the part of the Swedish Public Prosecutor to investigate events which took place abroad between 1997 to 2003, particularly in a conflict-torn country such as Sudan, (iv) the limitations of the relevant Swedish and international law, including Sweden's obligations under the European Convention on Human Rights, and (v) the public interest in doing so, especially as no investigation had been initiated when the Christian Aid allegations received significant publicity in 2001.

Properly and objectively considered, no investigation of Lundin was warranted. In the event, however, a mere two weeks after the ECOS report was published on 8<sup>th</sup> June 2010, the Prosecutor announced the opening of a preliminary investigation by way of a press release on 21<sup>st</sup> June 2010.<sup>520</sup> Two days later, the Company repeated its public denial of any involvement or complicity "directly or indirectly" in any alleged wrongdoing in Sudan. The Company noted that it had not been contacted by the Prosecutor and said that it would co-operate with the investigation.

Thereafter Lundin co-operated fully with the Prosecutor by providing documents voluntarily requested as part of the investigation. The Company has always believed that common sense would prevail and that the investigation would be closed. However, as time has passed, it has become increasingly concerned at the entire approach adopted by the Prosecutor on many levels. The Company considers that the investigation has proceeded on an incorrect basis as to the applicable law for complicit liability, yet its applications to the Swedish Prosecution Authority in 2014 and 2015 as to the correct applicable law were rejected. The Prosecutor is seeking under Swedish law to exercise "universal jurisdiction" over alleged crimes against international law but is applying standards that are materially different than those under international law.

Although Lundin made representations to the Prosecutor demonstrating that, far from being complicit in alleged international crimes, the Company was a constant advocate for peace, investing in the development of the country and improving living standards for the local community, the investigation has continued.

It was not until November 2016, more than six years after the investigation was opened and nearly 20 years after Lundin entered Block 5A, that the Chairman and CEO were named as suspects. The approach of the Prosecutor shows a willingness to give an unreasonable credence to the inherently unlikely allegations made against the Company by certain NGOs who have acted as advocacy groups. It is incumbent on a prosecutor to seek out sources of objective evidence, independent witnesses and corroboration in respect of crimes alleged by NGO bodies, since they cannot in any sense be considered impartial. Any prosecutor must be careful not to align himself with the narrative of the NGOs and should investigate a case independently of intermediaries who might supply biased evidence and a case theory. The dangers of not taking such care are well known to those experienced in other cases involving NGOs. This was a fundamental error, committed in recent years by the Prosecutor in the trial of President Kenyatta at the ICC, which ultimately resulted in the withdrawal of the charges and the collapse of the case. See Annex 7.<sup>521</sup>

In this case, insufficient weight has been given to the independent observers and experts whose evidence was inconsistent with the advocacy reports of Christian Aid and ECOS and consistent with Lundin's own experience on the ground.<sup>522</sup>

The Swedish Prosecutor's approach to evidence gathering and evaluation gives the impression of bias against Lundin. Furthermore, the scope of the Prosecutor's investigation is fundamentally flawed in other ways. The Prosecutor's office has made it clear that it does not intend to call any representative from the Government of Sudan or its military to testify to the alleged primary crimes. However, unless the primary crimes can be proved, there is no foundation for the allegations against Lundin. Thereafter, complicity between the Company and the Government of Sudan must be proved in relation to the specific alleged primary crimes.

As previously stated, no Company representatives witnessed any of the crimes alleged to have taken place in Block 5A (or elsewhere) and, consistent with the findings of the EU Ambassadors, could find no evidence on the ground to support the allegations made.

The Prosecutor has decided that owing to the security situation in South Sudan and budgetary constraints, it is unable to carry out any investigations in South Sudan or East Africa. Crucially however, the security situation also prevents Lundin from conducting its own evidence gathering in South Sudan.

In August and September 2018, Lundin made submissions to the Ministry of Justice that the criteria for authorisation to prosecute were not satisfied, contending that the Prosecution's investigation is not in accordance with Sweden's international obligations; and that it is impossible for Sweden to investigate the alleged crimes adequately given the passage of time and the Prosecution's own acknowledgement that it was not possible for Swedish personnel to travel to Sudan/ South Sudan.

The Ministry of Justice did not engage with Lundin's arguments and it subsequently came to light that the Company's submissions had been 'cancelled', meaning that they had not been considered, which was in clear contravention of the *audi alteram partem* rule.<sup>523</sup> Morgan Johansson (the Minister of Justice) and Peter Hultqvist (Minister of Defence), despite their obvious lack of independence as accusers of the



Company, both took part in the governmental decision-making process, which granted approval in principle for a prosecution.<sup>524</sup>

Lundin sought judicial review of the Ministry of Justice's decision to authorise the investigation, by way of an application to the Supreme Administrative Court, arguing that Morgan Johansson had a conflict of interest and should have recused himself from the decision. In 2019, this application was dismissed on the basis that the suspects had no standing before the court. The court did not engage with the conflict of interest issue.

There has been unequal treatment as between the Prosecution and the Defence in the Prosecutor's handling of the investigation, which is contrary to natural justice. The Prosecutor has sought to restrict the Lundin's legal team's access to details regarding the plaintiffs, has resisted disclosure of the audio recordings of the plaintiff interrogations, and refused to accept the lawful application of privilege to Company materials. The Company was compelled to go to court on each occasion to ensure unrestricted access to the plaintiffs' details by its legal team, force disclosure of the recordings and preserve privilege.

Furthermore, the bias of the Prosecutor was shown by his unlawful disclosure to the plaintiffs' lawyers of confidential information provided by Lundin to the Prosecutor. The Company applied for the Prosecutor to be removed from the investigation as a consequence but whilst the Swedish Prosecution Authority admitted in February 2018 the unlawfulness of Prosecutor Elving's actions, he was not removed. A further application to the Parliamentary Ombudsman also failed to secure any action against the Prosecutor to redress this unlawful behaviour.

Subsequently when Prosecutor Elving stood down from the lead role, his successor Prosecutor Attorps also disclosed information unlawfully to the plaintiffs' lawyers to which the Company has again objected, without consequence.

Whilst Lundin and its representatives have co-operated with the investigation, it has been clear that the inordinate length and continuation of this process is a breach of the right to a fair trial within a reasonable time under Article 6 of the European Convention on Human Rights. Applications have been made by Ian Lundin and Alex Schneiter to the Swedish Court to have the investigation stopped on these grounds. Notwithstanding Sweden's status as a signatory of the Convention, the Swedish Court has to date declined even to recognise a power to stop the investigation on human rights grounds and an appeal on this issue of principle is ongoing.

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## End Notes

<sup>1</sup> Extract from letter dated 23.5.2001 from Pereric Hogberg published on Global Reporting website (since removed).

<sup>2</sup> <https://www.lundinsudanlegalcase.com/history-in-sudan/>

<sup>3</sup> Formerly IPC, later Lundin Petroleum, later Lundin Energy referred to in this report as “the Company”.

<sup>4</sup> Addis Ababa Agreement on the Problem of South Sudan 1972; Koka Dam Declaration 1986; Communique of the Abuja Sudanese Peace conference 1992; The IGAD Declaration of Principles 1994; Political Charter between the Sudan Government and the SPLA/ (United) 1995; Declaration of Principles for the Resolution of the Nuba Mountains Problem 1996; Sudan Peace Agreement 1997; The Fashoda Agreement 1997; Agreement reached between the state of Eritrea and the Republic of Sudan 1999; Agreement between the Governments of Sudan and Uganda (Nairobi Agreement) 1999; Nuba Mountains Ceasefire Agreement on Sudan 2002; Agreement between the Gov. of the Republic of Sudan and the Sudan People’s Liberation Movement to Protect Non-Combatant Civilians and Civilian Facilities from Military Attack 2002; Machakos Protocol 2002; MoU on Cessation of Hostilities between the Gov. of the Sudan and the SPLM/A 2002; MoU between the Gov. of the Sudan and the SPLM/A on Aspects of Structures of Government 2002; Addendum to the MoU on Cessation of Hostilities Between the Gov. of Sudan and the SPLM/A 2003; Agreement between the Gov. of Sudan and SPLM on Capacity Building and the creation of a joint planning mechanism from the Sudan Technical meeting 2003; Agreement on Security Arrangements during the interim period 2003; Protocol between the Gov. of Sudan and the SPLM on Power Sharing 2004; Protocol between the Gov. of Sudan and the Resolution of Abyei Conflict 2004; Nairobi Declaration on the Final Phase of Peace in the Sudan 2004; Declaration on the conclusion of IGAD Negotiations on Peace in the Sudan 2004; Permanent ceasefire between the Gov. of Sudan and the SPLM/A 2004; Comprehensive Peace Agreement between the Gov. of Sudan and the SPLM/A 2005; Agreement between the Gov. of Sudan and the National Democratic Alliance (NDA) (Cairo Agreement) 2005; and others post-2006 not included here. Darfur peace agreements not included but see [https://peacemaker.un.org/document-search?field\\_pacountry\\_tid=Sudan](https://peacemaker.un.org/document-search?field_pacountry_tid=Sudan)

<sup>5</sup> The Intergovernmental Authority on Drought and Development (“IGADD”) was founded by Djibouti, Ethiopia, Kenya, Somalia, Sudan and Uganda and as of 1993, Eritrea, partly out of a reaction to donor pressure to resolve the armed conflicts and promote sustainable economic development. The Drought was dropped in later years to just be the IGAD.

<sup>6</sup> 1998 Constitution Articles 137, Article 138. Source: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_isn=52652&p\\_lang=en](https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=52652&p_lang=en)

<sup>7</sup> Chapter 4 Article 3 of the Khartoum Peace Agreement provided that: “Major Federal development projects and big mining and oil projects shall be considered as national wealth and be managed on national basis provided that:-



- a) The Federal Government shall observe to allocate an equitable percentage of the Returns to be fixed by the Revenue Allocation Commission to the State where the project is located (see annex 3).
- b) Ensure participation of the States in the management of such projects.
- c) Ensure recruitment and training of citizens of the State in order to participate in such projects.
- d) Any other fringe benefits.

4. Revenue Allocation Commission shall be established to recommend revenue sharing formula for the whole country. The Coordinating Council shall be represented.

5. The Federal Government shall observe the following for the purpose of distribution of national revenue among the States and for site selection of major development projects:-

- a) Giving priority to the less developed States according to their state of underdevelopment.
- b) Economic feasibility of projects and their efficient functioning.
- c) The effect of the project in the realisation of self-sufficiency in the basic needs of the country.
- d) A balanced relationship between development and density of population and environment.
- e) Establishment of special fund to take care of crash development programmes and maintenance of peace.

6. In the field of rehabilitation of the war affected areas, the following shall be observed:-

- a) The Federal Government and the Coordinating Council shall work to attract loans and aid from the sisterly and friendly countries and international benevolent organisations to rehabilitate the economic projects which ceased to function or were damaged because of the war affected areas and resettlement of returnees and displaced persons.
- b) The Federal Government and the Coordinating Council shall launch a plan and joint international appeal for the reconstruction, rehabilitation, repatriation and development of the Southern States and other war affected areas.
- c) The Coordinating Council shall also establish a relief, resettlement, rehabilitation and reconstruction commission to manage and administer the resources acquired for the above purposes.

7. The sources of revenue of the Southern States shall consist of the following:-

- a) State taxes and generated revenue.
- b) Fees, excise duties and licenses.
- c) Revenue from commercial, industrial and agricultural projects based in Southern States.
- d) Funds from the Federal treasury for established services in the States until such a time when they become self-reliant.
- e) Any development assistance and donations from foreign sources.
- f) Revenue allocation from the Federal Government for socio-economic development.
- g) State share of Federal taxes levied on Federal projects and services functioning within the Southern States.
- h) Business profit taxes.
- i) Corporate taxes on factories and agricultural enterprises in the State, other than Federal ones, established in Southern States.
- j) Property taxes.
- k) The share of fees on licenses for mineral oil explorations (see Annex 3).
- l) Profits accruing from the Customs, Airports Services, Roads, Postal and
- m) Telecommunication Services and River Transport in Southern States shall be allocated to the Rehabilitation, Reconstruction, Repatriation Commission.

8. The State Government shall prepare a budget to meet the expenditure on services, administration and

development of the State to be submitted to the State Legislative Organ for approval.

9. No project adversely affecting the people, ecology and natural environment of State may be implemented without consulting the State Concerned.
10. The Federal Government and the Coordinating Council shall encourage and promote foreign investment and procurement of development assistance for the Southern States and shall encourage establishment of branches of public sector institutions, development corporations and specialised banks.
11. The Coordinating Council shall prepare a development budget for Southern States and to submit the same to the President.

<sup>8</sup> “Committed to the Comprehensive Peace Agreement of January 2005, guided by the 1998 Constitution and the Sudanese constitutional experience since independence and other relevant experiences,” Preamble: The Interim National Constitution of The Republic of the Sudan, 2005.

<sup>9</sup> <https://www.peaceagreements.org/view/1039>

<sup>10</sup> <http://www.ipsnews.net/1997/04/sudan-politics-peace-agreement-or-unity-or-separation-pact/>

<sup>11</sup> Khartoum Peace Agreement 1997, Chapter 4: Wealth Sharing.

<sup>12</sup> Id., Chapter 4, art. 1.

<sup>13</sup> Id., Chapter 4, art. 6.

<sup>14</sup> Heywood, Keisha H., ‘Comparing the SPLA’s Role in Sudan’s 1997 and 2005 Comprehensive Peace Agreement’, 2014, p.156, African Studies Review, Vol.57, No.3 (December 2014).

<sup>15</sup> Wennmann, Achim, ‘Wealth Issues Beyond 2011: Economic Issues in Sudan’s North-South Peace Process’, The Centre on Conflict, Development and Peacebuilding, CCDP Working Paper, <https://land.igad.int/index.php/documents-1/countries/sudan/conflict-6/1094-economic-issues-in-sudan-s-north-south-peace-process/file>

<sup>16</sup> Luke Patey, New Kings of Crude: China, India and the Global Struggle for Oil in Sudan and South Sudan, 2014, p.27.

<sup>17</sup> Nyaba, Peter Adok, The Politics of Liberation in South Sudan, (Fountain Publishers: 2000) p.1.

<sup>18</sup> Rolandsen, Oystein H. and Daly, M.W., A History of South Sudan: from Slavery to Independence, 2016, p. 124.

<sup>19</sup> Srivivasan, Sharath, When Peace Kills Politics: International Intervention and Unending Wars in the Sudans, 2021, p.2

<sup>20</sup> Martell (2018) p.149.

<sup>21</sup> Id., p.149.

<sup>22</sup> Allen D. Hertzke, Freeing God’s Children: The Unlikely Alliance for Global Human Rights, (Rowman & Littlefield Pubs. 2006) p.240.

<sup>23</sup> Elijah M. Brown, The Road to Peace: The Role of the Southern Sudanese in Communal Stabilisation and

National Resolution, 2008 (doctoral thesis).

<sup>24</sup> E. Brown, 2008, p.170-71

<sup>25</sup> See Bradbury et al (2006), p.37, fn 16

<sup>26</sup> De Waal, Alex, 'Exploiting Slavery: Human Rights and Political Agendas in Sudan, *New Left Review* 1/227, Jan/Feb, 1998.

<sup>27</sup> Nina Shea is an international Human Rights Lawyer and Director for the Centre of Religious Freedom at the Hudson Institute: <https://www.hudson.org/experts/376-nina-shea>

<sup>28</sup> Hertzke (2006) p249.

<sup>29</sup> See for example, D. Michael Lindsay, 'Faith in the Halls of Power: How Evangelicals Joined the American Elite', (2007).

<sup>30</sup> Hertzke (2006) p.239.

<sup>31</sup> Id., p239.

<sup>32</sup> <https://www.theguardian.com/world/2001/jan/28/angeliquechrisafis.theobserver>

<sup>33</sup> Hertzke (2006) p.115.

<sup>34</sup> <http://www.ipsnews.net/2018/07/church-conflict-South-sudan/>

<sup>35</sup> Stringham, N., and Forney, J. (2017), 'It takes a village to raise a militia: Local politics, the Nuer White Army and South Sudan's civil wars', *The Journal of Modern African Studies*, p.190.

<sup>36</sup> Wilson, Jacqueline, *The Religious Landscape in South Sudan: Challenges and Opportunities for Engagement*, United States Institute of Peace, June 2019, p.4.

<sup>37</sup> De Waal, Alex, 'Exploiting Slavery: Human Rights and Political Agendas in Sudan', *New Left Review* 1/227, Jan/Feb, 1998: "Renewed interest in Sudan by foreign churches dates from about 1989, when the UN-led Operation Lifeline Sudan (OLS) began to open up Southern Sudan to humanitarian aid, and the SPLA began to recognize the churches as a potentially important constituency. Until that moment, Southern Sudan had been very isolated—urban areas controlled by an unsympathetic government, and rural areas under a communist-leaning, anti-clerical SPLA which made a habit of kidnapping foreign priests."

