

# **UNPAID DEBT**

**The Legacy of Lundin, Petronas and OMV  
in Sudan, 1997-2003**

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## WHY THIS REPORT

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. Being a coalition of European organizations, ECOS’ role is not primarily to hold Sudanese players to account, but to investigate the role of European parties. For this reason, ECOS decided to concentrate on Block 5A, a concession area that, until 2003, was operated by a European company and where two European companies, Lundin and OMV, together held a majority share.

On November 11, 2008, an advance draft copy of this report was forwarded to Lundin Petroleum AB (“Lundin”), Petronas Carigali Overseas Sdn Bhd (“Petronas”), OMV AG (“OMV”) and the Swedish Ministry of Foreign Affairs for comments. Lundin responded by stating that it considers the report to be defamatory and it reserved the right to claim damages if it were to be published. Lundin disputes the accuracy of the report, its conclusions and the interpretation of international law set out in the report. Lundin denies that it violated international law. It further denies that it was directly or indirectly involved in the conflict in Sudan or that it participated in or had, or ought to have had, knowledge of any of the illegal acts that are documented in this report.

Lundin provided comments on the report to ECOS, which have been considered in detail and have been taken into account in *UNPAID DEBT*.

Lundin copied Petronas and OMV into its correspondence with ECOS. These companies did not communicate directly with ECOS and have not formally commented on the report.

The Swedish Ministry of Foreign Affairs received a delegation from ECOS in 2008, but declined to comment on a non-published document.

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## SUMMARY

From 1983 to 2005, Sudan was torn apart by a civil war between the Government and Southern armed groups. Oil was a factor in the outbreak and exacerbated war from the mid-1990s. This report is concerned with the injustice perpetrated on victims and the role of oil companies and their home governments during the oil wars.

In 1997, the Swedish oil company Lundin Oil AB ("Lundin") formed a consortium with Petronas Carigali Overseas Sdn Bhd ("Petronas") from Malaysia, OMV (Sudan) Exploration GmbH ("OMV") from Austria, and the Sudanese state-owned oil company Sudapet Ltd., hereafter referred to as the Lundin Consortium or the Consortium. They signed a contract with the Government for the exploitation of oil in the concession area called Block 5A that was not at that time under full Government control. The start of oil exploitation set off a vicious war in the area. Between 1997 and 2003, international crimes were committed on a large scale in what was essentially a military campaign by the Government of Sudan to secure and take control of the oil fields in Block 5A. As documented in this report, they included indiscriminate attacks and intentional targeting of civilians, burning of shelters, pillage, destruction of objects necessary for survival, unlawful killing of civilians, rape of women, abduction of children, torture, and forced displacement. Thousands of people died and almost two hundred thousand were violently displaced. Satellite pictures taken between 1994 and 2003 show that the Lundin Consortium's activities in Block 5A coincided with a spectacular drop in agricultural land use.

The actual perpetrators of the reported crimes were the armed forces of the Government of Sudan and a variety of local armed groups that were either allied to the Government or its main opponent, the Sudan People's Liberation Movement/Army (SPLM/A). Nonetheless, the evidence presented in this report calls into question the role played by the oil industry in these events.

"Many little children drowned in the river as they tried to escape the horsemen. ... The horsemen chased the people to the river and shot at them as they struggled across burdened with young children and the elderly.... There were two young women, Nylaluak Riek and Nyanhialdiu, who were very near term, the horsemen still shot them as they fled."

Rhoda Nyareak Chany, from Wangrial near Nhialdiu, who lost ten of her relatives during attacks on her village in 2001.<sup>1</sup>

ECOS believes that Lundin, Petronas and OMV, as a matter of international law, may have been complicit in the commission of war crimes and crimes against humanity.

This report calls for an investigation into the role of the Consortium in the oil war in Block 5A, explains the case for compensation for the victims and argues that the home governments of Lundin (Sweden), Petronas (Malaysia) and OMV (Austria) have failed in their international obligations to prevent human rights violations and international crimes. At the time of the oil wars, these Governments received credible indications that decisions made by companies based in their territory allegedly exacerbated war and contributed to violations of human rights and the commission of international crimes in Sudan. These Governments are yet – after ten years – to account for their failure to act. It is ECOS' position that the Governments are duty-bound to investigate the allegations concerning the activities of the companies and to work to undo injustice.

ECOS calls upon Sweden, Austria and Malaysia to investigate whether or not the members of the Consortium met their responsibility to respect human rights when they signed a contract with the Government of Sudan without any guarantees that human rights and international law would be respected. At the time the contract was signed, the Sudanese Government was in the middle of a civil war, had a record of committing international crimes, and the Government's access to oil wealth was likely to be challenged. Sweden, Austria and Malaysia should also investigate the extent to which the member companies of the Consortium have adequately addressed the alleged adverse impacts of the Consortium's operations in Sudan after the Consortium was dissolved. As research in this report makes clear, throughout the war the Consortium worked alongside the

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<sup>1</sup> De Guzman, Diane, & Egbert Wesselink, *Depopulating Sudan's Oil Regions*, January to March 2002, European Coalition on Oil in Sudan, May 2002, p. 11. Available at: [www.ecosonline.org](http://www.ecosonline.org)

perpetrators of international crimes. Its infrastructure enabled the commission of crimes by others. Taking into account the overwhelming body of reporting at the time, the members of the Lundin Consortium should have been aware of the abuses committed by the armed groups that partly provided for their security needs. However, they continued to work with the Sudanese Government, its agencies and its army. For these reasons, supported by the evidence presented in this report, ECOS believes it to be imperative for Sweden, Austria and Malaysia to also investigate whether the members of the Lundin Consortium knew or should have known that their activities in Block 5A assisted those who were responsible for gross human rights abuses in Block 5A, contrary to the norms of international law, and whether, through their activities, the members of the Lundin Consortium, as a matter of international law, were complicit in the commission of war crimes and crimes against humanity by others during the period 1997-2003.

Furthermore, ECOS believes that there are grounds to investigate whether the Consortium provided material support to Sudanese security agencies that were involved in gross human rights abuses.

Lundin denies that it violated the norms of international law or that it participated in or had, or ought to have had, knowledge of any of the illegal acts that are documented in this report. In its response to an earlier draft of this report, Lundin stated in November 2008 that it has at all times acted in accordance with all applicable local and international laws and its operations have been and continue to be conducted in a manner which seeks to have a positive influence on the country and people of Sudan.

“Oil installations are known to be likely objects, and even targets, of military operations and terrorism. Given their vulnerability and the considerable economic interests involved, this adds to the high risk profile of Lundin Petroleum’s interests.”

Lundin Petroleum, October 2001.<sup>2</sup>

There should be no more war over oil in Sudan. The parties to the 2005 Comprehensive Peace Agreement (CPA) are discussing arrangements for the future management of the oil industry. These should include compensation, and the oil companies and their home governments can play a key role in bringing that about. Moreover, ECOS contends that it is their duty. When Lundin and OMV left Sudan, they left with a large profit - and they left the victims of the oil wars to fend for themselves. Sudan’s CPA and Interim National Constitution (INC) establish a specific right to compensation for people whose rights have been violated by oil contracts, but no adequate compensation has been received. A compensation process that will do justice to them and is designed to create the conditions for reconciliation and forgiveness, would bring crucial peace dividends and contribute to a much needed environment of trust in the oil-producing areas and beyond.

Therefore, to promote peace and achieve justice for the victims of the oil war in Block 5A, ECOS recommends that:

1. **The Governments of Sweden, Austria, and Malaysia** investigate the alleged violations of norms of international law by their national oil companies.
2. **The Governments of Sweden, Austria, and Malaysia** account for their failure to prevent the alleged human rights violations and international crimes.
3. **The Governments of Sweden, Austria, and Malaysia** ensure appropriate compensation for all persons whose rights have been violated in the course of the war for control over Sudan's oil fields.
4. **The international guarantors of the Comprehensive Peace Agreement (CPA)** take urgent initiatives to ensure implementation of the right to compensation as established by the CPA.
5. **The members of the Lundin Consortium** open all records and fully cooperate with investigations into their role in the reported events.
6. **The members of the Lundin Consortium** create enabling conditions for reconciliation with victims of the oil war, starting with the allocation of their fair share of compensation for the victims, which ECOS estimates at US\$300 million.
7. **Investors** divest from all companies that do not fully cooperate with investigations into credible allegations of complicity in international crimes or fail to compensate the victims of Sudan’s oil wars pursuant to the terms and conditions of the CPA and the UN Guidelines.

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<sup>2</sup> Lundin, “Offer to subscribe for shares in Lundin Petroleum AB (publ) and the entitlement to receive warrants”, Stockholm, October 28, 2001, p. 31. See: [http://www.lundinoil.com/Documents/co\\_prospectus\\_e.pdf](http://www.lundinoil.com/Documents/co_prospectus_e.pdf).

## IN BRIEF

### What is this report about?

The death of thousands of people and violent displacement of almost 200,000 others between 1997 and 2003, when the exploitation of oil Block 5A in Southern Sudan by an international consortium of companies set off a vicious war for control over the oil fields in the area. The victims of this war have the right to be fully compensated for their losses, but up to now the oil companies have largely ignored this right. This must be rectified.

ECOS believes that these international oil companies, as a matter of international law may have been complicit in the commission of war crimes and crimes against humanity. Consequently, ECOS questions whether the Governments of Austria, Malaysia and Sweden fulfilled their international obligation to prevent the occurrence of human rights violations and international crimes when they failed to act after receiving credible indications that decisions made on their territory allegedly contributed to violations of human rights, exacerbated war, and allegedly contributed to the commission of international crimes.

### What happened?

From 1983 to 2005, Sudan was torn apart by a civil war between the Government of Sudan and a variety of armed forces, mostly in the southern part of the country. During this war, in 1997, the members of a consortium led by the Swedish oil company Lundin signed a contract with the Government for the exploration and production of oil on the fault line of Sudan's war zone, in the oil concession area called Block 5A which was not at that time under full Government control. Lundin was the lead partner and operator of the Consortium. The prospect of oil production gave the up to then relatively quiet area a strategic significance and it became a focal point of the civil war. A vicious war broke out for control over the oil fields in Block 5A between the Government and SPLA-supported armed groups.

The war followed a similar military logic as the later war in Darfur: the Government, through a variety of tribal militias, the country's army and air force, and Arab Murahaleen units, fought all real and potential rivals on the ground and cleared away the population. The Government of Sudan used artillery, ground troops, helicopter gunships, and high-altitude bombers against the civilian population. Almost 200,000 civilians were deliberately forced off their lands and thousands died. Most prominent among the reported crimes were arbitrary attacks on civilians, unlawful killing, arson, looting, rape, enslavement, underage recruiting, torture, and theft. The forced displacement was motivated by the desire to secure the oil fields for the purpose of oil exploration. The Canadian Government Mission to Sudan concluded in January 2000, "The underlying reality is that there has been, and probably still is, major displacement of civilian populations related to oil extraction. Furthermore, oil has become a major focus of the fighting."<sup>3</sup>

"During my visit I gathered further evidence that oil exploitation leads to an exacerbation of the conflict with serious consequences for the civilians. More specifically, I received information whereby the Government is resorting to forced evictions of the local population and destruction of villages to depopulate areas and allow for oil operations to proceed unimpeded. I was informed that all the villages around Nhialdu, in Nimne, south of Bentiu, have been burnt to the ground and crops had been destroyed. Similarly, all the villages along the road up to Pultutni, in the surrounding of the oilfields at Ryer, have been razed."

Oral statement by Gerhart Baum, Special Rapporteur on Human Rights in Sudan to the U.N. Commission on Human Rights, Geneva, March 2001.<sup>4</sup>

### Extent of the damage

Based on the evidence and reports of the many leading human rights organisations and other public reports cited in this report, ECOS estimates the damage caused by the 1997–2003 oil war in Block 5A to be:

- 12,000 people killed or died from hunger, exhaustion and conflict-related diseases
- 160,000 people forcibly displaced; often multiple times

<sup>3</sup> Harker, John, Human Security in Sudan: The Report of a Canadian Assessment Mission, Ottawa, January 2000, p. 15.

<sup>4</sup> For a transcription of Gerhart Baum's oral statement, March 29, 2001, see:

<http://www.unhchr.ch/huricane/hurricane.nsf/0/072FE7F713DE0F4FC1256A29002A3757?opendocument> (accessed May 28, 2008).

- 20,000 people permanently uprooted; having lost their cattle and houses, they took refuge in urban centres and never managed to return
- 40,000 tukhuls (huts) and luaks (livestock shelters) destroyed
- 500,000 cattle lost; mostly looted
- Enormous quantities of goats, food stocks, personal belongings, farming and fishing utensils looted, and communal assets, including churches, schools, markets, and medical clinics destroyed
- Immense loss of income because of interrupted agricultural cycles and otherwise thoroughly disturbed economic life
- Incalculable moral damage and lost opportunities, including employment, education and social benefits

### **Do the victims have a right to compensation?**

ECOS believes that the answer must be yes. Article 4(5) of Sudan's Comprehensive Peace Agreement (CPA) and Article 208 (5) of the country's Interim National Constitution establish a specific right to compensation: "Persons whose rights have been violated by oil contracts are entitled to compensation. On the establishment of these violations through due legal process the Parties to the oil contracts shall be liable to compensate the affected persons to the extent of the damage caused." In addition, it is a well established international legal principle that persons whose rights have been violated and have suffered damage as a result, have a right to remedy and reparation. The UN General Assembly has explicitly confirmed that right for victims of gross violations of international human rights law and serious violations of international humanitarian law.<sup>5</sup>

"According to the CPA, people whose rights have been violated by oil contracts are entitled to compensation. However, no action has been taken to compensate victims of such contracts provided for in the wealth-sharing agreement."

CPA Monitor, United Nations Mission in Sudan, March 2010.<sup>6</sup>

### **Have the victims been fully compensated?**

No. To date, the Government of Sudan and the members of the Lundin Consortium have not paid compensation under the CPA for the massive losses described in this report. In an ideal world, individual victims start civil law suits and legally responsible parties would be required to comply with court orders to pay compensation. However, access to justice is weak in Sudan. Most people in Block 5A cannot hire legal counsel or start legal proceeding. In addition, there is no fully functioning court system in Southern Sudan and the few existing courts do not have the resources for this massive task.

"Nobody has been compensated, if they do it, it will be good as everybody is eager to get it because of the great loss they had."

Chol Deng Dakir, Head of Land Commission, Unity State, April, 2007.<sup>7</sup>

### **Why is compensation important?**

First of all because the rights of the victims must be respected. Secondly, no lasting peace can be achieved unless the crimes of the past have been accounted for and justice has been done. There should be no more war over oil in Sudan. The parties to the CPA are discussing arrangements for the future management of the oil industry. These should include compensation, and the oil companies and their home governments should play a key role in bringing that about.

The CPA promised much that is very important to the people: addressing the needs of the war-affected regions, national reconciliation, democracy, respect for human rights, protection of the environment, redress of historical injustices and inequalities in development between different regions, and compensation for past injustices. Too much of this has not been forthcoming and won't be reached before the CPA comes to an end in 2011. The Secretary-General of the UN indicated in 2009 that any act or failure to act in relation to the CPA provisions could have serious consequences for the future of Sudan. "The

<sup>5</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law", General Assembly resolution 60/147, December 16, 2005.

<sup>6</sup> United Nations Mission in Sudan (UNMIS), The CPA Monitor, Vol. 6, Issue 52, March 2010, p. 17

<sup>7</sup> Chol Deng Dakir in "Compensation needed for oil company displacement", Gurtong General News, April 15, 2007, [http://www.gurtong.org/ResourceCenter/weeklyupdates/wu\\_contents.asp?wkupdt\\_id=726](http://www.gurtong.org/ResourceCenter/weeklyupdates/wu_contents.asp?wkupdt_id=726) (accessed May 28, 2008).



population, particularly in the south and in the border areas, urgently needs to see tangible benefits from the peace and stability created by the Comprehensive Peace Agreement. Growing dissatisfaction inevitably bears dangers of instability.”<sup>8</sup> The failure to compensate the population of the oil areas is a crucial factor in this respect. A compensation process that will do justice to the victims of oil exploitation and is designed to create the conditions for reconciliation and forgiveness, would bring crucial peace dividends and contribute to a much needed environment of confidence and trust in the oil-producing areas and beyond.

### **What evidence do we have?**

Numerous public reports provide detailed accounts of the atrocities that have been perpetrated against civilians in and around the area of Block 5A in Sudan during 1997–2003. In addition, ECOS reviewed documents filed in the proceedings in US District Court for the Southern District of New York (“The Presbyterian Church of Sudan, et. Al., vs. Talisman Energy, Inc. and Republic of the Sudan” Civil Action No. 01 CV 9882), which include Talisman’s security reports, testimonies from militia commanders who were active there at the time, as well as army orders to forcibly remove the population away from the oil areas. These documents have only become public as a result of the US Court proceedings. There is no suggestion that they were available to the Consortium at the time they were produced. The civil tort claim against Talisman is currently the subject of a petition to the United States Supreme Court following its dismissal by the lower courts.<sup>9</sup> ECOS believes that the evidence presented in this case offers a valuable insight into the oil industry in Sudan at the time.

Furthermore, ECOS commissioned specialist satellite image analysis of the agricultural land use in Block 5A before, during and after the Lundin Consortium’s presence, which shows that the timing of the Lundin Consortium’s operations and the Government’s efforts to secure them appears to coincide with a decrease of up to 80% of agricultural land use in the most densely populated parts of Block 5A. By comparing the available Landsat images between 1994 and 2004, substantial changes in land use and settlement patterns become visible, demonstrating enormous population movements that started after the Lundin Consortium began operations in 1998 and reached their height in 2002 when the operations by the Sudanese Government to secure the Lundin Consortium’s activities in Block 5A had degenerated into full-scale war.

### **Are the Lundin Consortium members complicit in war crimes and crimes against humanity?**

The International Commission of Jurists holds that companies may be complicit in international crimes when they contribute to the perpetration of the crimes; when they know or should know that their conduct would be likely to do so; and when they have close relations with the principal perpetrator of the abuses or with the victims. As the research in this report makes clear, throughout the war in Block 5A the Consortium worked alongside the perpetrators of international crimes. The Consortium’s infrastructure enabled the commission of crimes by others – for example, it commissioned a strategic bridge and a road which Lundin claims were accessible to everyone. This infrastructure expanded the geographic reach of armed groups, enabled year-round access to formerly isolated communities, and facilitated the Sudan Armed Forces (SAF) and armed groups to violently displace much of the population in Block 5A.

The violent displacement, killings and other crimes that were committed by Government forces and militias were predictable, as they had occurred previously in neighbouring oil areas. Taking into account the overwhelming body of reporting at the time, the members of the Lundin Consortium should have been aware of the abuses committed by the armed groups that partly provided for their security needs. However, they continued to work with the Government, its agencies and its army. For these reasons, supported by the evidence presented in this report, ECOS believes that, through their activities, the members of the Lundin Consortium may, as a matter of international law, have been complicit in the commission of war crimes and crimes against humanity by others during the period [1997-2003]. Furthermore, ECOS believes that there are grounds to investigate whether the Consortium provided material support to security agencies that were involved in gross human rights abuses. Whether or not the members of the Consortium are criminally liable for these international crimes is a matter for a competent court to decide. ECOS’ position, however, is that their conduct violated the norms of international law and was morally repulsive.

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8 UN Security Council, “Report of the Secretary-General on the Sudan”, S/2009/61, January 30, 2009, p. 15. See: <http://daccessdds.un.org/doc/UNDOC/GEN/N09/220/96/PDF/N0922096.pdf?OpenElement>.

<sup>9</sup> In October 2009, the U.S. Court of Appeals in New York affirmed a lower court’s 2006 dismissal of the tort case against Calgary, Alberta-based Talisman. “Plaintiffs have not established Talisman’s purposeful complicity in human rights abuses,” the appeals court said in a 68-page opinion. This judgment has been challenged by the petitioners with the argument that the mental element for aiding and abetting liability under both federal common law tort principles and under international law is knowledge rather than purpose. For a full text of the April 15th, 2010 Petition for Writ of Certiorari, see: <http://www.reports-and-materials.org/Cert-petition-Talisman-case-15-Apr-2010.pdf>.

Having been involved in Sudan's oil business since 1991, Lundin knew the country well when, in 1997, it acquired the right to explore and produce oil in Southern Sudan. For reasons set out in this report, Lundin and the other members of the Consortium should have known that their operations were of paramount strategic interest to the parties to the civil war and they should have been able to predict that these would become a major focus in the ongoing war. By 1997, the Government of Sudan had a solid and very well documented track record of disregard for human rights, practicing torture and political murder, denying humanitarian assistance to its population, and using forced displacement as a means of warfare and to secure oil operations. To guarantee security for the Lundin Consortium, the Government of Sudan would need control over a large area that had hitherto largely escaped the conflict. It was extremely likely that this would require the use of force against civilians. The members of the Consortium should have been aware that its activities were likely to spark war in Block 5A, a war in which international crimes were likely to be committed. The infrastructure built or commissioned by the Consortium enabled the armed forces to reach the rural population and attack the civilians that lived there. Armed raids against, and the forcible displacement of, the population enabled the exploitation of the Consortium's concession. But, when confronted with reports that their infrastructure was assisting and their activities were motivating the forced displacements and other international crimes, the Consortium failed to act.

By its failure to require guarantees that the Government, which had a proven record of disregard for human rights, would respect its international legal obligations when securing the Consortium's operations, ECOS believes that the members of the Consortium accepted the risk of potential complicity in the Government's crimes.

“We work without regard to political risk. It is so difficult to make large oil- and mining discoveries that, if you also limit yourself to countries which are politically secure you would not have a chance. It is like starting a marathon with a broken leg. The only thing that is important for us is that what we are looking for can be really big.”

Adolf Lundin, Chairman of Lundin Oil AB, August 1996.<sup>10</sup>

In addition, the reports and evidence reviewed in this report suggest that there are grounds to investigate whether the Consortium provided financial and material support to the security agencies that were responsible for the commission of international crimes and gross violations of human rights.

ECOS' interpretation of the relevant national and international law and its conclusions regarding the same have been confirmed by an independent expert, Professor Dr. Liesbeth Zegveld.<sup>11</sup>

Lundin denies that it violated the norms of international law or that it participated in or had ought to have had, knowledge of any of the illegal acts that are documented in this report. In its response to this report, Lundin stated in November 2008 that it has at all times acted in accordance with all applicable local and international laws and its operations have been and continue to be conducted in a manner which seeks to have a positive influence on the country and people of Sudan.

#### **Which companies formed part of the Lundin Consortium?**

The Lundin Consortium, which exploited Block 5A from February 1997 until June 2003, was led by the Swedish company Lundin Oil AB (40.4% ownership), which became Lundin Petroleum AB in 2001 and is privately owned. The other partners in the Consortium were the Malaysian company Petronas Carigali Overseas Sdn Bhd (28.5%) which is a wholly owned subsidiary of Malaysia's national oil giant Petronas. OMV (Sudan) Exploration GmbH (26.1%), a wholly owned subsidiary of the Austrian company OMV AG in which the Austrian State holds a 31.5% interest. And Sudapet Ltd. (5%), which is fully owned by the Sudanese Government.

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10 Bjorkland, M. and Lundberg, M., “Risk lures the hunt of oil across all borders” (translated), Svenska Dagbladet, August 5, 1996, p. 29. (Org. title and quote: Risker lockar till oljejakt över alla gränser: "Vi arbetar helt utan hänsyn till politisk risk. Det är så pass svårt att hitta olje- och gruvförekomster av stor storlek, att om man dessutom ska begränsa sig till länder som är politiskt säkra har man inte en chans. Det är som att starta ett maratonlopp med ett brutet ben. Det enda som är viktigt för oss är att det vi letar efter kan bli riktigt stort.").

11 Prof. Dr. Liesbeth Zegveld is professor of International Humanitarian Law at Leiden University, a member of the International Law Association's Committee for Compensation for War Victims and partner at the Amsterdam law firm Böhler Franken Koppe Wijngaarden.

**Did the Lundin Consortium make a profit?**

Lundin Petroleum AB made a total net profit of US\$92.6 million<sup>12</sup> in Block 5A and OMV AG an estimated US\$55 million.<sup>13</sup> In all, by mid-2003, when the two European companies sold their shares, the Lundin Consortium's total market value had increased by an estimated US\$200 million.

**Do the Governments of Sweden, Austria and Malaysia carry any responsibility?**

International law requires countries to prevent violations of human rights law and to penalise international crimes in their domestic criminal law. The home governments of the three international members of the Consortium failed to act after receiving credible indications that decisions made on their territory allegedly contributed to violations of human rights, exacerbated war, and allegedly contributed to the commission of international crimes. They are called upon to fully investigate the alleged violations of norms of international law by their national oil companies and their failure to prevent or end them.

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<sup>12</sup> "This deal resulted in an after tax profit contribution to Lundin Petroleum of SEK [Swedish krona] 720 million, out of total net profit of SEK 930 million and clearly demonstrates the value that can be generated through successful exploration drilling", in: Lundin Petroleum, Annual Report, 2003, [http://www.lundin-petroleum.com/Documents/ar\\_2003\\_e.pdf](http://www.lundin-petroleum.com/Documents/ar_2003_e.pdf) (accessed May 28, 2008).

<sup>13</sup> OMV Aktiengesellschaft, "OMV on the move in 2004: Annual Report", p. 110.

# 1. LAND AND PEOPLE

## Geography

Oil concession Block 5A is part of the oil-rich area of Unity State<sup>14</sup> in southern Sudan, adjacent to and south-east of oil concession Blocks 1, 2 and 4. The state stretches from the north of the Bahr el Ghazal river, bordering the Nuba Mountains, with the Bahr el Jebel river bordering the region on the eastern side and the Bahr el Ghazal river on its western side. Unity State is divided into nine counties: Mayom, Rubkona, Parieng (former Ruweng), Ler, Guit, Koch, Abeimnom, Mayendit and Payinjar. Its capital is Bentiu.

Most of the land in Unity State is black cotton soil, a dense clay-like soil that develops the consistency of thick glue when wet. The area directly bordering the White Nile forms immense wetlands. These are part of the Sudd; marshes formed by the tributaries of the Nile, and one of the largest wetland areas in the world. The Sudd is protected under the UN Ramsar Convention on Wetlands.<sup>15</sup>

Block 5A is part of the huge, swampy, flat landscape on the west bank of the White Nile and totals 29,885 square kilometres. Block 5A comprises the Unity State counties of Guit, Koch, Ler and Mayendit, and parts of Rubkona, Mayom and Parieng. Part of Block 5A lies outside Unity State (in Jonglei State, east and Warrap State, south-west), where no oil activities occurred. The Block comprises a few small towns, notably Nimne, Nhialdiu, Duar, Bow, Koch, Kuac, Ler, Adok, Ryer, and Rubnyagai.<sup>16</sup> Geologically, its oil-bearing structures are a continuation of the Muglad Basin. Before the oil companies commissioned the construction of elevated all-weather roads, there were only dirt tracks during the dry season and no access over land during the wet season.

## Population

The largest ethnic groups in Unity State are the Nuer and the Dinka, with a smaller, localised presence of the Baggara, Nuba and Shilluk people. Block 5A is almost exclusively populated by Nuer. They are divided into various sub-groups. The oil-rich areas of Block 5A belong to the Bul, Leek, Jagei, Jikany, and Dok Nuer. The distinction between the various groups can be fluid, even between the Nuer and the Dinka. Identity shifts are frequent, and so is inter-marriage.

## Traditional land use in Block 5A

The people of Unity State are very poor in a material sense. Large parts of the population lead lives that are similar to those of their ancestors. Changes in their natural environment can greatly affect their ability to survive in their home areas. The Nuer people are agro-pastoralists, surviving on cattle herding, farming, and fishing. They have developed sophisticated ways of coping with the harsh terrain and the vagaries of the climate.

The lifestyle of the Nuer has been adapted to the periodic flooding and dryness of the land. At the beginning of the dry season, in December/January, most communities migrate to the rivers to graze their cattle. They camp in the wet-land areas, graze their animals on the rich and succulent vegetation along streams and rivers (seasonally flooded grasslands, also known as *toic*), and fish the waters. The area that became the focus of oil exploration and development along the White Nile in Block 5A provides rich *toic* for the Jagei Nuer and other Nuer tribes.

In May/June, at the start of the rains, the communities return to their permanent settlements where they cultivate sorghum and other crops on the sandy ridges that are not flooded. The food situation is particularly precarious in the months before the first harvests in July, known as the annual hunger-gap. At the end of the rainy season, in September, the cattle start being driven back to the cattle camps in the *toic*. Young men accompany the cattle to the *toic*, together with some women to milk cattle. Other family members stay behind to cultivate crops until December/January. This makes October–December the best months to assess overall agricultural land use, as the grazing in the *toic* has started while land is still being cultivated around the wet-season settlements.

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14 Historically, the state is called Western Upper Nile but this report uses the later and officially more common name of Unity State. We did not replace the name Western Upper Nile in citations.

15 In June 2006, Sudan designated the Sudd marshes as Wetland of International Importance and added them to the international Ramsar List of protected wetlands. [http://www.ramsar.org/cda/ramsar/display/main/main.jsp?zn=ramsar&cp=1-26-45-49%5E17377\\_4000\\_0\\_\\_](http://www.ramsar.org/cda/ramsar/display/main/main.jsp?zn=ramsar&cp=1-26-45-49%5E17377_4000_0__) (accessed Sept. 28, 2009).

16 Most villages carry various different names, usually different spellings are used.

**Settlements**

The permanent villages/settlements of the rural Nuer and Dinka usually comprise mud and thatch huts above the maximum flood level to which the Dinka and Nuer return during the rainy season and where they plant their crops. A typical settlement includes several extended families and/or other compounds. A compound consists of a few mud huts known as *tukhuls* - circular one-room mud huts with thatched roofs - with larger *luaks* housing the cattle and other livestock. Temporary 'dry season' huts built along the river are flooded during the rainy season. Brick buildings are only found in Bentiu and the larger towns.

## 2. OIL AND SUDAN'S CIVIL WAR

### 2.1 Overview

The human catastrophe that unfolded in oil concession Block 5A of Sudan between 1997 and 2003 was part of a larger conflict between the country's ruling elite and economically, politically, and socially marginalised groups all over the country. From independence in 1956 until 1972, and again from 1983 to 2005, large parts of the population were at war with the Government, particularly in the south of Sudan.

Prior to the discovery of oil in the region that later became known as Block 5A, the area attracted minimal interest from outsiders. Until the 1980s, violent conflicts in the area were limited to small-scale inter-tribal competition for cattle and grazing land, characterised by *ad hoc* cattle raids during the dry seasons. Block 5A became strategically important to all sides in the war when the members of the Lundin Consortium signed a contract with the Sudanese Government for the exploitation of oil in the block.

#### Foreign investors

In the late 1970s, the American oil company Chevron explored the area in Unity State that later became Block 5A and discovered high potential geological structures west of the White Nile. In 1978, Chevron drilled a dry well at Baang, about 50 kilometres west of the White Nile and an equal distance south of Bentiu. The company shut down all operations shortly after the murder of three Chevron expatriate staff in February 1984.

The northern parts of Unity State, notably Blocks 1, 2, and 4 had been the scene of conflict and forced displacement since the mid-1980s.<sup>17</sup> These blocks were eventually operated by the Greater Nile Petroleum Operating Company (GNPOC), owned by Talisman Energy Inc. of Canada (25%, from 1998 until 2002 when it sold its interest to ONGC Videsh Ltd. of India), China National Petroleum Company (CNPC, 40%), Petronas Nasional Berhad of Malaysia (Petronas, 30%), and Sudan's state-owned Sudapet Limited (5%).<sup>18</sup>

In February 1997, the members of the Lundin Consortium signed an Exploration and Production Sharing Agreement (EPSA) with the Government of Sudan for oil concession Block 5A. The International Petroleum Company (IPC), a wholly-owned subsidiary of Lundin Oil AB, became the operator or lead partner with a 40.4% stake in Block 5A. The other companies in the Consortium were: the Malaysian company Petronas Carigali Overseas Sdn Bhd (28.5% stake), OMV (Sudan) Exploration GmbH, a wholly-owned subsidiary of the Austrian company OMV AG (26.1% stake), and Sudapet Limited, owned by the Sudanese Government (5% stake; fully carried). Block 5A had not attracted much military interest until that time. These areas south of the Bahr el Ghazal river had until then minimal strategic importance and had seen little warfare and displacement. During the mid-1990s, when GNPOC negotiated with the Government to build a pipeline from Heglig to Port Sudan, this gradually changed. The reports of Christian Aid, Médecins Sans Frontières (MSF), and Human Rights Watch (HRW) state that after 1997, when the Lundin Consortium signed its Exploration and Production Sharing Agreement, the oil operations south of the Bahr el Ghazal river became the centre stage of Sudan's civil war.<sup>19</sup>

In April 2005, the Sudanese Government signed an agreement for the development of the Thar Jath and Mala oilfields in Block 5A with White Nile Petroleum Operating Company (WNPOC), operated by Petronas Carigali Overseas Sdn Bhd (68.875%) and partners ONGC Videsh Ltd (24.125%) and Sudapet Ltd. (7%). Production started in June 2006 at the rate of 38,000 barrels per day (b/d). Production in the first half of 2009 officially averaged 20,057 b/d.<sup>20</sup>

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17 Human Rights Watch (HRW), *Sudan, Oil and Human Rights*, 2003, p. 123-147.

18 HRW (2003), p. 2.

19 Christian Aid, "The Scorched Earth: Oil and War in Sudan", March 2001; Médecins Sans Frontières (MSF), "Violence, Health and Access to Aid in Unity State/Western Upper Nile, Sudan", April 2002; HRW (2003).

20 Sudan Ministry of Finance and National Economy, "Petroleum 2009-petroleum 2009", p.1, <http://www.mof.gov.sd/img/e6230.pdf> (accessed May 6, 2010).

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## THE LUNDIN CONSORTIUM MEMBERS IN BLOCK 5A, 1997–2003

**Lundin Petroleum AB** is an independent oil and gas exploration and production company based in Geneva. Created in 2001, following the takeover of Lundin Oil AB by Canadian independent Talisman Energy, Lundin Petroleum AB is traded on the Stockholm Stock Exchange.

- The International Petroleum Corporation (“IPC”), a subsidiary of Lundin Oil AB, first entered Sudan in 1991.
- In June 1997, Adolf H. Lundin obtained 8.2% of Arakis — through his holding in the Swedish company Sands Petroleum AB — which had obtained Chevron's rights in the northern parts of Unity State.<sup>21</sup> One member of the Lundin family later joined the Board of Directors of Arakis Energy. In 1998, the Arakis concession in Blocks 1, 2 and 4 was taken over by the GNPOC consortium.<sup>22</sup>
- From 1997 until 2003 IPC held a 40.375% share in Block 5A in Sudan. In May 1998, IPC was folded into its parent, Lundin Oil AB.
- In June 2003, Lundin Petroleum AB sold this interest to Petronas Carigali Overseas Sdn Bhd Petronas Carigali for US\$142.5 million, while retaining a 24.5% interest in Block 5B. Lundin Petroleum is also the exclusive rights holder to Block 16, which is in an area that is contested by Egypt and Sudan. There is currently no activity in Block 16.
- In 2001, the Board of Directors of Lundin Petroleum AB was made up of Carl Bildt, C. Ashley Heppenstall, Kai Hietarinta, Adolf H. Lundin, Ian H. Lundin, Lukas H. Lundin, William A. Rand and Magnus Unger.<sup>23</sup>
- Lundin Petroleum AB recorded a net profit of US\$141 million in 2007<sup>24</sup> and of US\$60.4 million in 2008.<sup>25</sup>

**OMV (Sudan) Exploration GmbH** is a 100 percent owned subsidiary of Austria's OMV Aktiengesellschaft. Stocks of the parent company OMV are traded on the Vienna, Munich, and Frankfurt stock exchanges. OMV AG is based in Vienna.

- OMV AG is Austria's largest listed industrial company. As the leading oil and gas group in Central Europe, it is active in Refining and Marketing (R&M) in 13 countries. In Exploration and Production (E&P) OMV is active in 21 countries on five continents.
- OMV's 2002 Executive Board Members were: Wolfgang Rutenstorfer, Gerhard Roiss, David C. Davies and Helmut Langanger.<sup>26</sup>
- In May 2004, OMV concluded the sale of its interests in Blocks 5A and 5B in Sudan to ONGC Videsh Ltd of India for EUR 105.6 million and reported an overall net profit of EUR48.37 million (approximately US\$55 million) on its Sudanese adventure.<sup>27</sup> OMV is no longer active in Sudan.
- In 2007, OMV AG made a net operating profit of EUR 1,579 million<sup>28</sup>, in 2008 the net income amounted to EUR1,738 million.<sup>29</sup>

**Petronas Carigali Overseas Sdn Bhd** is wholly-owned by the state oil company of the Government of Malaysia, Petroliam Nasional Berhad.

- Petronas is ranked among the Fortune Global 500's largest corporations in the world.
- In Sudan, Petronas invested in the GNPOC project in Blocks 1, 2, and 4 (30%) in December 1996, and entered Block 5A in 1997 (28.5%).
- Petronas became the largest owner in Block 5A (68.875%) when it bought Lundin Petroleum's stake in June 2003. • In Sudan, Petronas also holds interests in Blocks 3 and 7 (40%), Block 8 (77%), and Block 15 (35%). The company thus plays a leading role in Sudan's oil industry.
- In 2007, the Petronas Group booked a net profit of US\$12.9 billion<sup>30</sup>. Over the fiscal year 2008 it booked RM 35.7 billion (US\$10,6 billion)<sup>31</sup> net profit.

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<sup>21</sup> Petroleum Economist, “Sands buys Arakis stake”, June 30, 1997.

<sup>22</sup> Middle East Economic Digest, “Talisman buys out Arakis”, October 19, 1998.

<sup>23</sup> Lundin Petroleum, “Annual Report 2001”, p. 16-17.

<sup>24</sup> Lundin Petroleum, “Year end report 2007”, February 20, 2008, [http://www.lundin-petroleum.com/Press/pr\\_corp\\_20-02-08\\_e.pdf](http://www.lundin-petroleum.com/Press/pr_corp_20-02-08_e.pdf) (accessed Oct. 30, 2008).

<sup>25</sup> Lundin Petroleum, “Year End report 2008”, February 18, 2009, [http://www.lundin-petroleum.com/Documents/qr\\_4\\_2008\\_e.pdf](http://www.lundin-petroleum.com/Documents/qr_4_2008_e.pdf) (accessed Sept. 28, 2009).

<sup>26</sup> OMV, “OMV on the move in 2002, Annual Report”, p. 9.

<sup>27</sup> Ibid., p.110, footnote 1.

<sup>28</sup> OMV, “Annual Report 2007”, p.54.

<sup>29</sup> OMV, “Report January-December and Q4 2008”, February 25, 2009, p.1.

<sup>30</sup> Petronas Group, “Financial Results Announcement, Year Ended 31 March 2007”, [http://www.petronas.com/internet/corp/centralrep2.nsf/f0d5fd0d9c25fbdd48256ae90025ee04/2b3caac313db597148256be60015256c/\\$FILE/Finacial\\_highlights\\_FY2007.pdf](http://www.petronas.com/internet/corp/centralrep2.nsf/f0d5fd0d9c25fbdd48256ae90025ee04/2b3caac313db597148256be60015256c/$FILE/Finacial_highlights_FY2007.pdf) (accessed Sept. 28, 2009).

<sup>31</sup> Petronas Group, “Financial Results Announcement, Year Ended 31 March 2008”, [http://www.petronas.com/internet/corp/centralrep2.nsf/f0d5fd0d9c25fbdd48256ae90025ee04/2b3caac313db597148256be60015256c/\\$FILE/FY2008%20Results%20Announcement%20-%20Presentation.pdf](http://www.petronas.com/internet/corp/centralrep2.nsf/f0d5fd0d9c25fbdd48256ae90025ee04/2b3caac313db597148256be60015256c/$FILE/FY2008%20Results%20Announcement%20-%20Presentation.pdf) (accessed Sept. 28, 2009).

**Sudapet** (Sudan Petroleum Company Ltd.) was established in 1997. It is a wholly owned company of the Sudan Ministry of Energy & Mining, incorporated under the Sudan Petroleum Resources Laws of the Republic of the Sudan. The company holds minority shares in all Sudan's Blocks, including a 5% share in Block 5A and is fully carried.

- Sudapet does not publicly report financial results.

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## 2.2 Sudan's second civil war

Sudan's second civil war broke out in 1983 after the abolition of the southern autonomous region and the nation-wide introduction of sharia law. Among its causes were concerns by the people in the southern part of the country that their natural resources, notably water and oil, were going to be taken by the north and that they would get nothing in return. The main protagonists were the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) led by Dr. John Garang de Mabior.<sup>32</sup>

From the start of the 1983 rebellion, the Government of Sudan pursued a divide and rule strategy, actively promoting conflict among southern groups. At times this was effective. Internal divisions during the 1990s caused massive bloodshed and famine, weakening southern resistance, destroying what infrastructure existed and giving rise to indigenous warlords. Supplying local forces — Baggara from the north and a variety of anti-SPLM/A groups in the south — was an integral part of the Government's counter-insurgency strategy. The Baggara are cattle owning Arabic-speaking pastoralists of the western Sudan, including the Misseriya and Humr ethnic groups of southern Kordofan and the Rizeigat of southern Darfur. The Government's strategy was aimed at reducing support for the rebel forces by driving populations that were considered to be sympathetic to the rebel movements into Government-held garrison towns, like Bentiu, to the north or further south, away from strategic areas.<sup>33</sup>

### **Destruction and displacement in Blocks 1, 2, and 4**

By 1986, the SPLM/A controlled most of Unity State, except for a few Government garrison towns, several oilfields north of Bentiu, and the Bul Nuer area to the west, which was the territory of Commander Paulino Matiep Nhial, himself a Bul Nuer. The SPLM/A entered into promising peace negotiations with the Government of Sudan in 1988, but these were thwarted by the Islamist-military coup of 1989. The new Islamist Government wished to oust the SPLA from the oil fields in Blocks 1, 2, and 4. It started destroying villages near the oil sites around Heglig and Bentiu, relying largely on irregular Baggara forces and Cmdr. Paulino Matiep's Nuer troops. These attacks marked the start of the Government's campaign of violently depopulating the oil-rich areas of Unity State.<sup>34</sup>

Southern politicians at the time saw a close link between the displacement and oil. Abel Alier, former head of the Southern Regional Government, wrote in his book in 1992: "The role of oil in South-North politics was further developed when Chevron made concerted attempts to support the activities of Southern Kordofan based armed militia [called murahleen] to secure protection of the oilfields in Bentiu Area Council to make exploitation and further prospecting possible. All oilfield areas were practically cleared of civilians in 1985–86; some of [the civilians] returned to the area in 1988 under the protection of the SPLA."<sup>35</sup>

### **Split in the SPLM/A**

In 1991, the SPLM/A split when three of its top leaders and their troops came out against Dr. John Garang's leadership. Two of them were Nuer, Dr. Riek Machar Teny Dhurgon, the SPLA zonal commander of Unity State, and Commander Gordon Kong Chuol of Nasir, Eastern Jikany. The third leader, Commander Lam Akol, was a leading Shilluk politician. The split was perceived as based on ethnic divisions. The faction under Dr. Riek Machar formed a separatist southern rebel movement, known since 1994 as the South Sudan Independence Movement/Army (SSIM/A). According to Human Rights Watch, the clashes between Dr. Riek Machar's forces and the SPLA were frequent, bloody, and unsparing of civilians. His faction was supplied with arms and ammunition by the Government of Sudan from 1991 onwards. From that date until 1999, there were no attacks by his soldiers on Government forces.<sup>36</sup>

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<sup>32</sup> Johnson, Douglas H., *The Root Causes of Sudan's Civil Wars*, Bloomington: Indiana University Press, 2003, p. 59-90.

<sup>33</sup> HRW (2003), p. 154, 191-194.

<sup>34</sup> Johnson (2003), p. 163, and HRW (2003), p. 134-144.

<sup>35</sup> Alier, Abel, *Southern Sudan: Too Many Agreements Dishonored*, 2d ed., Reading: Ithaca Press, 1992, p. 243.

<sup>36</sup> HRW (2003), p. 155-159.



In 1992, eight years after suspending its operations in Sudan, Chevron sold its rights to Blocks 1, 2, and 4 to the Canadian company Arakis Energy Corporation and the Sudanese State Petroleum Corporation. To ensure access to the oil fields in these Blocks, the Government intensified its military offensive in this area, chasing residents off their land, in addition to following a strategy of dividing and buying off southerners in control of strategic territory. By December 1993, the area around Heglig was already mostly deserted.<sup>37</sup>

### **Peace no, Oil yes**

During these years, the war in southern Sudan was waged on a shoestring. Advances into rival territory routinely turned into raiding and pillaging expeditions. Most of the fighting was done between the different southern forces. Little cash was available and soldiers received little or no pay, living partially at the expense of the population. Everything was always in short supply and internal rivalry was endemic. None of the Nuer groups had a sufficient cash basis to procure stocks of ammunition. They could not carry out military operations without external support, making it easy for the Government to bribe certain local forces with weapons, ammunition, and money. The fragmentation of authority among the rebel movements further contributed to volatile affiliations of local commanders and their followers, and the more fighting there was, the more dependent they became of the two available sources of arms supplies: the Government and the SPLA.<sup>38</sup>

In April 1996, Dr. Riek Machar (SSIM/A) formally aligned with the Government of Sudan by signing a Political Charter. The only other commander who signed the Political Charter was Commander Kerubino Kuanyin Bol, a Dinka and former SPLA high commander, who joined Dr. Riek Machar's forces in 1993. The Charter provided for a referendum "to determine the political aspirations of the people of southern Sudan".<sup>39</sup> On April 21, 1997, the Khartoum Peace Agreement was signed by Dr. Riek Machar and the Government of Sudan, which incorporated the Political Charter.<sup>40</sup> The SSIM/A was renamed the South Sudan Defence Forces (SSDF), which integrated the forces controlled by the other southern signatories of the Agreement. The Khartoum Peace Agreement was, however, inherently weak. The SPLM/A was strongly opposed to it and its most essential signatory, the Government of Sudan, never showed any commitment to its implementation.<sup>41</sup>

Availability of ammunition was a decisive military factor in the Sudanese civil war. The SSDF received only scant support from its sponsor, the Government of Sudan, and only when fighting the SPLA. The Government knew very well that the vast majority of the Nuer were fiercely against any northern influence and was distrustful of the political wing associated with the SSDF, the United Democratic Salvation Front (UDSF), which advocated self-determination for the south. According to HRW, Dr. Riek Machar believed that the Khartoum Peace Agreement meant that the SSDF would provide security in the oil regions, pending the referendum on independence.<sup>42</sup> As explained further below, the Government fuelled the animosities between the Nuer militias of Commander Paulino Matiep and Dr. Riek Machar.<sup>43</sup>

The Khartoum Peace Agreement gave the Government of Sudan what it sought most: secure access to the oil fields of Unity State controlled by troops loyal to Dr. Riek Machar.<sup>44</sup> It enabled the Government to present Unity State as a zone of peace under the Government of Sudan control, even though crucial areas were in reality under the authority of a variety of armed groups whose loyalty to the Government of Sudan was tactical at best, and most of whom were staunch advocates of Southern independence. The Khartoum Peace Agreement also allowed the Government access to some of the rural areas of the GNPOC concession north of Block 5A, enabling expansion of the oil development and completion of a pipeline north to Port Sudan.<sup>45</sup>

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<sup>37</sup> HRW (2003), p. 161.

<sup>38</sup> Johnson (2003), p. 94-100, 114-118.

<sup>39</sup> "1996 Political Charter", April 10, 1996. See: <http://www.incore.ulst.ac.uk/services/cds/agreements/pdf/sudan1.pdf> (accessed May 28, 2008).

<sup>40</sup> The 1997 Khartoum Peace Agreement was also called the Sudan Peace Agreement. Besides Dr. Riek Machar, the signatories were Commander Kerubino Kuanyin, defecting from the SPLA Bahr el Gazal Group, Commander Kwac Makuei Mayar (South Sudan Independents Group, Dinka of Aweil), Dr. Thisphohis Ochang Loti (Equatoria Defence Force), Samuel Aru Bol (a southern opposition politician with the Union of Sudan African Parties (USAP) and Arok Thon Arok Kongor (defecting from the SPLA/Bor Group, Dinka from Bor). From: Gabb, Sean, "The Civil War and Peace Process in Sudan: A Brief Account", Sudan Foundation, Peace File no.13, London, 1997, p. 5.

<sup>41</sup> Johnson (2003), p. 123.

<sup>42</sup> HRW (2003), p. 174/175.

<sup>43</sup> Jok, Jok Madut & Sharon Hutchinson, *Sudan's Prolonged Civil War and The Militarization of Nuer and Dinka Ethnicity*, (Loyola Marymount University, Los Angeles, and University of Wisconsin-Madison, 1999), p.8; HRW (2003), p. 172-176.

<sup>44</sup> Johnson (2003), p. 123-124, 163; and HRW (2003), p. 71.

<sup>45</sup> Gagnon, Georgette & John Ryle, "Report of an Investigation into Oil Development, Conflict and Displacement in Western Upper Nile, Sudan", October 2001, p. 20.

Within months after signing the peace deal, the Government of Sudan moved units of the Sudan Armed Forces (SAF) and loyal forces into the oil fields north of Bentiu and sought opportunities to stoke the fires of inter-Nuer rivalry.<sup>46</sup> War would frustrate the main southern achievement within the Khartoum Peace Agreement: a referendum on southern autonomy.

### **Nuer-Nuer infighting**

The SSDF officially included the forces of Cmdr. Paulino Matiep, who had formally joined forces with Dr. Riek Machar in 1991, but had remained eager to extent his influence outside the Bul Nuer territories. Open tensions broke out immediately after the Khartoum Peace Agreement had been signed when Cmdr. Paulino Matiep and Dr. Riek Machar had their own candidates running for governor of Unity State. In December 1997, Dr. Riek Machar's candidate, Taban Deng Gai, won the governorship. The Government seized on this rivalry to stoke the fires of ethnic fighting between the Nuer.<sup>47</sup>

The forces of Paulino Matiep, by then promoted to the rank of Major General of the Sudanese Armed Forces, represented a useful counterweight for the Government to keep Dr. Riek Machar's forces (SSDF) from controlling the oilfields. They had proved their worth in the campaigns in their own home territory and against the Dinka in Blocks 1 and 4. They had developed into loyal auxiliary forces, being dependent on the Government for arms and funding and on forced recruitment to fill the ranks, including of minors. They could now be trusted to serve the Government in its ambition to take control over the territories of the Leek, the Jikany and the Jagei Nuer. The Government and the oil companies presented the war as a manifestation of traditional inter-tribal strife, despite the fact that it was fought with the help of gunship helicopters, artillery, tanks, high altitude bombers and armed personal carriers.<sup>48</sup>

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<sup>46</sup> Jok & Hutchinson (1999), p. 8-9.

<sup>47</sup> Johnson (2003), p. 123-124.

<sup>48</sup> "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", from: Batruch, Christine, *Oil and Conflict: Lundin Petroleum's Experience in Sudan*, in Baines, A. J. K. & I. Frommelt, (eds), Stockholm International Peace Research Institute (SIPRI), *Business and Security: Public-Private Sector Relationships in a New Security Environment*, 2004, Oxford University, p. 4. See also: Lundin, "Lundin Oil in Sudan", May 2001, p. 3: "During the construction period [1999-2001], a number of security incidents took place, however, they were mainly caused by inter-factional and rebel fighting", and HRW (2003), p. 192.

## **“WE CANNOT GO BACK, A COMPANY IS THERE”**

“My name is Mary Chabak. I am from Unity State in Western Upper Nile, from Koch County, a place called Thar Jath. It is the sixth year since the displacement. My place was a big community of 28 families. Everyone was displaced. We still live in the new place, Guk.

I married in 1987. I have a big family, my husband has a first wife with seven children and I have five children. We live together with the grandmother of my husband.

Before we left, people came to talk to us and told us we had to leave Thar Jath because it is a dangerous place. