Report on Investing in the Sudan

Prepared for the Steering Committee of University Council
by the Social Responsibility Advisory Committee
University of Pennsylvania

March 3, 2006

Executive Summary

The government of Sudan is an active participant in genocide against people in the Darfur region of the Sudan. Oil revenues account for a majority of Sudanese government income, and therefore are instrumental in financing genocide. The Social Responsibility Advisory Committee (SRAC) believes that providing instrumentalities of genocide represents a grave social injury. Under University policy concerning endowment securities, "*when the Trustees determine that corporate policies or practices cause substantial social injury .. they, as responsible and ethical investors, shall give independent weight to this factor in their investment policies*." Therefore SRAC recommends that the University exclude from its direct investments – and require the University's separate account managers to exclude from their direct investments – any investment that it may currently have in oil companies operating in Sudan as well as in the general obligations of the Sudanese government. In addition, we ask the Investment Office to share the University's desire to adhere to this investment philosophy with the investment managers of commingled funds in which the University invests .

1. Socially Responsible Investing at the University of Pennsylvania

On May 15, 2003, the Board of Trustees of the University of Pennsylvania adopted a statement on Responsibility Concerning Endowment Securities from which we quoted above. The same document established the Penn Social Responsibility Advisory Committee charged with providing advice to the Trustees on matters of ethical investing. The committee is appointed by the President and consists of twelve voting members including: four faculty members, two undergraduates, two graduate students, two alumni and two staff members.

SRAC has been active since the fall of 2004. In March of 2005, the Committee submitted recommendations to the Trustees Advisory Committee on Proxy Voting. Although the University Statement on Responsibility Concerning Endowment Securities deals with all aspects of ethical investing including divestment, SRAC's function was limited to advice on proxy voting.

On issues such as divestment, the then Chair of Steering, Professor Mitchell Marcus reported at the February 26, 2003 meeting of University Council as follows:

> …Steering …. discussed the issue of divestment at great length, and it explicitly and publically noted that Steering, as a University-wide representative body, is the appropriate mechanism for hearing the voices of the community "about extraordinary matters in extraordinary times that might lead to extraordinary recommendations," such as divestment.[1]

In cases of substantial social injury that can not be addressed through proxy voting, the Committee believes that it must recommend to the Steering Committee of University Council that it consider other actions, consistent with the University's Exercise of Shareholder Rights as described in section 2 b) of the Policy Guidelines. SRAC views divestment as a last resort when other efforts to remedy social injury appear unlikely to succeed.

We are not alone among our peer institutions in addressing this issue. Harvard, Stanford, and more recently Yale and Brown[2] have stated their intention to divest investments in one or more companies doing business in the Sudan. Several state pension funds have divested from all companies operating in the Sudan. We believe that the position taken by Yale University divesting in oil companies doing business in the Sudan and from obligations of the Sudanese government is an appropriate compromise at this time. The Yale report[3] is an excellent review of this topic. Much of what follows below is quoted, without direct attribution, from the Yale Report.

2. Genocide in Sudan

Since early 2003, the Government of Sudan and government-sponsored militias have committed pervasive violations of human rights in Darfur, Sudan. The United Nations Commission of Inquiry on Darfur found in a report issued in January 2005 that "[Sudanese] government forces and militias conducted indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement, throughout Darfur. These acts were conducted on a widespread and systematic basis. Estimates of the death toll range from 100,000 to 400,000, with the true figure likely somewhere in between.

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[1] *University Council, Minutes of Meeting of February 26, 2003.* page 4, submitted by Leslie Laird Kruhly, Secretary of University Council.

[2] The Brown University Statement on Divestment is available on the web at http://www.brown.edu/Administration/News_Bureau/2005-06/05-084.html

[3] *Report on Invbesting in the Sudan,* Prepared for the (Yale) Coiporate Committee on Investor Responsibility by the (Yale) Advisory Committee on Investor Responsibility. The report is available on the web at http://www.acir.yale.edu/sudan.html

On July 23, 2004, the U.S. Senate and House of Representatives unanimously adopted a joint resolution declaring the atrocities in Darfur genocide. Based on interviews with over 1,000 Darfurian refugees in Chad, the U.S. Department of State announced in September of 2004 that genocide had occurred, and might still be occurring, in Sudan. President Bush reiterated that the U.S. Government believes genocide is taking place in Darfur in June, 2005.

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

In a December 2005 report Human Rights Watch stated: “The Sudanese government at the highest levels is responsible for widespread and systematic abuses in Darfur. The U.N. Commission of Inquiry on Darfur found that the government has provided weapons to pro-government militias in Darfur. The State Department indicates that as of August 2004, more than 100 locations in Darfur had experienced aerial bombardment from the Sudanese government. The U.N. Commission of Inquiry on Darfur found that government army attacks in Darfur were “deliberately and indiscriminately directed against civilians.”
The U.N. Commission of Inquiry on Darfur has turned over a list of 51 “senior Sudanese government officials, militiamen, army officers, and rebel commanders” to the International Criminal Court for possible indictment.

3. Criteria for Evaluating Companies with Ties to the Sudan

Among the companies doing business in the Sudan, SRAC believes that companies which provide funding or other assistance to perpetrators of genocide are themselves complicit. This leads to the following criteria for evaluating companies doing business in the Sudan.

A company with business dealings in the Sudan shall be presumed to be committing grave social injury if the company has knowledge of an act, or acts of genocide and renders substantial assistance to the perpetrators of the genocide.

Substantial assistance includes (but is not limited to):

1. providing significant net revenue to those committing genocide

2. providing the instrumentalities with which to commit genocide, and the company knows or should know that those instrumentalities will be used for committing genocide;

3. providing aid to perpetrators that amounts to participation in specific acts of genocide.

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

4. Identification of Companies with Business Ties to the Sudan

The Allard K. Lowenstein Human Rights Clinic at the Yale Law School and the Lowenstein International Human Rights Project to conducted an in-depth background study of the situation in the Sudan and an analysis of corporate operations in that country[4].

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

Although companies in the electricity and telecommunications sectors may provide means for the government to collect revenue, this must be balanced against the contribution of utility services to the economic welfare of the Sudan.

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[4] *An Analysis of Select Companies' Operations in Sudan: A Resource for Divestment* A report by the Allard K. Lowenstein International Human Rights Clinic at Yale is an excellent overview of companies doing business in Sudan. This report is available on the web at http://www.acir.yale.edu/sudan.html

The oil industry provides the majority of government revenues and contributes little direct benefit to most Sudanese. In contrast, provision of utility services contributes relatively little government revenue and provides widespread benefit. Even though only a small fraction of these benefits are directly enjoyed by the members of the region where the genocide occurs, the positive impact of electricity and telecommunications is impossible to ignore. For these reasons, SRAC decided to focus initially on the oil sector, but may further investigate other sectors of the Sudanese economy in the future.

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

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

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

Amnesty International has reported that:

> Sudan's oil wealth has played a major part in enabling an otherwise poor country to fund the expensive bombers, helicopters and arms supplies which have allowed the Sudanese government to launch aerial attacks on towns and villages and fund militias to fight its proxy war [in Darfur]. By earning increasing oil revenues, the Sudanese government continues to be in a position to deploy considerable resources to military activities – be it in the form of paying salaries, or acquiring equipment, such as helicopter gunships, armaments, and associated hardware. The government has used increases in oil revenues to fund a military capacity that has in turn been used to conduct war in Darfur, including carrying out violations of international human rights and humanitarian law.

The Lowenstein Clinic Report provides background on 23 companies that have direct business interests in Sudan's oil industry, either by owning rights to develop particular fields, or through contracts for oil-related construction projects. A majority of these companies are publicly traded, but several are either privately held or state owned. And while most of these companies have active operations, others hold a passive stakes in particular blocks of fields or have suspended their activities
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The Yale Advisory Committee on Investor Responsibility asked the Yale Investments Office to communicate with companies listed in the Lowenstein report, asking them to provide detailed information concerning their activities in the Sudan. Responses were received from four oil companies: CNPC, PetroChina, Tatneft, and Total. While the responses vary widely in content, none provide concrete information. In those cases where responses were received, they provide little concrete information to counterbalance the findings laid out in the Lowenstein report. The Yale Committee came to the conclusion that it was unlikely that a policy of constructive engagement will lead to near-term correction of the grave social injury occurring in the Sudan. Nonetheless, they recommended a final round of engagement with companies before any divestment is finalized.

6. Conclusions and Recommendations from SRAC

SRAC believes that there is overwhelming evidence that the government of Sudan supports genocide against people in the Darfur region, and that this activity represents grave social injury. Therefore the SRAC recommends to the divestment from all bonds issued by the government of Sudan.

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

Based upon the Yale experience SRAC is not optimistic that active engagement with companies identified in the Lowenstein report, (requesting detailed information about their activities in the Sudan and their attempts to correct the grave social injury inflicted on the people in the Darfur region) will lead to an amelioration of the current situation in Darfur. Nevertheless, we recommend that our investment office monitor the responses received by Yale before taking final action on divestment. Given the gravity of the situation we believe it is reasonable to expect companies to respond by May 1, 2006

Based on the Lowenstein report we identify seven companies currently operating in the Sudan as targets for divestment barring satisfactory responses to the inquires referred to above. Of these companies, four are publicly traded and three are privately held. Two other companies, Petronas and Sudapet, would qualify for divestment were they not state owned. These companies are listed below:

Bentini (private)
Higleig (private)
Hi-Tech Petroleum (private)

Nam Fatt
ONGC
PetroChina
Sinopec

Background Information on Companies Targeted for Likely Divestment.

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

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

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

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

<u>PetroChina</u> – The China National Petroleum Company (CNPC) is wholly owned by the Chinese government and owns a 40% stake in the Greater Nile Oil Project. GNOP was set up by the Sudanese government and includes, among other investors, Sudapet, the national oil company. CNPC operates interests in the Sudanese oil industry with Sinopec, Petronas, ONGC, and other investors, and is not only active in the GNOP, but also has stakes in Petrodar and other oil blocks in Sudan. When CNPC attempted to go public on the New York Stock Exchange in 1999, public criticism over its holdings in Sudan forced it to create a subsidiary, PetroChina, which went public instead. At the time of its creation, PetroChina was 90% owned by CNPC and was comprised of CNPC's domestic holdings. When PetroChina was created, it inherited $15 billion in debt from CNPC, some of which was incurred in respect to its Sudan activities. There is a large overlap between the management and the board of PetroChina and CNPC. This creates doubt that there exists a firewall between the two companies.

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

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

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

Yale has received no response to its inquiries from either Sinopec Corp. or Sinopec Group.

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

Higleig Petroleum Services and Investment Company Limited (private)/Hi-Tech Petroleum (private): These are both Sudanese oil companies.
Bentini (private) – Bentini is an Italian construction firm, with a large contract, along with Nam Fatt's subsidiary NF Energy, from Petrodar to build six pumping stations on the Melut Basin. This is one of the larger oil investment projects in Sudan.

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

The following members of SRAC were present at the March 3, 2006 meeting when this matter was discussed. The members present voted unanimously to forward this recommendation to the Steering Committee.

Ryan Burg, PhD candidate, Wharton
Brenden Darrow, College of Arts and Sciences
Helen Davies, Professor of Microbiology
Cassondra Giombetti, PhD candidate, Education
Maureen Harrigan, Office of Budget and Management Analysis
Seth Lehr, W'78, WG'83
Mitchell Marcus, Professor of Computer Science
Gerald Porter, Professor of Mathematics, chair
Spencer Scharff, College of Arts and Sciences

The following members of SRAC were not present at the March 3 meeting and did not vote on this issue.

Elizabeth Bailey, Professor of Business and Public Policy
Lolita Jackson, SEAS '89

One of the staff positions on the committee is vacant because of the resignation of William Dunworth.