<sup>38</sup> Martell, (2018) p.195.

<sup>39</sup> See for example, *Evaluation of Danish Humanitarian Assistance to Sudan, 1992-1998, Final Report*, Overseas Development Institute 1999, p.78: "Aside from direct theft, diversion has also occurred indirectly through manipulation of exchange rates. For example, in 1998 MSF-B became locked into an agreement that diverted many tens of thousands of dollars to the SRRA/SPLM/SPLA. This occurred in 1998 when the MSF-B management team in South Sudan agreed to an arrangement wherein the SRRA changed all their foreign currency into Sudanese dinars at a 10th of the usual exchange rate. Because of the scale of the MSF-B operations during the summer and autumn of 1998 the scale of the diversion was also very high."

<sup>40</sup> Riehl, Volker, Who is ruling in South Sudan: The role of NGOs in rebuilding socio-political order, Studies in Emergencies and Disaster Relief, No. 9, Nordiska Afrikainstitutet, (2001), p.4.

<sup>41</sup> Volker (2001) p.11.

<sup>42</sup> Royal Ministry of Foreign Affairs, (1997), Evaluation of Norwegian Humanitarian Assistance to the Sudan, Oslo, November – quoted in Young (2019) p.45. A Guardian newspaper (UK) report from 2002 highlights that many staff of established humanitarian charities were increasingly concerned at the activities of evangelical relief agencies in the developing world. Brendan Paddy, Save the Children, said it is dangerous when charities mix humanitarian work with the promotion of a particular religious or political agenda; “The risk is that it creates conflict and that the agency is regarded as partisan” <https://www.theguardian.com/society/2002/dec/18/guardiansocietysupplement7>

<sup>43</sup> Scroggins (2004) p.133.

<sup>44</sup> Young (2019) p.46, 47.

<sup>45</sup> John Young is highly critical of Reeves work as he was cited as an expert by US Government despite only briefly visiting Southern Sudan yet writing reams on the region and also forming a pivotal role within the US lobby groups pushing for Southern independence. In, South Sudan’s Civil War: Violence Insurgency and Failed Peacemaking, (2019), Chapter 2.

<sup>46</sup> Id., p. 49.

<sup>47</sup> Id., p.49.

<sup>48</sup> See Srinivasan (2021) For an excellent discussion on the misrepresentation of Sudan along North/South fault lines.

<sup>49</sup> Barletta, Michael, Chemical Weapons in the Sudan: Allegations and Evidence, Center for Nonproliferation Studies, Monterey Institute of International Studies, Nonproliferation Review/Fall 1998. See also, The Missiles of August by Seymour M. Hersh, October 5, 1998, Annals of National Security, October 12, 1998 Issue.

<sup>50</sup> Pendle, Naomi, Elite Bargains and Political Deals Project: South Sudan Case Study, Stabilisation Unit, UK Government, February 2018, p.9.

<sup>51</sup> Srinivasan, 2021, for a discussion on peace processes during this period

<sup>52</sup> John Young, ‘The Fate of Sudan’, (2012) p.8 quoted in Naomi Pendle, ‘Elite Bargains’ (2018), p.10.

<sup>53</sup> Srinivasan, 2021, p.4, “Yet from the time of the CPA negotiations onwards the wars in Sudan and South Sudan recurred and multiplied without end. More international peacekeeping interventions followed. Militarised, authoritarian rule remained entrenched in both countries and their economies were in deep crisis.”

<sup>54</sup> Special Report: The Wonks Who Stole Washington on South Sudan by Rebecca Hamilton, July 11 2012, Reuters.

<sup>55</sup> Van Baarsen, M.V., *The Netherlands and Spain: Dutch Policies and Interventions with respect to the Sudanese Civil War*, Conflict Research Unit, August 2000, Netherlands Institute of International Relations Clingendael, p.9.

<sup>56</sup> <https://www.presidency.ucsb.edu/documents/statement-signing-the-sudan-peace-act>

<sup>57</sup> See Srinivasan (2021)

<sup>58</sup> The AU Commission of Enquiry on South Sudan, *Final Report of the African Union Commission of Inquiry on South Sudan*, Addis Ababa 15 October 2014, para. 45, “First it [the CPA] adopted or followed the dominant paradigm of ‘liberal peace building, which in practice tends to privilege negative peace’.

<sup>59</sup> “See UN GA Resolution 1803 (XVII) on the Permanent Sovereignty over Natural Resources; UNGA Resolution 2158 (XXI); UNGA Resolution 3167, Appendix 199; UNGA “Declaration on the Establishment of a New International Economic Order”, appendix 200; UNGA 3281 (XXIX) Charter of Economic Rights and Duties of States, Appendix 202.”

<sup>60</sup> During the period 1997 to 2003, 235 exploration and appraisal wells were drilled in Sudan. Of these only 4 were in Block 5A, operated by Lundin, paras 4-5, p.4 of the Gaffney Cline report. Note that in relation to Thar Jath-1, Lundin only established successful testing of this well in March 2001, and therefore Thar Jath-1 was only considered a discovery at that point: para 33, Gaffney. By the end of 2003, Lundin’s Thar Jath discovery was still not fully appraised, and required further appraisal drilling to confirm a potentially commercial discovery, warranting possible development: para 36 Gaffney Report.

<sup>61</sup> Gaffney Cline Report, p.12. Note that in relation to Mala-1 marked on the map, after Lundin had sold its interest in Block 5A and was no longer present in Sudan, a consortium of Petronas, ONGC and Sudapet developed the Thar Jath and Mala fields. Mala-1 was spudded by WNPC in June 2003 with completion in July 2003 – Gaffney Cline report, p. 4-5.

<sup>62</sup> *Id.*, para.8. GNPOC is the Greater Nile Petroleum Operating Company, a joint-venture consortium comprising CNPC (40%), Petronas (30%), Talisman (25%) and Sudapet (5%).

<sup>63</sup> *Id.*, para.13.

<sup>64</sup> Jenner, Hadley, “When Truth is Denied, Peace Will Not Come”, *The People-to-People Peace Process of the New Sudan Council of Churches*, October 2000, p.3.

<sup>65</sup> “The most recent census, in 2008, recorded a total population of 39 million, but it probably understates the population both of Darfur (recorded as 7.5 million) and of Southern Sudan (8.2 million), either as a result of flawed data collection or manipulation of the results. The uncertainty over how many people actually live in Sudan is the most striking example of a recurrent problem in Sudan, statistics are generally unreliable or contested or both”. Willis, Egemi and Winter in the ‘Sudan Handbook’ (2011) p.16.

<sup>66</sup> Worldometer for 2000 the population density of Sudan was calculated as 15 psqk (Column 8). The population of Unity state was assessed to be 660,000 compared to Khartoum’s 6 million. [https://www.worldometers.info/world-population/sudan-population/#:~:text=Sudan%20population%20is%20equivalent%20to,64%20people%20per%20mi2\).&text=The%20median%20age%20in%20Sudan%20is%2019.7%20years.](https://www.worldometers.info/world-population/sudan-population/#:~:text=Sudan%20population%20is%20equivalent%20to,64%20people%20per%20mi2).&text=The%20median%20age%20in%20Sudan%20is%2019.7%20years.)

<sup>67</sup> <https://www.nationsonline.org/oneworld/map/sudan-administrative-map.htm>

<sup>68</sup> <https://geosciences.utdallas.edu/remsens/Nile/sudd.html> (link no longer working).

<sup>69</sup> Hopkins, Donald R. and Withers Jr, P Craig, 'Sudan's War and Eradication of Dracunculiasis, The Lancet Supplement, Vol.360, December 2002. See also, <https://whc.unesco.org/en/tentativelists/6276/>

<sup>70</sup> Office for the Coordination of Humanitarian Affairs (OCHA), January 2020.

<sup>71</sup> Office for the Coordination of Humanitarian Affairs (OCHA), map dated: 26/03/12.

<sup>72</sup> Internal reference map

<sup>73</sup> University of Berne 2005.

<sup>74</sup> De Wit, Paul, 'Legality and Legitimacy: A study of the access to land, pasture and water – Sudan, Special Relief Operations, Food and Agricultural Organization of the UN, Rome 2001', p.4 ("A study financed by the European Community prepared for the IGAD Partner Forum Working Group on Planning for Peace in Sudan by the FAO UN").

<sup>75</sup> De Wit, Paul, "Legal Legitimacy" FAO, p.4.

<sup>76</sup> Id., p.4.

<sup>77</sup> Id., p.7.

<sup>78</sup> Gordon, Carey N., 'Recent Developments in the Land Law of the Sudan: A Legislative Analysis', Journal of African Law, Vol.30, No.2 (Autumn, 1986) p.148: "On April 1970, legislation was promulgated stating that "all land of any kind whatsoever, whether waste, forest, occupied or unoccupied, which is not registered before the commencement of this Act, shall, on such commencement, be the property of the Government and shall be deemed to have been registered as such." The Civil Transactions Act, 1984, now provides that land registered on or after 6 April 1970, as freehold in the name of an owner shall be deemed merely the ownership of the 'usufruct' thereof. 'Usufruct' is defined as the right to use property that belongs to another person. In other words, the 1984 legislation maintains the rule, originally enunciated in 1970, that as to land for which full ownership was not registered in the name of a private person prior to 6 April 1970, the state is deemed to be the owner thereof, although the right to use such land may belong to a private party."

<sup>79</sup> Unregistered Land Act, 1970: The Unregistered Land Act (1970) served to nationalize all unregistered land in the country.

<sup>80</sup> De Wit, Paul 2001, p.4.

<sup>81</sup> Id., p.28.

<sup>82</sup> "The Civil Transactions Act, 1984 (C.T.A.) was promulgated on 14 February 1984 and took effect on that date. It comprises some 95 chapters with 819 separate sections, more than one-third deal with matters relating to land. The original text of the law was promulgated in Arabic." Gordon (1986), pp.143-144.

<sup>83</sup> Article 9 Sudan Constitution 1998.

<sup>84</sup> Economic Trade Between Africa and the European Union (with special reference to Sudan), inaugural

dissertation, September 2006/07, Universitat Freiburg im Breisgau

<https://freidok.uni-freiburg.de/fedora/objects/freidok:3154/datastreams/FILE1/content>

<sup>85</sup> Id.

<sup>86</sup> Jal, Gatluak Ruon, 'The Roots Cause of Cross Border Conflict in Gamballa Regional State Between Jikany-Nuer and Lou-Nuer', Public Policy & Administration Research, Vol.4, No.8, 2014: "The respondents who participated in the first day of fighting between Jikany-Nuer and Lou-Nuer revealed the first fighting erupted on March 27, 1993 in place called Dualdap in South Sudan. The results supported the fighting that started in South Sudan between Jikany-Nuer and Lou-Nuer in 1993 expanded to Ethiopian Jikany Nuer in Akobo district within the same year. The information obtained from the field work revealed, because Lou-Nuer area does not have river and water pool during dry season, every year, they move with their cattle to river side which is occupied by Jikany-Nuer. In 1993 Lou-Nuer under the community leader called Machot Dak moved to river side where they met Jikany-Nuer, the place called Dualdap. Because they left their food items they want to fish to get something to eat as they felt hungry. The respondents explained the Jikany-Nuer did not allow Lou-Nuer people to fish because they have to inform other people. The results supported it is the culture of Nuer when there is fishing pool which is not yet touched they will inform all people around for specific day they will first start fishing in that pool. The Lou-Nuer wait for two days but Jikany-Nuer did not come to inform them when it will be possible to fish. After these days some Lou-Nuer went to river on their will and put their nine fishing nets in the river. When the Jikany-Nuer knew that the Lou-Nuer had put their fishing nets in the river they came and pulled the nets out. As the Lou-Nuer came to take their nets there the two groups disagreed and the fighting erupted. The respondents explained that was the first incident of fighting between Jikany-Nuer and Lou-Nuer in the history. From that fighting up to five people were shot dead from both sides."

<sup>87</sup> <https://library.ecc-platform.org/conflicts/jikany-nuer-lou-nuer-south-sudan>

<sup>88</sup> Hutchinson, Sharon, Nuer Dilemmas: Coping with Money, War and the State, 1996, p.27.

<sup>89</sup> Schomerus, Marieke & Allen, Tim, 'Southern Sudan At Odds with Itself: Dynamics of Conflict and Predicaments of Peace', DESTIN London School of Economics, (2010).

<sup>90</sup> Report of Visit to Nyal and Gangliel in Preparation for the Coming Nuer-Dinka Conference (West Bank), by Rev. Mathew M.Deang, Justice and Peace Coordinator, Upper Nile, October 1998, <http://sudaninonet.tripod.com/Nuer-Dinka/MMD-Report.html>

<sup>91</sup> Bradbury et al, 'Local Peace Processes in Sudan: A Baseline Study', (2006); and Schomerus & Allen (2010).

<sup>92</sup> See for example, 'A Study of Customary Law in Contemporary Southern Sudan', by Justice Alue Akechak Jok et al for World Vision International and the South Sudan Secretariat of Legal and Constitutional Affairs, March 2004.

<sup>93</sup> Jenner, Hadley "When Truth is Denied, Peace will not Come" (2000) p.5.

<sup>94</sup> Id., at p.5.

<sup>95</sup> Id.

<sup>96</sup> "In May 1998, FAO issued a Special Alert on the grave food supply difficulties in southern Sudan,

particularly in Bahr el Ghazal, as a result of a succession of drought-reduced food production coupled with an intensification of the long-running civil strife. Later in the year heavy rains and flooding displaced a large number of households and damaged crops in the central and eastern parts of the country.” Source: <http://www.fao.org/3/X0771e/X0771e00.htm#E61E9>

<sup>97</sup> Evaluation of Danish Humanitarian Assistance to Sudan 1992-1998, Final Report, October 1999, Overseas Development Institute p.83: “This chronic conflict, during which people received only minimal humanitarian input, has progressively depleted resources and people’s ability to cope with natural and man-made deprivation, displacing many families and destroying cattle and stores. By the end of 1997 the food security and health situation of the population was deteriorating seriously - for example, TB was a major and increasing threat to the population. An epidemic of Kalazar was raging in Western Upper Nile and Guinea Worm was highly endemic. More usual problems such as diarrhoeal disease and respiratory tract infections were also common as a result of poor water and living conditions.”

<sup>98</sup> De Wit. Paul (2001), p.33.

<sup>99</sup> From, Willis, Egemi and Winter in ‘The Sudan Handbook (2011), p.20: “In the last few decades, as a result of state intervention, civil war, famine and in some areas of the north, increasingly unreliable rainfall – and the consequent disruption of traditional systems of food production – Sudan has seen dramatically accelerated population displacement. Millions of people have been forced to move. Rural-urban migration has resulted in dramatic changes in the population landscape ... Sudan’s porous international borders with Chad, Eritrea and Ethiopia mean that it has also played host to many hundreds of thousands of refugees from wars in these countries.”

<sup>100</sup> In the opening ceremony to the Wunlit Peace Conference Governor Nhial Deng Nhial said: “...There are still a minority among us whose interests are being served by the perpetuation of the suffering of our people. There are still people among us, and in our two communities, and some of these are well placed. They want to exploit the tragic events of 1991 and call our peoples to take revenge. But what they want is not really revenge but rather to perpetuate the raids for property and cattle to increase their wealth”. Dinka and Nuer West Bank Peace and Reconciliation Conference, transcripts from Wunlit.

<sup>101</sup> A report from 1998 from WUN says: “75% of the people in Payinjar district south of Leer area of Nyal and Gangliel are due to flooding, the villages concerned are Gakal, Youb, Palual, Tharbar, Nyadoung, Pathiel and Luali.”... “Also there were reports that the area south of Leer was affected most by the flooding and that in the villages the children are malnourished.” <http://sudaninfonet.tripod.com/Nuer-Dinka/MMD-Report.html>

<sup>102</sup> See François Grünewald (FAO Consultant), ‘Uprooted People in Sudan: From Drought and War to Peace and Development’, Consultancy on the Rehabilitation and Reintegration of IDPs & Returnees for the IGAD Partner Forum Working Group ‘Planning for Peace’, June 2001.

<sup>103</sup> Lundin Oil in Sudan May 2001

<sup>105</sup> Id., “Periods of drought have occurred throughout Sudan’s history and in most cases have been followed by famines and outbreaks of disease (Babiker, 1985; 1990). Table 11 indicates diversity in the spatial incidence of drought and famine, with frequent occurrences concentrated in the western and eastern regions.”, Drought Characteristics and Management in North Africa and the Near East, FAO UN Water Reports 45, Rome 2018. <http://www.fao.org/3/ca0034en/CA0034EN.pdf> p.59

15 May 1998 FAO report: <http://www.fao.org/3/w8701e/w8701e00.htm>



<sup>106</sup> See for example Stringham and Forney, 'It Takes a Village to Raise an Army', (2017)

<sup>107</sup> Scroggins, Deborah, *Emma's War*, (2003), p.258.

<sup>108</sup> Grunewald "Uprooted People in Sudan" (2001).

<sup>109</sup> De Waal, 1997, p.276.

<sup>110</sup> Crossley, 'Why not to State Build in Sudan', (2004) states: "Simply by isolating the SPLM/A as the primary interlocutor, the OLS bestowed a certain pride of place on one armed movement over the others."p.142

<sup>111</sup> Branch, A., & Mampilly, Z. (2005), 'Winning the War, but Losing the Peace? The Dilemma of SPLM/A Civil Administration and the Tasks Ahead', *The Journal of Modern African Studies*, 43(1), 1-20. Retrieved July 17, 2020: "The SPLA has managed to gain control of NGOs and the distribution of foreign funds through a number of strategies. The formal instrument of this control is the Memorandum of Understanding that every NGO signs with the SPLM/A and according to whose terms the NGO must abide at risk of expulsion."

<sup>112</sup> W. Reno, 'Complex Operations in Weak and Failing States: The Sudan Rebel Perspective', April 6 2010, *Prism* 1 No.2, pp. 116-117: "Although Sudan's government could manipulate relief deliveries for its own advantage, the politically favored mainstream SPLA also was able to divert relief supplies for military purposes and to devise ways to tax relief aid that arrived via OLS. In the words of a member of the SPLA Executive Council, "Since humanitarian assistance is only provided for the needy civil population, the task of distribution of this assistance fell on specially selected SPLA officers and men who saw to it that the bulk of the supplies went to the army. Even in cases where the expatriate relief monitors were strict and only distributed relief supplies to the civilians by day, the SPLA would retrieve that food by night. [...] Even if Sudan's government asserted its sovereignty to interfere with and veto OLS relief flights, longer term aspects of the OLS engagement with the SPLA conveyed additional advantages to rebels. The external support for the development of "civil society" groups gave the SPLA and its SRRRA the capacity to screen participants in workshops and seminars and to influence which local NGOs would get contracts to implement foreign-supported development projects. Many of these Sudanese NGOs were headed by former SPLA members and other associates of the rebel group, including those that sprang up in Nairobi around the opportunities that the organizational base of the coordinated relief operation provided. What appeared to the international community to be part of the normalization in support of a peace process was to rebels the opportunity to assert political control over wider swaths of southern Sudanese society and dominate the distribution of resources from foreign sources while they continued to fight."

<sup>113</sup> Duffield et al, 'Unintended Consequences of Humanitarian Aid', (2000), p.186: "The SPLA does seem to have become to some degree dependent on taxing and other forms of siphoning of resources from aid operations. The lack of high value and easily extractable natural resources in the SPLA-controlled area makes aid goods particularly important. ... The importance of aid to the rebel administration helps to explain the current SPLM/SRRRA attempt to impose a new Memorandum of Understanding on aid agencies, which is to be agreed individually by each organisation."

<sup>114</sup> Prendergast (1997), p.67.

<sup>115</sup> De Waal, (1997), p.276. See also Prendergast (1997) p.140: "In Sudan, aid has become directly integrated into the dynamics of conflict through the negotiated access agreements of Operation Lifeline Sudan and the Sudan Emergency Operations Consortium. Aid may not directly prolong conflict unnaturally in Sudan but it certainly has a major bearing on the course of the war. From 1989-1991, OLS boosted the rebel SPLA."

<sup>116</sup> Public Law 106-113, 106<sup>th</sup> Congress (1999), US Statutes at Large, 1501A-122. In a USAID report from June 2011, South Sudan Transition Strategy 2011-13, while outlining American support in 2001 it states: “Senior USAID officials, some of whom had personal ties to Sudan People’s Liberation Movement (SPLM) leader John Garang, played key roles in the negotiations that led to the CPA.” (p10.): “providing humanitarian assistance, including food, directly to National Democratic Alliance participants and the Sudanese People’s Liberation Movement operating outside of the United Nations’ Operation Lifeline Sudan structure.”

<https://www.usaid.gov/sites/default/files/documents/1860/SouthSudanTransitionStrategy2011-13.pdf>

<sup>117</sup> Metelits, Claire, *Inside Insurgency: Violence, Civilians and Revolutionary group Behavior*, 2010, p.61.

<sup>118</sup> *Id.*

<sup>119</sup> <https://www.thelocal.no/20150421/norway-footed-sudan-rebels-1m-phone-bill>

<sup>120</sup> <https://tv.nrk.no/serie/brennpunkt/1999/FFAD12007399>

<sup>121</sup> The Government of Norway provided US\$32,420 (cash) for SPLM participation at peace negotiations in 2000. Flow data 13366: UNOCHA.

<sup>122</sup> Rolendsen states: “The official date for the founding of the Sudan Relief and Rehabilitation Association (SRRRA) is disputed but the most widely accepted version is that it was founded at Itang refugee camp in Ethiopia in 1986.”

<sup>123</sup> Large, Daniel, *The International Presence in Sudan*, p. 169, in *The Sudan Handbook*, Ryle eds., 2011: “In 1985 it formed the Southern Relief and Rehabilitation Association (SRRRA) with the aim of making it the SPLA’s humanitarian wing; this also served as a mechanism to support the armed struggle.”

<sup>124</sup> Resolution 21: Relief and Humanitarian Affairs. 21.1.0: “The Sudan Relief and Rehabilitation Association (SRRRA) shall coordinate and facilitate relief and rehabilitation in the New Sudan. The 1994 Chukudum Declaration – ‘A Major Watershed: SPLM/SPLA First National Convention: Resolutions, Appointments and Protocol. Chukudum, New Sudan, 12<sup>th</sup> March/April 1994’.

<sup>125</sup> De Waal, (1997), p.326.

<sup>126</sup> Reference from Crossley, in Kingston & Spears, (2004), p. 141. In terms of the attitude of the SPLA towards International Aid Organisations, see Ohm, Manfred, *War and Statehood in South Sudan* (2013) p.85: “The SPLA’s attitude towards the IAOs [International Aid Organisation] changed over the years. During the 1980s, it was hesitant about accepting any relief agencies in its territory. There is no clear evidence why; yet is plausible that the movement was simply not interested in cooperation with international actors while it was fighting from Ethiopian territory. The Mengistu regime ensured access to the necessary resources. The camps in Ethiopia were military retreats and the refugee camps in northern Uganda humanitarian retreats. During the 1990s the SPLM/A showed a growing interest in the presence of international aid. This can be explained by the interest in the influx of resources and technical assistance from the IAOs after the movement fled Ethiopia in 1991 and was cut off from its resources. In returning to South Sudan the SPLM/A had to rely entirely on the civilian population for support. Political changes in the SPLM/A in the 1990s due to external and internal pressures, like the 1991 split, influence the attitudes of the SPLM/A leadership towards international aid organisations. Last but not least, the demands of the IAOs who put pressure on the movement. Beginning with the Chukkudum convention in 1994, the SPLM/A started to build civil authorities and to formally separate the armed and civil wings of the movement. The foundation of the

South Sudan Relief and Rehabilitation Agency (SRRA) as the humanitarian wing of the movement was therefore a logical step. The SRRA facilitated cooperation with international organisations that did not want to cooperate with an armed movement. The SPLA expected that the SRRA would prove to be a valuable source of resources.”

Prendergast also states the following about the SRRA and SPLA: “The role of the SRRA has been to hide the SPLA and the Chiefs who are the true authorities in southern Sudan. The control in southern Sudan resides in the SPLA and in the tribal structures. The SRRA hides these powers. ‘The power of the SRRA is derived solely from externally provided relief’, according to one NGO official. ‘If they have a problem with the people of a certain area, they can withhold relief or services.’ Another official concurs saying that the SRRA gets its legitimacy through what it gives out.” Prendergast, John, *Crisis Response: Humanitarian Band Aids in Sudan and Somalia*, (1997), p.59.

<sup>127</sup> Ohm (2013) p.127: “At a more general level, the international support for South Sudan was obviously a source of revenue for the SPLM/A, as the rebel movement taxed IAOs (for each staff member, vehicle, aircraft landing, etc.) and SRRA staff found employment at the compounds of international organisations. Any infrastructural support, especially road repairs (e.g. from Uganda to Rumbek) considerably enhanced the mobility of the SPLA.”

<sup>128</sup> De Simone, Sara, ‘State building South Sudan. Discourses, Practices and Actors of a Negotiated Project (1999-2013)’, PhD Thesis, Università degli studi di Napoli “L’Orientale”, Dottorato di Ricerca in Africanistica XII ciclo N.S., quoting African Rights ‘Food and Power in Sudan: A Critique of Humanitarianism, p.116

<sup>129</sup> De Waal, (1997), p.319.

<sup>130</sup> The 1999 Danish International Development Agency [DANIDA] evaluation team reported that, during the peak of the 1998 famine in Bahr El Ghazal, “in one town, WFP [the UN agency World Food Program] was accidentally given a report documenting the collection of cereals by the SRRA, 80% of which was allocated to the army, 15% to administration, and 5 % to the SRRA”.

<sup>131</sup> Douglas Johnson in John Prendergast (1997), p.62. “The SRRA was ill-organized in 1989 when OLS began, with no clear Policy. Most of its field representatives had been selected not only from the military wing of the movement but from the security wing as well. Throughout OLS the SRRA often gave the impression that it was the procurement Department for the SPLA at least as far as food and medicines are concerned”.

<sup>132</sup> Quoted in de Simone (FN243) William Reno stated: “Travelling to rebel-held parts of Sudan at that time [in 2000 when the SPLA forced NGOs to sign up to a Memorandum of Understanding] was like traveling to a new country, with SPLA travel permits, registries and other administrative paraphernalia typical of a sovereign state.” p.134

<sup>133</sup> Manfred Ohm travelled independently in 2000 but needed an entry permit granted by the SRRA, which was obtained with the support of the New Sudan Council of Churches: (2013), in p.21 *War and Statehood in South Sudan*, (2013). Nicholas Coghlan explained the routine was to take the Kenya Airways flight from Khartoum to Nairobi, where, depending on precisely which area you wanted to visit, you sought a permit from either the Sudan Relief and Rehabilitation Agency (for SPLA-controlled areas) or the confusingly similar Relief Association of Southern Sudan for less extensive areas under the influence of forces loyal to Riek Machar. See Coghlan, Nicholas, *Collapse of a Country: A diplomat’s memoir of South Sudan*, (2017) p.14. The 1995 Sudan Emergency Operations Consortium (SEOC) A Review, also refers to travel issues for its own research: “The SPLA provided permits for three of the team but declined permission for the fourth, the member with detailed field experience in southern Sudan.” p.6.

<sup>134</sup> Id., p.98.

<sup>135</sup> Evaluation of Danish Humanitarian Assistance to Sudan, (1999), p.34. “For example, the assumption of stability implicit in the October – November assessment of needs does not sufficiently acknowledge the central role that instability and displacement play in reducing access to food. The FEA does not fully recognise that there may be crises where everyone is in need of food aid nor does it examine social dynamics or power relations, focusing instead on relatively static economic groups. Many communities are now so well-versed in the food economy approach, and in WFP’s targeting criteria, that it is difficult to really get to know what communities think, let alone what they actually do (and even if they do say what they think, SRRA knows what they should think and will translate by giving the “correct” answer). A further problem has been the reliance of WFP on expatriate staff to conduct assessments, who in turn rely upon the SRRA for translation services. This has provided plenty of scope for selective use of information. WFP was accidentally given a report documenting the collection of cereals by the SRRA, 80% of which was allocated to the army, 15% to administration and 5% to the SRRA.”

<https://odi.org/en/publications/evaluation-of-danish-humanitarian-assistance-to-sudan-19921998/>

<sup>136</sup> E.M. Brown, ‘The Road to Peace: The Role of the Southern Sudanese Church in Communal Stabilisation and National Resolution, p170, (2008), PhD thesis, Uni. Edinburgh.

<sup>137</sup> Id., p.171.

<sup>138</sup> De Waal, (1997), p.342.

<sup>139</sup> T. Brown, ‘Building Social Capital in South Sudan: How Local Churches Worked to Unite a Nation in the Lead Up to the 2005 Comprehensive Peace Agreement, 2011’, p.17).

<sup>140</sup> De Waal, (1997), p.345.

<sup>141</sup> Id., p.345.

<sup>142</sup> Id., p.342.

<sup>143</sup> Brown E.M., (2008), p.215

<sup>144</sup> Id., p.182

<sup>145</sup> Hadley Jenner, “When Truth Is Denied, Peace Will Not Come”: The People-to-People Peace Process of the New Sudan Council of Churches, (2000), p.11.

<sup>146</sup> Id., p.12

<sup>147</sup> One Nation from every Tribe, Tongue and People”: The Church and Strategic Peacebuilding in South Sudan, John Ashworth and Maura Ryan, *Journal of Catholic Social Thought* – 10:1, 2013, 47-67. “The SPLM/A mandated the church to handle peace and reconciliation as well as other issues such as the provision of chaplains to the armed forces.”...“At that time the ecumenical body in the liberated parts of the South Sudan was the New Sudan Council of Churches (NSCC)”. P.55. What is noteworthy here is the use of the word ‘Liberated’. John Ashworth was an advisor to the NSCC and also Pax Christi.

<sup>148</sup> The NSCC committee included the following individuals: Rev Peter Pal Kweth (Moderator, Presbyterian Church), Rev John Jal Cop (Presbyterian Church), Brother John Jok Chol (Presbyterian Church), Fr Benjamin

Madhol Akot (Catholic Church), Brother Abraham Mayom Athiang (Episcopal Church), Rev Peter Bol Arok (Episcopal Church), Rev Matthew Aguto Kok (Pentecostal Church).’ Roland Werner, William Anderson, Andrew Wheeler, Day of Devastation Day of Contentment. From Brown, (2008) fn. 548 p.170.

<sup>149</sup> New Sudan Council of Churches Project Proposal for Jan-June 2000, Project Title: Nilotics East Bank Peace and Reconciliation Conference

<sup>150</sup> Ib.

<sup>151</sup> NSCC Peace Desk Update, September-December 1999.

<sup>152</sup> Brown, E.M., (2008).

<sup>153</sup> Sudan Focal Point is a DanChurchAid project funded by Danida. SEOC Review, Duffield, p.4. John Ashworth worked at Sudan Focal Point for five-years.

<sup>154</sup> Jenner, H, (2000), p.10.

<sup>155</sup> Brown, T, (2008) p.43. Swedish Aid – SIDA, provided aid to various church organisations during the period 1999-2006 that would have been handled by the NSCC as a peak body for seven separate church organisations operating throughout the region.

<sup>156</sup> <https://reliefweb.int/report/sudan/nscc-peace-desk-update-sep-dec-1999-people-people-peace-process>

<sup>157</sup> Review of the UK Government Approach to Peacebuilding and Synthesis of Lessons Learned from UK Government Funded Peacebuilding Projects 1997-2001 [report]. Contribution to the Joint Utstein Study of Peacebuilding. The NSCC Peace Desk Update Sep-Dec 1999 thanks DanChurchAid and Christian Aid for financial support and USAID for providing the funding for air charters for the peace conferences. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/67946/ev646.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/67946/ev646.pdf)

<sup>158</sup> Sudan – The Passion of the Present – Exiled Sudanese activist called home – Colombia Minister Returns to Native Land to Help Keep the Peace, 12<sup>th</sup> February 2006. In 2001, HRW recognised Dr Haruun Ruun as a Global Human Rights Defender for his significant work in human rights: <https://www.hrw.org/news/2001/11/05/human-rights-watch-honors-global-rights-defenders>

<sup>159</sup> Ib. ‘The Passion of the Present’

<sup>160</sup> Brown, T, (2008), p.44.

<sup>161</sup> <http://www.reformiert-online.net/aktuell/details.php?id=1520&lg=eng>

<sup>162</sup> Ib.

<sup>163</sup> <https://pres-outlook.org/2006/02/ex-pcusa-missionary-accepts-advisory-post-in-sudan-2/>

<sup>164</sup> Iversen, “Foreign Policy in God’s Name: Evangelical Influence on US Policy Towards Sudan”, Norwegian Institute for Defence Studies, Vol. 4 (2007), pp. 28-29.

<sup>165</sup> Brown, T, (2008) p.44.

<sup>166</sup> *Ib.*

<sup>167</sup> The United States Agency for International Development is an independent agency of the United States federal government that is primarily responsible for administering civilian foreign aid and development assistance.

<sup>168</sup> See for example for discussions on aid development within the south, Branch, A., & Mampilly, Z. (2005), *Winning the War, but Losing the Peace? The Dilemma of SPLM/A Civil Administration and the Tasks Ahead*, *The Journal of Modern African Studies*, 43(1), 1-20.

<sup>169</sup> Ohm (2013) p.139.

<sup>170</sup> Tounsel (2016) p.137.

<sup>171</sup> In 1994 the Akobo Peace gathering occurred sponsored by the Presbyterian Church. Other peace initiatives include; 1997 Yei Dialogue between the SPLA and NSCC; 1998 Lokichokko, Kenya, Peace Gathering of Chiefs and Church leaders among the Dinka and Nuer; 1999 March, Wunlit People-to-People Peace conference; 1999, June Women's Peace Workshop, Lokichokkio, Kenya; 1999, September Wunlit Ordained Peace Council Meeting in Yirol; 1999, November Waat Lou-Nuer Covenant; 2000, May, East Bank Nilotic people's Peace Conference at Liliir.

<sup>172</sup> Jenner, H, (2000) p.17.

<sup>173</sup> *Ib.*

<sup>174</sup> See New Sudan Council of Churches Project Proposal for Jan-June 2000 (as above)

<sup>175</sup> [http://sudaninfonet.tripod.com/Peace\\_Council.html](http://sudaninfonet.tripod.com/Peace_Council.html)

<sup>176</sup> In a People-to-People Peace Conference in November 1999 in Waat, Christian Aid along with World Vision amongst others were thanked expressly as sponsors: <https://reliefweb.int/report/sudan/nsc-peace-desk-update-sep-dec-1999-people-people-peace-process>.

<sup>177</sup> After the Court of Appeals for the Second Circuit dismissed their appeal, the plaintiffs petitioned for a writ of certiorari on 15<sup>th</sup> April 2010, asking the Supreme Court to hear their claims and reverse the Second Circuit's decision. On 20<sup>th</sup> May 2010, EarthRights International filed an amicus brief with the Supreme Court on behalf of the plaintiffs, urging it to hear the appeal and overturn the dismissal of the case. In October 2010, the Supreme Court declined to grant certiorari, announcing that it would not hear the appeal in this case.

<sup>178</sup> Brown, E. (2008) p.178, 180.

<sup>179</sup> Kastfelt, Niels (eds), *Religion and African Civil Wars*, (2005), p. 45.

<sup>180</sup> *Ib.*, "John Garang refused to endorse these meetings in any way. Less than a week before the Wunlit conference was scheduled to begin, several Nuer cattle camps were attacked from the SPLA's side. These raids reportedly resulted in nine deaths, the kidnapping of several women and children, and the loss of some 2,000 Nuer cattle. ... In contrast to Garang's resounding silence, Machar – who had long sought to fashion himself as a regional agent of peace – wrote a formal letter to the NSCC organizers in which he

voiced unconditional support for this grassroots initiative”.

<sup>181</sup> *Ib.*

<sup>182</sup> Getty Images: 364091 15 ‘Making Peace Between the Dinkas and the Nuer; 364091 10: ‘Making Peace Between the Dinkas and the Nuer.’

<sup>183</sup> <https://reliefweb.int/report/sudan/nsc-peace-desk-update-sep-dec-1999-people-people-peace-process>

<sup>184</sup> The Sudan Liberation Movement was born under the leadership of Michael Wal Duany (US citizen) who had been a Presbyterian Church of Sudan facilitator at the Akobo Peace Conference and one of the principal NSCC organisers for Wunlit. (Brown, E. (2008) p.186)

<sup>185</sup> Lundin Oil in Sudan, May 2001, p.15.

<sup>186</sup> Gaffney and Cline report, para.24.

<sup>187</sup> Canadian listed company controlled by the Lundin Group.

<sup>188</sup> Lundin Oil in Sudan, May 2001, p.3; Lundin History in Sudan, 1997-2003, p.8.

<sup>189</sup> Lundin History in Sudan, 1997-2003, p.8.

<sup>190</sup> This Political Charter was signed on behalf of the Sudan Government by Major General Al Zubear Mohammed Salih (First Vice Presidency of the Republic of Sudan), on behalf of the SSIM/A by Dr Riek Machar and by Kerbino Kuanyin on behalf of the SPLM/A Bahr El-Ghazal.

<sup>191</sup> Lundin History in Sudan, p.8.

<sup>192</sup> The Sudan Peace Agreement, The Republic Palace, Khartoum, 21 April 1997

<sup>193</sup> Adolf Lundin, Major shareholder and Chairman of Lundin Oil AB, 23-03-2001. Drillings in Sudan continue”, Dagens Nyheter, March 23, 2001 (org. title and quote. Borningarna i Sudan fortsätter: vi fullständigt övertygade om att vår närvaro är positiv för folket och att vi bidrar till fred och välbefinnande, och demokrati så småningom.”). Referred to in Unpaid Debt, p.42.

<sup>194</sup> ‘Sudan Peace Agreements: Current Challenges and Future Prospects’, Abdel Ghaffer Mohamed Ahmad CHR. Michelson Institute, p.8: ”the agreement excludes other political forces, which makes it appear to have been designed for the interests of only two parties out of the entire nation. The NCP was quite clear on this point: it is an agreement between those who carried arms. That exclusion is one of the reasons that caused a leading advisor to the president of the republic to dub it “an accord that is neither fair nor comprehensive”.

<sup>195</sup> France had been trading with Sudan throughout the 1990s with “trade between France and Sudan jumping from \$25million in 1992 to \$725million in 1993. France is also giving medical aid to a hospital being built in South Sudan and is helping Sudan prospect for gold.”  
<https://www.upi.com/Archives/1994/08/22/Sudan-mediates-between-Algeria-France/1740777528000/>  
In June 1997 a conference was held in Saltsjöbaden, Sweden discussing Sweden’s New Partnership with Africa and one of the key themes was: “Africa in the international economy. This theme includes economic reforms, trade policy, debt issues and poverty reducing measures. In particular, experience of and

opportunities for regional collaboration should be elucidated.” Africa’s relations with the EU are another important area. See, Towards a New Partnership with Africa: Challenges and Opportunities, Ed. Steve Kayizzi-Mugerwa et al, (1998). Also, in November 1997, Mats Karlsson – State Secretary, Ministry for Foreign Affairs, Sweden, gave a speech at the Makerere University Kampala discussing Sweden’s new and developing Partnership with Africa policy where he says: “We will ask Parliament for a new mandate to guide our policy, not just an aid policy but an integrated policy covering trade and political cooperation, into the new century.”

See - [https://www.africa.upenn.edu/Urgent\\_Action/apic\\_122997.html](https://www.africa.upenn.edu/Urgent_Action/apic_122997.html)

<sup>196</sup> 13 April 1998, A/52/871-S1998/318

<sup>197</sup> *Ib.*, para.79.

<sup>198</sup> *Ib.*, para.80.

<sup>199</sup> For further information on Production Sharing Agreements this document provides a useful overview: <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2010/11/WPM25-ProductionSharingAgreementsAnEconomicAnalysis-KBindemann-1999.pdf>

<sup>200</sup> Batruch, C., Oil and Conflict: Lundin Petroleum’s experience in Sudan, p. 150.

<sup>201</sup> Lundin History in Sudan 1997-2003, p.11.

<sup>202</sup> *Ib.*, p.4.

<sup>203</sup> *Ib.*, p.9.

<sup>204</sup> <https://www.lundinsudanlegalcase.com/>

<sup>205</sup> Lundin History in Sudan, 1997-2003 at p.9.

<sup>206</sup> <http://news.bbc.co.uk/1/hi/world/africa/1769990.stm>

<sup>207</sup> Batruch, C., p.9.

<sup>208</sup> Press Release dated 27<sup>th</sup> March 2003.

<sup>209</sup> Lundin History in Sudan, 1997-2003, p.17.

<sup>210</sup> This was adjacent to the airstrip in Rubkona. When Lundin sold its interest in Block 5A in 2003, the base camp was taken over by Petronas. See Lundin History in Sudan, 1997-2003 at p.13.

<sup>211</sup> Lundin History in Sudan, 1997-2003, p.13.

<sup>212</sup> *Ib.*

<sup>213</sup> *Ib.*

<sup>214</sup> *Ib.*, [https://www.lundinhistoryinsudan.com/wp-content/uploads/2017/05/legacy-document\\_en.pdf](https://www.lundinhistoryinsudan.com/wp-content/uploads/2017/05/legacy-document_en.pdf)



<sup>215</sup> *Ib.*

<sup>216</sup> Batruch, C., 'Lundin Petroleum's experience in Sudan', 2003 at p.4.

<sup>217</sup> Lundin Oil in Sudan, pp.4-5.

<sup>218</sup> Batruch, C., p.5, footnote 10.

<sup>219</sup> *Ib.*

<sup>220</sup> Batruch, C., p.5.

<sup>221</sup> Lundin History in Sudan, 1997-2003, pp.14-15.

<sup>222</sup> *Ib.*

<sup>223</sup> [http://pfeda.univ-lille1.fr/Ethiop/ngopro\\_su.htm](http://pfeda.univ-lille1.fr/Ethiop/ngopro_su.htm)

<sup>224</sup> SIDA website as of 2020.

<sup>225</sup> Batruch, C., (2003) p.8.

<sup>226</sup> Referenced on p.16 of Lundin Oil in Sudan, 2001.

<sup>227</sup> Lundin Oil in Sudan, May 2001, p.16.

<sup>228</sup> Batruch, C., at p.8 and fn.18.

<sup>229</sup> *Ib.*

<sup>230</sup> Batruch, C., in Bailes, Alyson J.K., and Frommelt, Isabel, *Business and Security: Public, Private Sector Relationships in a New Security Environment* (2004) SIPRI, p.159.

<sup>231</sup> *Ib.*, p. 160.

<sup>232</sup> Sweden's International Development Cooperation, Yearbook 2000, p.104.

<sup>233</sup> Batruch, C., pp.9-13.

<sup>235</sup> The questions raised were: (i) What measures does the Foreign Minister intend to take with regard to forced displacement in connection with oil recovery in the civil war afflicted by Sudan? (ii) Does the Swedish government intend, within the EU, to initiate the establishment of a military no-fly zone in southern Sudan? (ii) In what way does the Swedish government as the President of the EU intend to raise the issue of the situation in Sudan?

<sup>236</sup> English translation of the answer of Ms Anna Lindh to interpellation number 2000/01:274, debate dated 3<sup>rd</sup> April 2001.

<sup>237</sup> *Ib.*

<sup>238</sup> Ib.

<sup>239</sup> Press release by Lundin Oil dated 21<sup>st</sup> March 2001.

<sup>240</sup> English translation of a letter in Swedish from Adolf Lundin to Anna Lindh, the Minister of Foreign Affairs, dated 26<sup>th</sup> March 2001.

<sup>241</sup> English translation of letter dated 25<sup>th</sup> April 2001 from the Minister of Foreign Affairs, Anna Lindh to Adolf Lundin.

<sup>242</sup> English translation of Ms Lindh's answer to interpellation 2000/01:344 on 2<sup>nd</sup> May 2001.

<sup>243</sup> Ib. fn 375.

<sup>244</sup> Bannon, Ian and Collier, Paul eds., *Natural Resources and Violent Conflict: Options and Actions*, World Bank Publication, 2003, p.337.  
<http://documents1.worldbank.org/curated/en/578321468762592831/pdf/282450Natural0resources0violent0conflict.pdf>

<sup>245</sup> Batruch, C., *Lundin Petroleum's experience in Sudan*, (2003), p.10.

<sup>246</sup> Press Release by Lundin Oil dated 21st March 2001.

<sup>247</sup> Extract from letter dated 23.5.2001 from Pereric Hogberg published on Global Reporting website (link since removed).

<sup>248</sup> Report of the Special Rapporteur, Gerhart Baum, submitted in accordance with Commission resolution 2001/18. E/CN.4/2002/46. "It should be taken into account, however, that while the SPLM/A controls access to some 80 per cent of the people in southern Sudan, it does not necessarily represent all of them. If most southern Sudanese are currently united against a common enemy, the potential for inter-ethnic fighting, particularly for the control of resources, is not to be ruled out." Para. 77. Situation of human rights in Sudan.

<sup>249</sup> Letter from Christine Batruch to the UN Special Rapporteur on Sudan, 29<sup>th</sup> October 2001.

<sup>250</sup> Batruch, C., (2003) p.12.

<sup>251</sup> Ib., p.12 and footnote 23 which explains that "Amnesty International (AI) had issued recommendations for oil companies operating in Sudan; these were circulated among relevant company staff, as were copies of the 10 Basic Human Rights Standards for Law Enforcement Officials."

<sup>252</sup> *Lundin History in Sudan 1997-2003* (published October 2016) found at [https://lundinsudanlegalcase.com/wp-content/uploads/2019/11/legacy-document\\_en-1-dec.pdf](https://lundinsudanlegalcase.com/wp-content/uploads/2019/11/legacy-document_en-1-dec.pdf) at p.16.

<sup>254</sup> Bengt Nilsson on resan med Lundin Oil: "Jag ar bara lojal mot tittarna", 9th April 2001  
- <https://www.journalisten.se/nyheter/bengt-nilsson-om-resan-med-lundin-oil-jag-ar-bara-lojal-mot-tittarna>

<sup>255</sup> Lundin Oil in Sudan May 2001

<sup>256</sup> Reference is made to the online version of The Human Price of Oil as it has not been possible to obtain a hardcopy. This version is 18 pages in length and provides no bibliography, so reliance has been placed on the information contained in the footnotes.

<sup>257</sup> *Ib.*, p.2.

<sup>258</sup> *Ib.*

<sup>259</sup> *Ib.*

<sup>260</sup> *Ib.*

<sup>261</sup> *Ib.*, p.3.

<sup>262</sup> *Ib.*, at p.9.

<sup>263</sup> *Ib.*, at p.8.

<sup>264</sup> The Human Price of Oil, p.4, 5 and 8, which refers to an interview with Peter Gadet conducted during an Amnesty International visit to Wicok Village in October 1999.

<sup>265</sup> Council Implementing Regulation (EU) 2017/402 of 7<sup>th</sup> March 2017, Implementing Article 20(3) of Regulation (EU) 2015/735 concerning restrictive measures in respect of the situation in South Sudan. See: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0402&from=EN>

<sup>266</sup> Statement from the Press Center of the U.S. Department of the Treasury, 'Treasury Targets Those Engaged in Violence and Atrocities in South Sudan', dated 5.6.2014: <https://www.treasury.gov/press-center/press-releases/Pages/jl2386.aspx>

<sup>267</sup> The Human Price of Oil, p.2.

<sup>268</sup> John Garang de Mabior Atem Aruai became chairman and commander in chief of the SPLM/A at its inception in 1983. Born 23 June 1945. A Twic Dinka from the village of Wangkulei. Graduated in Economics from Grinnell University, Iowa and studied African Agricultural Economics as a Thomas J Watson Fellow at the University of Dar es Salaam. Met Yoweri Museveni while at University. Captain John Garang de Maboir received advanced military training at Fort Benning, Georgia, USA (1974-75). Received his MA and PhD from Iowa State University focused on rural development. Fought as part of the Anya Nya movement preceding the SPLM/A. Killed in a helicopter crash in 2005. Long-standing tension existed between Garang's forces and other factional groups stemming from the split in the SPLM/A in 1991.

<sup>269</sup> Dr Riek Machar, Nuer from Leer. The 26<sup>th</sup> child of 32. Attended an American missionary school. Gained a PhD from Bradford Polytechnic, UK. Rebel leader in the SPLM/A in the 1980s but broke from Garang in 1991 with Dr Lam Akol and Gordon Kong to form the SPLM/A-Nasir.

<sup>270</sup> Kastfelt (eds) 2004, p.45, "continued unwillingness of Garang and Machar to resolve their personal and political difference for the greater good of the South".

<sup>271</sup> Peter Adwok Nyaba, *The Politics of Liberation in South Sudan: An Insider's View* (2000) p.51: "As such, when contradictions within the SPLM/A arose again, triggered off by the Nasir attempted coup, many Nuers saw the split that ensued as a result of Nuer-Dinka tribal animosity as an opportunity to revenge against the

Bor Dinka.” See also HRW (1993), *Civilian Devastation, Abuses by All Parties in the War in Southern Sudan*, p.4: “The leaders of the SPLA factions must address their own human rights problems and correct their own abuses, or risk a continuation of the war on tribal or political grounds in the future.”

<sup>272</sup> *The Human Price of Oil*, p.2:

The following description from Deborah Scroggins highlights the challenges of moving around Sudan and meeting people: “Emma soon learned that the Land Cruiser would not take her far in a land without roads. If she wanted to find the people, she would have to go into the villages on foot. Towns were alien to the Nilotic peoples, who moved from season to season with their beloved long-horned cattle. From November to March or April, they lived in the grasslands close to the rivers. From April to October, when the rains came and the rivers flooded, turning the grassy plains to marsh, they moved to permanent villages of conical thatched houses on higher ground.” Scroggins, *Emma’s War*, (2004), p.139.

<sup>273</sup> For example, the report relies on the account of an un-named ‘former commander in the forces of rebel leader Paulino Matip’, Report at p.9.

<sup>274</sup> (BBC 16/05/09); Julie Flint, *The Observer* (London), March 2000; Reuters [sic], Jan.4,2000; AFP, August 31, 1999 from *Gazeta Wyborcza*; *Al-Sharq al-Aswat*, 28 January 2000.

<sup>275</sup> *The Human Price of Oil*, p.4: New Release, 10 July 1999, WFP, Nairobi.

<sup>276</sup> *Blood for Oil in Southern Sudan* by Damien Lewis (Journeyman Pictures).

<sup>277</sup> *The Human Price of Oil*, fn 7: ‘Letter, written by Alan G. Hevesi to Mr James Buckee, president and chief executive officer of Talisman Energy, September 27, 1999’.

<sup>278</sup> Amnesty’s report refers to a newspaper article in *The Observer* in March 2000 by Julie Flint to support the allegation that ‘government troops cleared the area around the town of Bentiu using helicopter gunships, some allegedly piloted by Iraqi soldiers, and aerial cluster bombardment by high-altitude Antonov planes.’ This refers in fact to an article she wrote in April 2000, not March 2000.

<sup>279</sup> ‘Blood for Oil in Southern Sudan’ - [https://www.youtube.com/watch?v=3\\_KqkeVHGrs](https://www.youtube.com/watch?v=3_KqkeVHGrs)

In De Waal, Alex, *Famine that Kills: Darfur, Sudan, 2005* (revised edition), pp.21-22, refers to the phenomenon of ‘Disaster Tourists’, which is relevant for this particular source Amnesty cites as do others (for example, HRW 2003 – Sudan, Oil and Human Rights) rely on: “... the biases serve not to hide poverty but to exaggerate it. Disaster tourists are typically journalists in search of a story, relief workers trying to make an assessment of need or politicians in search of an image that combines action and compassion.” De Waal goes on to list a series of biases that distort what is seen and reflections/representations”.

<sup>280</sup> *The Human Price of Oil*, p.12. for example: ‘IPC has allegedly employed a local security team, mainly comprised of local Nuer fighters reportedly trained by a private military and security company. IPC later suspended its military operations because of the instability in the area. The constantly changing allegiances of local militia forces meant that the security of IPC could not be guaranteed by these forces’.

<sup>281</sup> *Ib.*, p.7.

<sup>282</sup> Amnesty say that “20,000 people reported missing in the oilfield areas by the WPF [sic], have since been reported to be living in neighbouring counties”. Given there was a low presence of NGOs in Western Upper Nile at this time it is unknown where this information comes from. The WFP bulletin referred to also does not contain this information or references oil: <https://reliefweb.int/report/sudan/sudan-bulletin-no-94-04->

10-jul-1999

<sup>283</sup> The Human Price of Oil. p.7.

<sup>284</sup> *Ib.*, p.12.

<sup>285</sup> *Ib.*, p.16.

<sup>286</sup> See for example, <http://www.fao.org/3/x4390t/x4390t05.htm>

<sup>287</sup> The Human Price of Oil, p.16.

<sup>288</sup> De Waal, Alex, *Famine Crimes: Politics & the Disaster Relief Industry in Africa*, (2002), p. 80

<sup>289</sup> Christian Aid, *Scorched Earth*, 2001; Georgette Gagnon & John Ryle, *Report of an Investigation into Oil Development in Western Upper Nile, Sudan 2001*; Human Rights Watch: *Sudan Oil & Human Rights*, 2003; ECOS *Unpaid Debt 2010*; Sudan Research, *Analysis & Advocacy*, Eric Reeves, 2004 - <https://sudanreeves.org/2004/12/14/amnesty-international-report-on-oil-development-in-sudan-may-3-2000/>; Eric Reeves, *Oil, Development in Sudan*, *Review of African Political Economy*, Vol.29, No.91, p.167-169.

<sup>291</sup> Press release by Lundin Oil dated 21<sup>st</sup> March 2001.

<sup>292</sup> English translation of a letter in Swedish from Adolf Lundin to Anna Lindh, the Minister of Foreign Affairs, dated 26<sup>th</sup> March 2001. On 25<sup>th</sup> April 2001, the Minister of Foreign Affairs replied to Adolph Lundin's letter stating that she would "await UN report conclusions" before requesting a "particular investigation or Swedish official visit."

<sup>293</sup> Lundin Oil in Sudan, 16 May 2001.

<sup>294</sup> Statement by John Dor, Governor of Unity State, Sudan, May 2001.

<sup>295</sup> *Scorched Earth*, p.20.

<sup>296</sup> Lundin Oil In Sudan, p.20.

<sup>297</sup> The bias of individual named sources such as Taban Deng Gai and Peter Gadet is addressed in this chapter.

<sup>298</sup> Chapter 1: 1. Block 5a: Lundin Oil, Independent aid worker, page 7, FN6; OLS Officials: page 7, no fn; Village chiefs: page 7, no fn.

<sup>299</sup> *Scorched Earth*, fn 11.

<sup>300</sup> *Ib.*, fn 3, "20 January 2001, on Sudan Thar Jath Well Testing Operation".

<sup>301</sup> NSCC working with SPLA in 1997: [http://sudaninfonet.tripod.com/Nilotics\\_Proposal.htm](http://sudaninfonet.tripod.com/Nilotics_Proposal.htm)  
Conference attended by NSCC and Christian Aid in 1995, *Southern Sudan: Capacity Building Conference Report and Joint Statement*: [http://www.africa.upenn.edu/Urgent\\_Action/DC\\_SSD.html](http://www.africa.upenn.edu/Urgent_Action/DC_SSD.html)  
Come let us Reason Together' *NSCC/SPLM*, Yei 1997:

<https://reliefweb.int/report/sudan/sudan-east-bank-nilotics-reconciliation-conference>

Agensky, Jonathan, 'Religion, Governance and the Peace-Humanitarian-Development Nexus in South Sudan, UN Peace Operations in a Changing Global Order', pp.277-295, 12 October 2018. "This new relationship was exemplified by the 1997 joint SPLM and NSCC conference at the Kajiko parish center of the Episcopal Church of Sudan. The Kajiko conference utilised the NSCC's social capital to mitigate tensions between ethnic groupings and help resolve a devastating SPLA split that had been exploited by Khartoum and became responsible for the bulk of death and destruction during the war. It also strengthened links between the SPLM/A and the Church, endorsing a set of common objectives on local peace and liberation (the 'Yei Declaration'). Kajiko reaffirmed the Church's commitment to the insurgency and mandated the NSCC with facilitating southern reconciliation. It laid the foundation for the Church-led 'Person-to-Person' peace process, which culminated in the 1999 Wunlit agreement that reunited the SPLA—paving the way for the IGAD-led peace negotiations between North and South."

<sup>302</sup> Scorched Earth, electronic copy p.3. The SCC was also described as a "partner" by Christian Aid

<sup>303</sup> <https://reliefweb.int/report/sudan/sudan-council-churches-mission-peace>

<sup>304</sup> Statement of the Sudanese Churches on the Oil Factor in the Conflict in Sudan, 12 April 2000, see <http://www.nccusa.org/news/02news15b.html>

<sup>305</sup> "NSCC was grateful for the support of DanChurchAid and ChristianAid with USAID covering air charters", <https://reliefweb.int/report/sudan/nscc-peace-desk-update-sep-dec-1999-people-people-peace-process>. See also page 59 from UK Government reviewing its peacebuilding efforts from 1997-2001: "People only use the modern practice of signing agreements because they have been asked to. Christian Aid's local partner, the New Sudan Council of Churches (NSCC), has also learned that each peace conference has its own peculiar dynamic" [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/67946/ev646.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/67946/ev646.pdf)

<sup>306</sup> Zink, Jesse A., 'Christianity and Catastrophe in South Sudan: Civil War, Migration and the Rise of the Dinka Anglicanism, (2018), p.139. Jenner states the NSCC was initiated in 1989, Torit, Eastern Equatoria as the civil war and SCC were unable to serve churches in non-government areas. The NSCC was created to serve SPLA held areas. Jenner, Hadley, (2000)

<sup>307</sup> "The NSCC under Ruun's leadership also has opposed oil exploration in southern Sudan, which it claims has destroyed countless homes and villages and forced many Sudanese off their land without compensation; and relentlessly opposed the institution of slavery, which persists in the country." <http://www.reformiert-online.net/aktuell/details.php?id=1520&lg=eng>

<sup>308</sup> NAIROBI--Churches operating in southern Sudan have protested to the Canadian Government over the oil exploration activities of a Canadian multinational corporation, Arakis Energy Corporation, in the region and its implications for peace initiatives to end the Sudanese conflict. In a strongly- worded letter the New Sudan Council of Churches draws the attention of the Canadian Foreign Affairs and International Trade Minister, Andre Quillet, to "the consequences of Arakis Energy Corporation business dealing with the Sudan Government and on the future of IGADD peace initiatives in which your Government is one of the supporters"... The oppressed people of southern Sudan feel let down by the Canadian Government because of the action of Arakis, the NSCC says, adding that: "While we acknowledge with appreciation that Canadian policy towards the Islamic Government is one of diplomatic pressure, we feel dismayed at your policy, which separates human rights concerns from trade related matters." How can business opportunities exist in a country like Sudan," asks the letter, "where citizens are humiliated, tortured and killed just because

they happen to belong to a different religion and race or colour?" The letter signed by the NSCC Executive Secretary, Rev (Dr.) Haruun L. Ruun asks the Canadian government to "do everything in your power to encourage Arakis to disinvest in Sudan in order to persuade the Sudan to opt for peaceful solution in the current civil war."

[http://www.africa.upenn.edu/Newsletters/menu\\_Hab7895.html](http://www.africa.upenn.edu/Newsletters/menu_Hab7895.html)

<sup>309</sup> NSCC Peace Desk Update Sep-Dec 1999: People to People Peace Process, 5, Jan 2000: <https://reliefweb.int/report/sudan/nsc-peace-desk-update-sep-dec-1999-people-people-peace-process>: "From the NSCC Roundtable held in October a letter was sent to the co-chairs of IGAD, Italy and Norway, to stress the negative impact of sales of oil from the Bentiu oil fields on the conflict in the South and the unequal sharing of revenues. It called for support to the initiative of the United Council of the Church of Canada for the setting up of a Trust Fund (Escrow Account) to receive and hold the revenues for Sudan in trust until there be a just and credible peace when payment be made distributed fairly between North and South."

<sup>310</sup> Agensky (2018), Who Governs? Religion and order in postcolonial Africa', p.18, f.n.17.

<sup>311</sup> Riehl, Volker, Who is Ruling in South Sudan? The role of NGOs in rebuilding socio-political order, Nordiska Afrikainstitutet, 2001.

<sup>312</sup> <https://reliefweb.int/report/sudan/nsc-peace-desk-update-sep-dec-1999-people-people-peace-process>

<sup>313</sup> UK Government report reviewing its peace-building efforts from 1997-2001 (p.59):

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/67946/ev646.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/67946/ev646.pdf)

"The NSCC Peace Desk Update Sep-Dec 1999 thanks DanChurchAid and Christian Aid for financial support and USAID for providing the funding for air charters for the peace conferences."

<https://reliefweb.int/report/sudan/nsc-peace-desk-update-sep-dec-1999-people-people-peace-process>

Bradbury et al, Local Peace Processes in Sudan: a baseline study, (2006), p.18, 60.

<sup>314</sup> Various sources discuss this issue:

Jenner, Hadley 2000 p.8 "The conflict is in a very real sense the only "industry" available apart from that offered by the nongovernmental organizations and thus a great deal of energy is expended to make this conflict palatable in a variety of different expressions. These expressions vary depending on the audience addressed, whether to the recruits, to neighboring countries and to a wider world concerned with an array of issues from human rights, oil resources, arms sales, political influence and development, to name a very few (Miller, 2000)." [The reference to Miller is personal communication].

Tounsel, Chris, Khartoum Goliath: SPLM/SPLA Update and Martial Theology during the Second Sudanese Civil War', Journal of Modern Africana Religions, Vol.4, No.2, (2016), pp.129-153: "From an organizational standpoint, it was politically beneficial to adopt Christianity and insert it into the war effort. After Bashir's coup, the SPLA allowed church leaders more freedom of activity within New Sudan and in their contacts with supporters overseas. Church leaders were allowed to form the New Sudan Council of Churches (NSCC), which was joined by all Southern churches in 1989 (Khartoum's Sudan Council of Churches could no longer maintain contacts with churches in SPLA-controlled areas). By 1991 the NSCC was servicing people in an SPLA-controlled area larger than Kenya. This tightening of relations between the SPLA and the church resulted in improved credentials with industrialized countries by suggesting religious freedom and Christian identity. The movement hoped that the West could be encouraged to give aid to the South, with the NSCC providing channels for assistance from Christian organizations abroad."

Agensky, Jonathan, Who Governs? Religion and Order in postcolonial Africa, *Third World Quarterly*, Vol.41, No.4(2020) p.593.

Omaar, Rakiya and de Waal, Alex, Humanitarianism Unbound, *African Rights*, Discussion Paper No.5, November (1994).

<sup>315</sup> Scorched Earth, P.7. [Note that the footnotes also refer to interviews of individuals taking place in May 2000 e.g. fns 7, 8, 9. There is only reference to one interview in August 2000 – see Chapter 3, Footnote 8 “Interviewed in Lokichokio, August 2000.”]

<sup>316</sup> [http://www.fao.org/WAICENT/OIS/PRESS\\_NE/PRESSENG/TOC00E.htm](http://www.fao.org/WAICENT/OIS/PRESS_NE/PRESSENG/TOC00E.htm)  
[http://www.fao.org/WAICENT/OIS/PRESS\\_NE/PRESSENG/2000/pren0069.htm](http://www.fao.org/WAICENT/OIS/PRESS_NE/PRESSENG/2000/pren0069.htm)

<sup>317</sup> <http://www.fao.org/3/y1610e/y1610e00.htm>

<sup>318</sup> <http://www.undp.org/content/dam/southsudan/library/Documents/CSAC%20Reports/UNDP-SS-UpperNile-consult-12.pdf>

<sup>319</sup> Hopkins, Donald R. and Withers Jnr, Craig P., Sudan’s war and eradication of dracunculiasis, *The Lancet Supplement*, Vol.360, December 2002. “The land in the southern part of the country is vast, much of it is flooded for months during the rainy season and there are few roads or infrastructure. Additional difficulties caused by the war include mass movements of displaced people, restricted access to known or suspected endemic communities, disruptions in activities and loss of personnel and increased costs because of the need to airlift supplies. Of these challenges, only the geographic and climatic constraints are inherent”.

<sup>320</sup> Christian Aid refer only to Mariel Lou as the location of interviews in November 2000. This is close to Wunlit, where the recent peace conferences had occurred and a village and infrastructure to accommodate 3,000 people including an airstrip for flights, had been built. It was also in SPLA territory. According to the FAO: “Climatic hazards, outbreaks of crop pests and diseases, erratic military and random breaches of law and order and the deterioration of roads and airstrips are features of daily life throughout Bahr al-Ghazal. These risks drastically affect both short- and medium-term household food security. Consequently, risk is the most important single obstacle to any operation in southern Sudan, and particularly to any asset-building programme.”  
<http://www.fao.org/3/x4390t/x4390t05.htm>;

<sup>321</sup> Described as A/Cdr Taban Deng Gai (TDG) (in Nasir) by Lam Akol, *The Nasir Declaration: SPLM/SPLA*, 2003, p.37. Akol also says TDG was part of the nine-member negotiating team at the Abuja Conference, 1992, but just as Cdr Taban Deng Gai alongside John Luk (NSCC) and D.K. Mathews (SPLA Sweden). He joined the SPLA in the 1980 and left with Machar during the 1991 split. Related to Machar by marriage via his first cousin, Angelina Teny. HRW03 p.140, say he was Governor of Unity State from 1997-1999. Christian Aid *Scorched Earth* describes him as “Taban Deng, a former Minister of State for Roads in the Khartoum government. P.7.

Young, John, *South Sudan’s Civil War: Violence, Insurgency and Failed Peacemaking*, (2019) p.15  
 “In response to the fraudulent 2010 elections a series of revolts broke out, the most serious of which was in Unity state on the border of Sudan. The background lay in Salva’s appointment of Taban Deng to the governorship of Unity state in 2005, although the president made the appointment conditional on him gaining acceptance of Paulino Matiep, the strong man of the state, leader of the now dissolved SSDF, and deputy leader of the SPLA under the Juba Declaration. Once he had gained the approved of Paulino, Taban turned on him and together with the SPLA chief of Staff, James Hoth, arranged for the SPLA to attack the house of Paulino, killing 12 of his bodyguards and forcing a UN evacuation of the rest of the guards to Juba. With Paulino marginalized, Taban constructed an administration which was little more than a crime ring,



with most of the state finances handled by his personal representatives in Khartoum and Doha. Taban also played a key role as a conduit of military supplies from Juba to Uganda to the various rebel groups fighting in the north. Never popular, prior to the 2010 elections Taban lost the leadership of the state SPLM to former governor Dr Joseph Monytil which should have precluded him contesting the governorship. With support from Salva, however, he ran and was opposed to the wife of Riek Machar, Angelina Teny.”

<sup>322</sup> Treasury Sanctions First Vice President of South Sudan, Taban Deng Gai, Press Statement, Mike Pompeo, Secretary of State, January 8 2020: <https://www.state.gov/treasury-sanctions-first-vice-president-of-south-sudan-taban-deng-gai/>

<sup>323</sup> Peter Gadet (alias: Peter Gadet Yaka; Peter Gadet Yak; Peter Gadet Yaak; Peter Gatdet Yaak; Peter Gatdet; Peter Gatdeet Yaka; Peter Gatdiet). Born between 1957-1959 in Mayom County, Unity State. He was a Bul Nuer and aligned with Riek Machar following the 1991 split. Allegiances were always loosely defined and opportunistic as he pursued a self-interested agenda.

<sup>324</sup> References to Peter Gadet’s location in advocacy reports:

Amnesty International, Human Price of Oil, state the location and date of the interview as: "In an interview conducted during an Amnesty International visit to Wicok village in October 1999." "In a meeting held in October 1999, shortly after he split from the forces of Paulino Matip, Commander Peter Gadet confirmed that the government had arranged for Paulino Matip's forces to clear the local population from the area of the oilfields. He stated, "We as Nuer have to reconcile with each other in this area and take control of what is ours. If the companies continue, we will attack the fields and we will attack the workers" (p.4 and 8 respectively).

Christian Aid’s Scorched Earth in November 2000 he is located in Tam:

1. “Commander Gadet, the former government ally who defected to the south in October 1999, told Christian Aid he had collected weapons from several of the new plants before he left the government. He had seen military vehicles and tanks, rocket-propelled grenades and heavy machine guns being assembled under the supervision of Chinese engineers.”

2. “Gadet showed Christian Aid RPG-Ss that carried no identification marks. He said these weapons - lightweight anti-tank weapons that can be pulled by hand - were among those being made in Khartoum under the supervision of Chinese engineers. 'Most of those assembled are unmarked,' he explained. 'The government doesn't want to show where its oil money is going'” (p.20)

3. “Peter Gadet, a commander under Matip before he returned to the south, said that Matip's forces killed scores of civilians, raped and abducted women and burned and destroyed homes south of Bentiu in the months before the pipeline opened. Gadet's own men participated in many of those abuses. He said the main purpose of the atrocities was to gain control of the oilfields” (p.24)

4. Date and location unspecified: “Commander Gadet told Christian Aid his forces had shot down three gunships - two Russian-made Hinds and one German.18 Gadet displayed the German 'Varta' battery taken from one of the gunships, which he said had German writing Inside the cabin” (p.24)

ECOS Unpaid Debt, they refer to “Gatdet in 2002, quoted in an interview in 2002” described as “present in archive footage”. P.83

Gagnon and Ryle’s 2000 report, (no date and location given) “In the case of Peter Gatdet, however, it may be assumed that he no longer does so. In Buoth, Commander Gatdet showed the authors of this report arms and ammunition that he had brought with him when he defected from Paulino Matiep’s militia. These included AK-47s and PKM machine guns and bullets that had been assembled in one of three new Chinese built factories near Khartoum. Commander Gatdet described visiting these factories himself to collect these supplies. These factories are of recent construction and it is reasonable to associate their establishment and the increased flow of arms and ammunition to various parties in the war with revenues from oil development.”

Date and location specified as 24 April 2001, Buoth Western Upper Nile: “This rig was in Block 4 near

Rumrum. The well has been abandoned. We destroyed the containers that the company was using for the residents. The GoS was forcefully moving people from that area.”

“Commander Peter Gatdet Yaka claims that the Government of Sudan has 37 gunships most of which were bought in 2000. He claims that forces under his control shot down three gunships in 2000 including two Hinds and one German model, and that the bodies of the crews of the gunships were destroyed. Other reports indicate that the government has eight gunships. Nicholas Coughlan, the Canadian consular official, suggests the total may be less.”

Frank Norbury, ‘Playing God in Hell’ 24 February 2002, location described as “14km south of Nhialdiu” he stays with Commander Peter Gadet. Norbury is working with Norwegian People’s Aid. Evacuating the wounded and agreed with Gadet only to evacuate them within the ‘New Sudan’. Norbury describes

“Commander Gadet is an extremely passionate and charismatic leader and it not difficult to understand why he is so respected and admired by both the civilian population and his men. He deeply cares for the welfare of those in his charge and I could tell it causes great anguish and frustration to know his people are suffering and dying without any chance of medical help.” Consistently refers to ‘New Sudan’.

By way of context, Norbury travelled to Sudan under the auspices of the ICI Foundation, which was set up by Brian Boquist who established ICI of Oregon. Boquist was a former Special Forces lieutenant colonel in the US Army. In 2001 they reported sales of \$8.8million. With regards to Sudan, “developed a medical training programme under US government auspices in southern Sudan, where Washington has pumped in at least \$13million in recent years in support of rebel opposition (Dyncorp is another key contractor in southern Sudan).

<https://www.icij.org/investigations/makingkilling/privatizing-combat-new-world-order/>

Safe Harbour International Relief, Pastor Gary Kusunoki travelled with Tom Masland for Newsweek in April 2001. They were delivering aid from Safe Harbor International Relief (approx. 38tons). Peter Gatdet is their host in Buoth and he gives them a tour while delivering tons of aid. Article also states the bulk of USAID at this time funnelled through OLS is to Norwegian People’s Aid, which is described as “beyond the boundaries of what is generally considered humanitarian practice”. Kusunoki states “We know the SPLA is working hard to protect you. ... When we come to bring food, our food goes to everybody, because everybody needs to eat. Please tell all your people that this was a gift from Jesus Christ.” Masland reports that Gadet agrees to keep 25 percent of the food and distribute the rest to the needy. <https://www.newsweek.com/soldiers-christ-150203>

<sup>325</sup> Jarch Capital leased 400,000 hectares in Mayom County, Unity State from Paulino Matiep Nhial’s family - [https://www.africa-confidential.com/article/id/3736/Jarch\\_Capital\\_has\\_friends\\_in\\_the\\_South](https://www.africa-confidential.com/article/id/3736/Jarch_Capital_has_friends_in_the_South). Taban Deng Gai was governor at this time. Jarch was chaired by Wall Street banker, Philippe M.Heilberg according to Africa Confidential

<sup>326</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0402&from=EN>

<sup>327</sup> <https://www.un.org/press/en/2015/sc11958.doc.htm>  
<https://www.treasury.gov/press-center/press-releases/Pages/jl2386.aspx>

<sup>328</sup> <https://www.refworld.org/docid/3ae6aa1114.html> - Amnesty International Report: Sudan, 1 June 2000.

<sup>329</sup> <https://www.theguardian.com/news/2005/aug/03/guardianobituaries.sudan>

<sup>330</sup> Scorched Earth Report: Abraham Riak (p.14), Medical Coordinator of the SRRRA quoted; Kut Young (p.15), SRRRA relief coordinator; Peter Akec (p.17), SRRRA field supervisor; Dhieu Paul (p.17), SRRRA relief official. See also Riehl, Volker, ‘Who is Ruling in South Sudan: the role of NGOs in rebuilding socio-political order’, for

discussion on links between the SRRA and SPLM/A.

<sup>331</sup> Manfred Ohm travelled independently in 2000 but needed an entry permit granted by the SRRA, which was obtained with the support of the New Sudan Council of Churches, (2013), p.21 in 'War and Statehood in South Sudan'.

<sup>332</sup> Scorched Earth, p.7, "In visits to Western Upper Nile in August and November 2000",

<sup>333</sup> *Ib.*, Chapter One: Footnotes 1, 7, 8, 9,12,17; Box i; Chapter Two: Footnotes 5,10,12,15,17.

<sup>334</sup> *Ib.*, 7, 29, 31.

<sup>335</sup> <https://www.crispinhughes.co.uk/>

<sup>336</sup> *Ib.*

<sup>337</sup> Scorched Earth summary report p.7

<sup>338</sup> *Ib.*, p.7.

<sup>339</sup> Scorched Earth p.12-17.

<sup>340</sup> See for example, Sudan Emergency Operations Committee Review (1995). Also, 'Food Aid to Sudanese Rebels Opposed, Human Rights Watch, December 13 1999 – letter to Secretary of State, Madeleine Albright. ` See also, 'Crisis Response: Humanitarian Band-Aids in Sudan and Somalia', John Prendergast, 1997.

<sup>341</sup> "To provide this documentation to interested parties to be used for advocacy purposes." P.2, Hiding Between the Streams: the war on civilians in the oil region of southern Sudan, Christian Aid and DanChurchAid, March 2002.

<sup>342</sup> Hiding Between the Streams, p.5.

<sup>343</sup> Prendergast (1997), p.59 "From the beginning of OLS there were attempts to minimise the external nature of the relief intervention by strengthening the capacity of the RRC (Relief and Rehabilitation Commission, the Government's principal humanitarian arm) and the SRRA. The RRC received staff members and other support from OLS. The SRRA which started from scratch in early 1989 received funds vehicles management training and other support from the United Nations children's fund (UNICEF) and NGOs. ... Many officials of the SRRA are former Sudanese government bureaucrats which is reflected in the paternalistic SRRA law according to one aid official. ... One NGO official in Bahr el-Ghazal says the closest they can get to talking to the people are the Chiefs there are SRRA minders following wherever NGO representatives go. It is consequently very difficult to monitor and follow up on aid distributions. The role of the SRRA has been to hide the SPLA and the Chiefs who are the true authorities in southern Sudan. The control in southern Sudan resides in the SPLA and in the tribal structures. The SRRA hides these powers. 'The power of the SRRA is derived solely from externally provided relief', according to one NGO official. 'If they have a problem with the people of a certain area, they can withhold relief or services.' Another official concurs saying that the SRRA gets its legitimacy through what it gives out."

<https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/4897.pdf>

<sup>344</sup> This reference map is included in Chapter 2 with scale included. It is a World Food Programme map dated 2013.

<sup>345</sup> For example, “all the people we interviewed”, “everyone spoke of...”, “in our talks with people”, “most of the displaced people.”

<sup>346</sup> Scorched Earth, p6, 9, 10

<sup>347</sup> Hiding Between the Streams, p.3.

<sup>348</sup> HRW03 (hard copy) at p.38.

<sup>349</sup> *Ib.*, p.567.

<sup>350</sup> This assessment is made according to the information provided in the footnote references in the report where locations are stated, which are very few. The exact locations are not provided and names of interviewees are not always clear or included so this assessment is based and estimated on the material provided in the report.

<sup>351</sup> Ghazi Saleh Eldin Atabani, State Minister of Foreign Affairs, Khartoum, May 4 1995 (FN 23 & 260); Student PDF members in an SPLA prison, Yei southern Sudan, October 22 1997 (FN667); Foreign Minister Mustafa Osman Ismail, New York, September 1998 (FN 1074); Residents of Eastern Upper Nile village where Riek Machar spoke in March 2001 which was then “captured” by SPLA from SPDF in May 2001, Eastern Upper Nile, July-August 2003 (FN 774); SSDF Commander/relief liaison and OLS officials, Nairobi, May and June 2003 (FN981).

<sup>352</sup> HRW03 at p.567

<sup>353</sup> The NSCC visited Nyal and Ganyiel in October 1998 in preparation for the People-to-People peace conferences and discussed the many reasons for conflict and displacement, including flooding: <http://sudaninonet.tripod.com/Nuer-Dinka/MMD-Report.html> .

<sup>354</sup> Christine Batruch, Lundin, Human Rights Watch interview, Washington, D.C., November 21, 2001. FN 273.

<sup>355</sup> Christine Batruch, Lundin Oil, letter to Human Rights Watch, attaching Lundin Oil Annual report, p. 6, faxed March 7, 2001. FN 1148.

<sup>356</sup> Lundin Oil Annual Report, 2000, page 6, fax from Christine Batrusch [sic], Lundin Oil, to Human Rights Watch, June 5, 2001, FN 1143.

<sup>357</sup> Six references to a security consultant working for Lundin” called Paul Wilson, taken from an interview with him, FN 277, 279, 286, 292, 298, 318, 434, 703, 1403, 1404, 1406.

- three references to an “SSDF officer”, again taken from interviews, FN 283, 435, 506
- a reference to an “employee of security consultant to oil company” FN512
- An interview with Taban Deng FN 285
- An article in SUNA, May 1999, Khartoum FN 531
- “Rebel combatants” FN 706
- “a young man” p.267 (electronic version)
- Richard Ramsay, as recited by Anna Koblack pp.267-268 (electronic version)
- “a local man” as recited by Anna Koblack p.268 (electronic version)
- “an email from a journalist to HRW (confidentiality requested)” FN 827
- “an email from a relief worker to HRW (confidentiality requested)” FN 827

- “CA/Danchurch investigation team” p.297 (electronic version)
- John Noble, a briefing FN 1337
- “those who saw the road from the air” p.449 (electronic version)
- “according to confidential sources” FN 1374
- “those displaced from Block 5A” p.454 (electronic version)
- “Anonymous” FN 1404
- “ the gripping testimonies of deliberate displacement of civilians from Block 5A” p.513 (electronic version)

<sup>358</sup>HRW03 has a Chapter titled: ‘Lundin: Willfully Blind to Devastation in Block 5A’ p.581 (hard copy), p.438 (electronic version).

<sup>359</sup> HRW03, fn 904

<sup>360</sup> World Food Programme, Full Report of the thematic evaluation of Recurring Challenges in the Provision of Food Assistance in Complex Emergencies: The problems and dilemmas faced by WFP and its partners, prepared by Ron Ockwell, Rome, September 1999

<sup>361</sup> HRW03, fn 910

<sup>362</sup> <https://reliefweb.int/report/sudan/operation-lifeline-sudan-northern-and-southern-sectors-joint-weekly-report-13-oct-1999>

<sup>363</sup> Further OLS October reports:

<https://reliefweb.int/report/sudan/operation-lifeline-sudan-northern-and-southern-sectors-joint-weekly-report-06-oct-1999>

<https://reliefweb.int/report/sudan/operation-lifeline-sudan-northern-and-southern-sectors-joint-weekly-report-27-oct-1999>

<sup>364</sup> <https://reliefweb.int/report/sudan/operation-lifeline-sudan-northern-and-southern-sectors-joint-weekly-report-06-oct-1999>

<sup>365</sup> HRW03 fn 1327 <https://reliefweb.int/report/sudan/150000-trapped-renewed-fighting-sudans-western-upper-nile>

<sup>366</sup> Id.

<sup>367</sup> HRW03 fn 904-921

<sup>368</sup> <https://reliefweb.int/report/sudan/operation-lifeline-sudan-southern-sector-weekly-report-31st-may-6th-june>

<https://reliefweb.int/report/sudan/operation-lifeline-sudan-northern-and-southern-sectors-joint-weekly-report-13-oct-1999>

<sup>369</sup> See section of HRW03 titled ‘Relief Politics and Abuses in the South’ p.430 (hard copy), p. 324 (electronic version).

<sup>370</sup> Part III: Human Rights Consequences of Oil Development, p.416 (hard copy), p.313 (electronic version).

<sup>371</sup> HRW03 pp.458-476.

<sup>372</sup> Sudan: Final Review Under Medium-Term Staff Monitored Program and the 2002 Program-Staff Report;

and Staff Supplement, November 2002, IMF Country Report No. 02/245.

<sup>373</sup> *Ib.*

<sup>374</sup> *Ib.*

<sup>375</sup> *Ib.*

<sup>376</sup> HRW03 p.417 (hard copy), p.313 (electronic version).

<sup>377</sup> Report of the Special Rapporteur, Gerhart Baum, to the Commission on Human Rights, "Situation of human rights in the Sudan," E/CN.4/2002/46, January 23, 2002, (fn 25).

Leonardo Franco, Special Rapporteur on the situation of human rights in Sudan, "Report on the situation of human rights in Sudan," prepared for the UN General Assembly, A/54/467, October 14, 1999, (fn 32).

Report on the situation of human rights in the Sudan," prepared for the General Assembly by Leonardo Franco, Special Rapporteur on the situation of human rights in the Sudan, A/54/467, agenda item 117 (c), October 19, 1999. (fn870).

Oral statement of the Special Rapporteur on human rights in Sudan Gerhart Baum to the U.N. Commission on Human Rights, Geneva, March 29, 2001, (FN 871).

Statement of special rapporteur on human rights in Sudan, to U.N. General Assembly, A/56/336, New York, September 7, 2001, (FN 873).

Report of the Special Rapporteur, Gerhart Baum, to the U.N. Commission on Human Rights, "Situation of human rights in the Sudan," E/CN.4/2002/46, Geneva, January 23, 2002, (FN 874)

"Report on the situation of human rights in the Sudan," prepared for the U.N. Commission on Human Rights by Gerhart Baum, Special Rapporteur on the situation of human rights in the Sudan, E/CN.4/2003/42, January 6, 2003, (FN 880).

"Report on the situation of human rights in the Sudan," prepared for the U.N. General Assembly by Gerhart Baum, Special Rapporteur on the situation of human rights in the Sudan, A/57/326, August 20, 2002, (FN 880).

U.N. Commission on Human Rights, "Situation of human rights in the Sudan, summary of the draft report of Special Rapporteur," Geneva, E/CN.4/2000/36, April 19, 2000, (FN 1590)

<sup>378</sup> HRW03 p.37.

<sup>379</sup> *Ib.* p.5.

<sup>380</sup> *Ib.*, fn 872 This is a record of an interview by a journalist and does not produce any facts that support the claim "oil was fueling the war". Gerhart Baum never stated "oil was fueling the war" in any official reports and never adopted the statement subsequently. It is an example of a non-evidence based assertion, by the media.

<sup>381</sup> Peter Gadet is profiled in Chapters 8 and 6 looking at ECOS and Christian Aid respectively. The EU sanctions notice is contained in Annex 5.

<sup>382</sup> Christian Aid (Scorched Earth) references interviews with Peter Gadet from November 2000 in Tam p.18 & 24 and ECOS Unpaid Debt refers to "archive footage" from an interview in 2002, p.83. ECOS Depopulating.

<sup>383</sup> Gagnon, Georgette and Ryle, John, Report of an investigation into Oil Development, Conflict and Displacement in Western Upper Nile, Sudan, October 2001. This report was focused on Talisman.

<sup>384</sup> *Ib.*, p.2.

<sup>385</sup> *Ib.*, p.6, “There are in fact three new arms and ammunitions factories in Northern Sudan. An SPLA commander, Peter Gatdet Yaka, formerly an officer in a government-backed Nuer militia, described, in an interview with the investigators, collecting arms and ammunition from these factories in 1999.”

<sup>386</sup> House, William J., Population, Poverty and Underdevelopment in the Southern Sudan, *The Journal of Modern Africa Studies*, Vol.27, No.2, (Jun 1989), pp.201-231.

<sup>387</sup> “The most recent census, in 2008, recorded a total population of 39 million, but it probably understates the population both of Darfur (recorded as 7.5 million) and of Southern Sudan (8.2 million), either as a result of flawed data collection or manipulation of the results. The uncertainty over how many people actually live in Sudan is the most striking example of a recurrent problem in Sudan, statistics are generally unreliable or contested or both”. Willis, Egemi and Winter in the ‘Sudan Handbook’ (2011) p.16.

In 1989 William House cautioned against wide-ranging conclusions as; “it is not possible to generalise about the extent of poverty and deprivation in the whole of the Southern Sudan, since no effort has ever been made to carry out a socio-economic and demographic survey for the whole region.” House, William J., Population, Poverty and Underdevelopment in the Southern Sudan, *The Journal of Modern Africa Studies*, Vol. 27, No.2 (June 1989) p.207.

<sup>388</sup> House, William J., Population, Poverty and Underdevelopment in the Southern Sudan, *The Journal of Modern Africa Studies*, Vol. 27, No.2 (June 1989) pp.201-231.

<sup>389</sup> “Nuer burn the grass at the height of the dry season (around December) so as produce new shoots for cattle to graze on and so to help to sustain them in the drought”. From Evans-Pritchard, 1966, <http://web.prm.ox.ac.uk/southernsudan/details/1998.346.41.2/index.html>

<sup>390</sup> Christian Aid Scorched Earth, European Coalition on Oil in Sudan (ECOS), “Depopulating Sudan’s Oil Regions, January to March 2002,” by Diane de Guzman, edited by Egbert G.Ch. Wesselink, for ECOS, Amnesty International.

<sup>391</sup> P.448 (electronic version) p.595 (paper copy).

<sup>392</sup> HRW03, fn, 1362.

<sup>393</sup> Unpaid Debt p. 5.

<sup>394</sup> <https://www.aklagare.se/nyheter-press/pressmeddelanden/2010/juni/forundersokning-om-folkrattsbrott/>

<sup>395</sup> Unpaid Debt p. 2 of the report states only the following: “Research and writing: European Coalition on Oil in Sudan.”

<sup>396</sup> *Ib.*

<sup>397</sup> For a selection of articles demonstrating ECOS’s campaign against Talisman, see <https://www.ecosonline.org/search/?words=talisman&x=0&y=0#filter=%7B%22words%22%3A%22talisman%22%7D>

<sup>398</sup> Unpaid Debt, p.5.

<sup>399</sup>Ib., p.77 “Two Sudanese Government ministers alleged in interviews with ECOS that certain payments made by the Lundin Consortium to the Ministry of Energy and Mining were used by the Ministry to finance Petroleum security (Footnote 310 reads “neither of them agreed to be publicly quoted).”

<sup>400</sup> Ib., p.78.

<sup>401</sup> See also Christian Aid Chapter (also discussed above). Peter Gadet (alias: Peter Gadet Yaka; Peter Gadet Yak; Peter Gadet Yaak; Peter Gatdet Yaak; Peter Gatdet; Peter Gatdeet Yaka; Peter Gattediet). Born between 1957-1959 in Mayom County, Unity State. He was a Bul Nuer. Gadet pursued his own self-serving, opportunistic interests, although aligned with various factions when it fitted his agenda.

<sup>402</sup> Unpaid Debt p. 20, p 23, p 29, p. 34 p 41,p.42, p 43. Extracts in Unpaid Debt are selective and taken out of their context. p.20 fn 48 quoting from “Oil and Conflict: Lundin Petroleum’s experience in Sudan “Security, however, proved to be elusive. The prevalence of arms, coupled with the division of tribes into various factions, contributed to making the situation volatile.” The passage, in fact, continues “Within a few years, instances of fighting started to increase. While the company was not directly affected by the fighting at the time, it was nevertheless worried about the safety of its staff and its operations. It was also concerned because of the criticisms that were being directed against an oil consortium situated in a nearby concession. To better understand these developments, Lundin decided in 1999 to commission a socio-political assessment of the area. The report quoted by Unpaid Debt then continues to consider that study and Lundin’s proactive approach to community relations. From which can be seen the selective approach taken to materials which favour Lundin. See a similarly limited quotation from this passage at p.34. ECOS then refer to selective parts of this same quote on two further occasions: fn123 and 165. For example, p.30 in Unpaid Debt refers to Christine Batruch’s Chapter: ‘Oil and Conflict: Lundin Petroleum’s Experience in Sudan’, in Bailes, A.J.K and I Frommelt, (eds.) Stockholm International Peace Research Institute (SIPRI), Business & Security: Public-Private Sector Relationships in a New Security Environment, 2004, Oxford Uni. ECOS says: “Lundin met with ‘key representatives of the local communitie’s” (fn 85). The full reference from Batruch says: “On its first visit to the concession area, Lundin met with key representatives of the local community, who welcomed oil activities as the only way to promote long-term economic development in their area.” (p.150). Unpaid Debt then goes on to say: “Lundin stated that the most important local representatives were Dr Riek Machar and Governor Taban Deng Gai. According to Lundin, the two politicians “committed themselves to providing a safe environment for the company to operate in.” Batruch says (p.150, fn 6): “The company met with Dr Riek Machar, who, pursuant to the 1997 Khartoum Peace Agreement, was Vice-President of Sudan and President of the South Sudan Co-ordinating Council (the government representative for the south); with Taban Deng Gai, the Governor of Unity State, and with representatives of the local factions”.

<sup>403</sup> Julie Flint a journalist was the author of Scorched Earth

<sup>404</sup> This report is referred to in Unpaid Debt at footnote 1 and is listed in the bibliography.

<sup>405</sup>Ib., p.2.

<sup>406</sup> Unpaid Debt p.83.

<sup>407</sup> Authored by Diane de Guzman and edited by Egbert Wesselink FN1 “Unpaid Debt” p.1 This report was based on fieldwork in blocks 1 and 2 (Ruweng County). 4 days were spent in Block 5a, but no exact location is given of where in this 30,000 sq km area this time was spent beyond “While the ECOS team was on the



ground in Waak”, which is near Nhialdiu and not near the site of Lundin’s operations.

<sup>408</sup> Unpaid Debt p.3 “In November 2006, a group of Sudanese civil society organisations attending the conference “Oil and the future of Sudan in Juba”, called upon European Coalition on Oil in Sudan to assist in safeguarding Sudan’s Comprehensive Peace Agreement by working for compensation and reparation for the injustices caused by Sudan’s Oil Wars. This report is a response to that request.”

<sup>409</sup> “Toward Freedom” June 16, 2010, “Sudan. Oil Consortium behind War Crimes.”  
<https://towardfreedom.org/global-news-and-analysis-global-news-and-analysis/sudan-oil-consortium-behind-war-crimes/>

<sup>410</sup> <http://www.bibalex.org/Search4Dev/files/345098/178456.pdf>, p.20.

<sup>411</sup> In 2005 Egbert Wesselink gave an interview in a publication for the Dutch Humanistic Peace Council where he says: “... heeft zijn gegevens door persoonlijke contacten met rebellen van de SPLM”, which translates to, “has his data through personal contacts with rebels of the SPLM”. Vredeskoerier ‘t Kan Anders jaargang 28, nummer 4, Kernwapens Weg! Jaargang 21, nummer 2, p14-15.

<sup>412</sup> Notably, in this interview, he focussed on the Chinese and Indian State oil companies, but not Lundin. ‘Vredeskoerier ‘t Kan Anders jaargang 28, nummer 4, Kernwapens Weg! Jaargang 21, nummer 2,’ p14-15.

<sup>413</sup> [http://globalreporting.net/cache/normal/www.globalreporting.net/news/intervju-med-egbert-wesselink\\_.html](http://globalreporting.net/cache/normal/www.globalreporting.net/news/intervju-med-egbert-wesselink_.html)

For PAX attitude towards South Sudan self-determination, see IKVPAX CPA\_Alert The State of Sudan’s Comprehensive Peace Agreement, Alert No 1, September 2009 “The holding of a free and fair referendum in 2011 must be the over-riding priority for all stake-holders, including Sudanese Government parties and civil society and the international community. If Southerners are not allowed to exercise their right to self-determination in a free, fair and credible manner, then there is a high probability of a return to civil war.”

<sup>414</sup> Despite the publication in 2002 of Depopulating the Oil Regions, ECOS seems to pivot post 2005 and in 2007 to promoting the oil sector as a ‘vital industry’ in Sudan and discuss its potential as a major driver for peace; something they criticise Lundin for advocating (Fact Sheet II: The Economy of Sudan’s Oil Industry, October 2007, p.2). In 2006 ECOS organised a conference in Juba titled ‘Oil and the future of Sudan’. Wesselink uses this platform to present the ECOS publication surrounding basic facts of the oil industry in Sudan; highlighting the economic dividends of this sector to South Sudan to a wide audience. Brig. Taban Deng Gai was also a participant at this conference and used the opportunity to discuss the issue of Chevron disposing of waste water before 1983 as his specific complaint – along with general accountability towards the oil industry (Page 20. TDG also refers to lack of employment for local people in the oil industry as an issue). Taban Deng Gai is referenced in ECOS’s 2002 and 2010 reports as a source and similarly by Christian Aid in Scorched Earth. Wesselink’s partner in ECOS, Kathelijne Schenkel – herself a key critic of Lundin, became an advisor to the oil in industry in the new South Sudan after 2011. “Kathelijne Schenkel from ECOS is today an adviser to the government of South Sudan on oil issues, and she also works together with the Sudanese church council.”  
<https://www.ecosonline.org/news/2012/20120516> The road back to the victims is so long/

<sup>415</sup> “A ticket of admission to the AGM” - PAX website. This is documented on ECOS’s website dated 21 March 2012: [https://www.ecosonline.org/reports/2012/Resolutions\\_AGM\\_Lundin\\_Petroleum/](https://www.ecosonline.org/reports/2012/Resolutions_AGM_Lundin_Petroleum/)

<sup>416</sup> See “Proposals for resolutions to be presented at the Annual General Meeting (AGM) Lundin Petroleum AB (publ) Thursday 10 May 2012” (in English) posted on ECOS website.

[https://www.ecosonline.org/reports/2012/Lundin\\_Petroleum\\_Shareholders\\_Resolutions\\_May\\_10.pdf](https://www.ecosonline.org/reports/2012/Lundin_Petroleum_Shareholders_Resolutions_May_10.pdf)

<sup>417</sup> PAX, ECOS Online, “The Road Back to the Victims is So Long”, available at [https://www.ecosonline.org/news/2012/20120516\\_The\\_road\\_back\\_to\\_the\\_victims\\_is\\_so\\_long/](https://www.ecosonline.org/news/2012/20120516_The_road_back_to_the_victims_is_so_long/).

<sup>418</sup> *Ib.*, ‘The Road Back to the Victims is so Long’

<sup>419</sup> In August 1993, a Canadian company named State Petroleum Company (“SPC”) purchased the rights to develop blocks 1, 2 and 4. In 1994, SPC was acquired by, and became a wholly owned subsidiary of, another Canadian company, Arakis Energy Corporation. SPC was also a member of a consortium which operated through a Mauritius corporation called the Greater Nile Petroleum Operating Company Limited (GNPOC). In October 1998, Talisman acquired Arakis and its 25% stake in GNPOC. See Talisman Court of Appeal Judgment, decided 2<sup>nd</sup> October 2009.

<sup>420</sup> *The Presbyterian Church of Sudan v. Talisman Energy Inc. & Republic of the Sudan*, District Court for the Southern District of New York, 12 September 2006.

<sup>421</sup> *The Presbyterian Church of Sudan v Talisman Energy, Inc*, United States Court of Appeals for the Second Circuit, Decided 2 October 2009.

<sup>422</sup> *Ib.*, at p.53.

<sup>423</sup> *Ib.*,

<sup>424</sup> As above, after the Court of Appeals for the Second Circuit dismissed their appeal, the plaintiffs petitioned for a writ of certiorari on 15<sup>th</sup> April 2010, asking the Supreme Court to hear their claims and reverse the Second Circuit’s decision. On 20<sup>th</sup> May 2010, EarthRights International filed an amicus brief with the Supreme Court on behalf of the plaintiffs, urging it to hear the appeal and overturn the dismissal of the case. In October 2010, the Supreme Court declined to grant certiorari, announcing that it would not hear the appeal in this case.

<sup>425</sup> Talisman District Court Judgment, 12 September 2006, at p.639.

<sup>426</sup> *Ib.*, at p.641.

<sup>427</sup> [www.bloodhound.dk](http://www.bloodhound.dk) – webarchive.

<sup>428</sup> The Talisman documents referred to in ECOS can be found at pages 36, 37, 56, 43, 46, 47, 48, 49, 77, 78, 83. The ones which refer to IPC or Lundin are at pages 36, 43, 47, 48, 49, 78.

<sup>429</sup> Unpaid Debt at p.36: ‘There is no suggestion that they were available to the Consortium at the time they were produced.’

<sup>430</sup> Unpaid Debt, p.29.

<sup>431</sup> *Ib.*, fn 92.

<sup>432</sup> *Ib.*, p.29.

<sup>433</sup> P.43, FN 175 refers to ‘Lundin Oil in Sudan’ p.6.

<sup>434</sup> Unpaid Debt, p43.

<sup>435</sup> *Ib.*, p.43.

<sup>436</sup> *Ib.*, p.54-61.

<sup>437</sup> Prins Report: Satellite Mapping of Land Cover and Use in relation to Oil Exploitation in Concession Block 5A in South Sudan 1987–2006 (Prins 2009).

<sup>438</sup> Unpaid Debt, p. 54-61.

<sup>439</sup> *Ib.*, p.93.

<sup>440</sup> *Ib.*, p. 93-94.

<sup>441</sup> Although the study provides that these elements of uncertainty do not have any significant influence on the observed patterns of anthropogenic activity, neither the PRINS study nor the ECOS report examine how they have been accounted for when forming their general conclusions of displacement in Block 5A.

<sup>442</sup> Erik Prins, “Satellite Mapping of Land Cover and Use in relation to Oil Exploration in Concession Block 5A in Southern Sudan 1987-2006, PRINS Engineering, p.7.

<sup>443</sup> *Ib.*

<sup>444</sup> *Ib.*, p.8.

<sup>445</sup> *Ib.*, p.9.

<sup>446</sup> *Ib.*, p.9.

<sup>447</sup> *Ib.*, p.9. The study does attempt to provide alternative sources that have “verified” these findings, however it only relies on other aerial photos and a Human Rights Watch report from one year, 2003.

<sup>448</sup> Hatfield Report, p.44.

<sup>449</sup> *Ib.*, p.44.

<sup>450</sup> Hatfield Report, p.v.

<sup>451</sup> This undermines the principle of ‘reproducibility’, a critical element in any scientifically defensible work.

<sup>452</sup> Hatfield Report, p.v.

<sup>453</sup> Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, Trial Chamber II, Decision on the Prosecutor’s Bar Table Motions, ICC-01/04-01/07-2635, 17 December 2010, para.30 (emphasis added).

<sup>454</sup> Prosecutor v Boskoski Trial Judgement, para 134 and Fn. 544 (referring to Peter Bouckaert, T 3074-3075).

<sup>455</sup> *Ib.*, para.134.

<sup>456</sup> *Prosecutor v. Milutinovic et al*, Trial Chamber, “Decision on Lukic Defence Motions for Admission of Documents from Bar Table”, 11 June 2008, paras.35, 37-38.

<sup>457</sup> *Prosecutor v Ruto*, Decision on the Prosecution's Request for Admission of Documentary Evidence, ICC-OI/09-01/11, 10 June 2014, paras.42ff.

<sup>458</sup> *Ib.*, para.43.

<sup>459</sup> *Ib.*, para.44.

<sup>460</sup> *Ib.*

<sup>461</sup> *Hadzihasanovic et al* Trial Judgment, paras 578-579.

<sup>462</sup> *Prosecutor v. Tadic*, Trial Chamber, Trial Chamber, Decision on the Defence Motion on Hearsay, 5 August 1996, para. 15; *Prosecutor v. Milutinovic*, Decision on Lukic Defence Motion for Admission of Documents from Bar Table, 11 June 2008, para. 9.

<sup>463</sup> *Prosecutor v. Aleksovski*, Appeals Chamber, Decision on Prosecutor’s Appeal on Admissibility of Evidence, 16 February 1999, para. 15; *Prosecutor v. Milutinovic*, Trial Chamber, Decision on Lukic Defence Motion for Admission of Documents from Bar Table, 11 June 2008, para.9

<sup>464</sup> *Prosecutor v. Hadzihasanovic*, Trial Chamber Judgment, 15 March 2006, paras.272, 303, 578-579. See also *Prosecutor v. Milutinovic*, Trial Chamber, Decision on Evidence Tendered Through Sandra Mitchell and Frederick Abrahams, 1 September 2006, paras.19-20.

<sup>465</sup> *Prosecutor v Mbarushimana*, ICC, PTC, Decision on Confirmation of Charges, 16<sup>th</sup> December 2011 para.49.

<sup>466</sup> *Ib.*, para.78.

<sup>467</sup> See, e.g., *The Prosecutor v. Ruto*, Decision on the Prosecution's Request for Admission of Documentary Evidence, ICC-OI/09-01/11, 10 June 2014, paras 44-45. See also *Mbarushimana* Confirmation of Charges, paras 49, 77-78.

<sup>468</sup> *Gbagbo*, Decision Adjourning the Hearing on the Confirmation of Charges Pursuant to Article 61(7)(c)(i) of the Rome Statute, Case No. ICC-02/11-01/11, 3 June 2013, in particular, paras.28ff.

<sup>469</sup> *Ib.*, para.28.

<sup>470</sup> *Ib.*, para.29.

<sup>471</sup> *Ib.*, para.30.

<sup>472</sup> *Ib.*, para.35.

<sup>473</sup> *Prosecutor v. Milutinovic et al*, Trial Chamber, Decision Denying Prosecution’s Second Motion for Admission of Evidence Pursuant to Rule 92Bis, 13 September 2006, para.14.

<sup>474</sup> *Ib.*, Trial Chamber, Decision on Evidence Tendered Through Sandra Mitchell and Frederick Abrahams, 1 September 2006, para. 15-19 (referring to Prosecutor v. Milosevic, Appeal Chamber Decision on Admissibility of Prosecution Investigator’s Evidence, 30 September 2002, para. 22. See also Prosecutor v. Aleksovski, Case No. IT-95-1411-AR73, Decision on Prosecutor’s Appeal on Admissibility of Evidence, 16 February 1999, para. 15.)

<sup>475</sup> See, for example, Prosecutor v. Milutinovic et al., Decision Denying Prosecution’s Second Motion for Admission of Evidence Pursuant to Rule 92Bis, 13 September 2006, para.14.

<sup>476</sup> Prosecutor v. Strugar, Decision on the Admissibility of Certain Documents, 26 May 2004, para.36.

<sup>477</sup> Prosecutor v. Djordjevic, Decision on Prosecution’s Motion to Admit Exhibits from the Bar Table, 28 April 2009, para.34.

<sup>478</sup> Prosecutor v. Karemera et al, Decision on the Prosecutor’s Motion for Admission of Certain Exhibits into Evidence, Rule 89(C) of the Rules of Procedure and Evidence, 25 January 2008, paras.42-45.

<sup>479</sup> Prosecutor v. Boskoski, Decision on Boskoski Defence Motion to Amend Its Rule 65ter List and Admit Exhibits from the Bar Table, 20 March 2008, para.21.

<sup>480</sup> Prosecutor v Gbagbo, Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute, Case No. ICC-02/11-01/11, 3 June 2013, in particular, para.35.

<sup>481</sup> Prosecutor v. Callixte Mbarushimana, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled Decision on the confirmation of charges, 30 May 2012, ICC-01/04-01/10-514 (OA 4), para.40. See also Ruto, Decision on the Prosecution’s Request for Admission of Documentary Evidence, ICC-01/09-01/11, 10 June 2014, para.25.

<sup>482</sup> Prosecutor v Ntaganda, Public redacted version of Corrected Version of Response on behalf of Mr Ntaganda to Prosecution application under rule 68(3) to admit the prior recorded testimony and associated documents of Witness P-0315, 10 June 2016, ICC-01/04-02/06-1386-Conf”, 14 June 2016, ICC-01/04-02/06-1386-Conf-Corr, ICC-01/04-02/06, 22 July 2016 (‘The opportunity to cross-examine the author of the report “does not overcome the absence of the opportunity to cross-examine the person who made them”.’).

<sup>483</sup> Prosecutor v. Milutinovic et al, Decision on Evidence Tendered Through Sandra Mitchell and Frederick Abrahams, 1 September 2006, para. 21; See also, Prosecutor v. Milutinovic, Decision on Lukic Defence Motions for Admission of Documents from Bar Table, 11 June 2008, para. 120.

<sup>484</sup> *Ib.*, Decision on evidence tendered through Sandra Mitchell and Frederick Abrahams, 1 September 2006, para.21.

<sup>485</sup> *Ib.*, para. 22.

<sup>486</sup> For illustrations, see e.g., Gotovina et al Trial Judgment, Vol 1, paras 50ff; See also Boskoski et al Trial Judgment, para 372; Kenyatta et al Confirmation of Charges, paras 82ff, in particular, paras 82 and 87. And, *ibid*, for an illustration, para.259.

<sup>487</sup> See, e.g., Prosecutor v Kenyatta et al Confirmation of Charges, para 86. See also Prosecutor v Bemba,

Decision on Confirmation of Charges, 15 June 2009, pars 47ff.

<sup>488</sup> Katanga, Decision on the Prosecutor's Bar Table Motions, ICC-01/04-01/07, 17 December 2010, para 37.

<sup>489</sup> *Ib.*, paras.38-40.

<sup>490</sup> Prosecutor v Ruto, Decision on the Prosecution's Request for Admission of Documentary Evidence, ICC-01/09-01/11, 10 June 2014.

<sup>491</sup> *Ib.*, para 16.

<sup>492</sup> For further detail about constructive engagement, see Chapter 4.

<sup>493</sup> See e.g., <https://www.di.se/debatt/tidigare-forsvarsministern-s-struntade-i-lundin-oil-nar-handelserna-pagick/>

<sup>494</sup> KU-anmälan 2006/07:36 (050-1605-2006/07). Retrieved at: [https://www.riksdagen.se/sv/dokument-lagar/dokument/ku-anmalan/utrikesminister-carl-bildts-finansiella-intressen\\_GUA1858](https://www.riksdagen.se/sv/dokument-lagar/dokument/ku-anmalan/utrikesminister-carl-bildts-finansiella-intressen_GUA1858) . The Committee also questioned Bildt's shares in Vostok Nafta and Legg Mason.

<sup>495</sup> KU-betänkande 2006/07:KU20, p. 61, retrieved at <https://data.riksdagen.se/fil/EA88978B-2D7F-46AE-85F8-C087CE373ED9> "He made two more trips to Sudan: one in the beginning of July 2001 and the other in the end of January 2002. It was part of a greater trip that concerned the political development in Sudan and in the region. It did not concern concrete company business, which board members did not engage in. The idea was to start a political peace process and he dedicated a lot of time in various contacts in the matter." (sv. "Han har gjort två mer utförliga resor till Sudan: den ena i början av juli 2001 och den andra i slutet av januari 2002. Det var delvis en del av lite större resor, som handlade om den politiska utvecklingen i Sudan och i regionen. Det handlade inte om konkreta företagsaffärer, som styrelseledamöter inte ägnar sig åt. Avsikten var att få i gång en politisk fredsprocess, och han ägnade mycket tid åt olika kontakter i det ärendet.")

<sup>496</sup> KU-betänkande 2006/07:KU20, p. 61, retrieved at <https://data.riksdagen.se/fil/EA88978B-2D7F-46AE-85F8-C087CE373ED9> "He even met the president of Sudan, and his message was a question about oil: 'You cannot believe that you will be able to utilise the resources and the environment for Sudan like oil if you continue with this war. You must back down and get a peace process. This is what will create conditions for you to utilise your land's resources.'" (sv. "Han träffade även presidenten i Sudan, och hans budskap till denne var i fråga om olja: "Ni ska inte tro att ni ska kunna utnyttja de resurser och den möjlighet för Sudan som oljan är om ni fortsätter med detta krig. Ni måste sätta er ned och få en fredsprocess. Det är det som skapar förutsättningar för att ni ska kunna utveckla ert lands resurser.").

<sup>497</sup> KU-betänkande 2006/07:KU20, p. 61, retrieved at <https://data.riksdagen.se/fil/EA88978B-2D7F-46AE-85F8-C087CE373ED9> "He was not there when they negotiated the contract entered into between the Sudanese State and the Lundin consortium in May 2001 for the continued extraction of oil and he referenced that such negotiations were not entered into as part of the Board's duty." (sv. "Han har inte varit med om att förhandla fram ett avtal mellan den sudanesiska staten och ett konsortium där Lundin Oil ingick i maj 2001 om fortsatt oljeutvinning och hänvisade till att sådana förhandlingar inte ingick i styrelseuppdraget").

<sup>498</sup> KU-betänkande 2006/07:KU20, p. 61, retrieved at <https://data.riksdagen.se/fil/EA88978B-2D7F-46AE-85F8-C087CE373ED9> "He believes that companies that are operating in such areas – for working with social principles and responsibility – actually can contribute to the people. Even if many think he is wrong, he is still convinced that when they were there, with the aid program they had and with eyes and ears on the

ground in the very restricted part of Sudan they were in actually helped individual people with a better life/” (sv. “Han tror att företag som är verksamma i sådana områden – om de arbetar efter sociala principer och är ansvarstagande – faktiskt kan göra en insats för människorna. Även om många kan anse att han har fel, är han alldeles övertygad om att när de var där, med de hjälpprogram de hade och med de ögon och öron som fanns på marken i den mycket begränsade del av Sudan som de var i, hjälpte de faktiskt enskilda människor till ett bättre liv.”)

<sup>499</sup> Social Democrats for Belief and Solidarity, 7 June 2007.

<sup>500</sup> <https://www.sydsvenskan.se/2007-05-06/ku-forhor-misstolkas>

<sup>501</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/skriftlig-fraga/foretag-som-fortsatt-att-verka-i-sudan\\_GU11783](https://www.riksdagen.se/sv/dokument-lagar/dokument/skriftlig-fraga/foretag-som-fortsatt-att-verka-i-sudan_GU11783)

<sup>502</sup> See [https://www.riksdagen.se/sv/dokument-lagar/dokument/skriftlig-fraga/foretag-som-fortsatt-att-verka-i-sudan\\_GU11783](https://www.riksdagen.se/sv/dokument-lagar/dokument/skriftlig-fraga/foretag-som-fortsatt-att-verka-i-sudan_GU11783); [https://www.riksdagen.se/sv/dokument-lagar/dokument/skriftlig-fraga/atgarder-angaende-svenskt-bolag-i-sudan\\_GU11945](https://www.riksdagen.se/sv/dokument-lagar/dokument/skriftlig-fraga/atgarder-angaende-svenskt-bolag-i-sudan_GU11945); and [https://www.riksdagen.se/sv/dokument-lagar/dokument/interpellation/granskning-av-foretag-i-sudan\\_GU10477](https://www.riksdagen.se/sv/dokument-lagar/dokument/interpellation/granskning-av-foretag-i-sudan_GU10477)

<sup>503</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/interpellation/atgarder-mot-sudan\\_GV10406](https://www.riksdagen.se/sv/dokument-lagar/dokument/interpellation/atgarder-mot-sudan_GV10406)

<sup>504</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/skriftlig-fraga/lundin-petroleums-verksamhet-i-sudan\\_GV111109](https://www.riksdagen.se/sv/dokument-lagar/dokument/skriftlig-fraga/lundin-petroleums-verksamhet-i-sudan_GV111109)

<sup>505</sup> [https://www.aftonbladet.se/debatt/a/zllwE9/bildts-oljekontakter-finansierar-folkmord\\_\(Bildt's\\_Oil\\_Contacts\\_are\\_Financing\\_Genocide\)](https://www.aftonbladet.se/debatt/a/zllwE9/bildts-oljekontakter-finansierar-folkmord_(Bildt's_Oil_Contacts_are_Financing_Genocide))

<sup>506</sup> Ib.

<sup>507</sup> Official question by leader of the Left Party, Jonas Sjöstedt: [https://www.riksdagen.se/sv/dokument-lagar/dokument/interpellation/svenska-foretag-och-folkratten\\_GY1074](https://www.riksdagen.se/sv/dokument-lagar/dokument/interpellation/svenska-foretag-och-folkratten_GY1074); also see Peter Hultqvist (S): [https://www.riksdagen.se/sv/dokument-lagar/dokument/skriftlig-fraga/lundin-oil\\_GX11917](https://www.riksdagen.se/sv/dokument-lagar/dokument/skriftlig-fraga/lundin-oil_GX11917); and Hans Linde (V): [https://www.riksdagen.se/sv/dokument-lagar/dokument/skriftlig-fraga/lundin-oil\\_GX11917](https://www.riksdagen.se/sv/dokument-lagar/dokument/skriftlig-fraga/lundin-oil_GX11917)

<sup>508</sup> <https://sverigesradio.se/sida/artikel.aspx?programid=2054&artikel=3805227>

<sup>509</sup> See for example: <http://hogbergstankar.blogspot.com/2010/06/kamouflage-och-herr-bildt-del-9-vad.html>

<sup>510</sup> <https://www.aftonbladet.se/nyheter/a/zLMQKv/krav-fran-europa-ta-timeout-bildt>

<sup>511</sup> <https://www.expressen.se/nyheter/vansterpartiet-kraver-carl-bildts-avgang/>

<sup>512</sup> Release date: 2019-09-14. Date for general election: 2019-09-19.

<sup>513</sup> <https://www.resume.se/kommunikation/media/han-ar-sa-fyrkantig-i-sin-stackars-skalle/>

<sup>514</sup> <https://www.resume.se/kommunikation/media/han-ar-sa-fyrkantig-i-sin-stackars-skalle/>

<sup>515</sup> <https://www.expressen.se/debatt/bengt-nilsson-wechselmanns-attack-pa-bildt-ar-ett-falsarium/>

<sup>516</sup> [https://www.imdb.com/title/tt2285453/?ref\\_=nm\\_flmg\\_dr\\_4](https://www.imdb.com/title/tt2285453/?ref_=nm_flmg_dr_4). See full documentary here: <https://vimeo.com/193438489>

<sup>517</sup> <https://www.dn.se/kultur-noje/filmrecensioner/det-ar-upp-till-dig/>

<sup>518</sup> <https://www.aftonbladet.se/kultur/a/vm3E6X/glodande-attack-mot-carl-bildt>

<sup>519</sup> See Chapter 23, section 4 of the Swedish Code of Civil Procedure.

<sup>520</sup> <https://www.aklagare.se/nyheter-press/pressmeddelanden/2010/juni/forundersokning-om-folkrattsbrott/>

<sup>521</sup> Annex 7: The Prosecution of Uhuru Kenyatta at The International Criminal Court, dated 20<sup>th</sup> January 2015 at pages 51-65.

<sup>522</sup> Lundin Oil in Sudan, May 2001, p.6.

<sup>523</sup> This Latin phrase means “listen to the other side”. It is the principle that no person shall be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them.

<sup>524</sup> <https://www.expressen.se/nyheter/val-2018/hultqvist-anklagas-for-jav-efter-orden-om-blodspengar/> and <https://www.dn.se/ekonomi/regeringen-godkanner-atal-mot-lundin-toppar/>



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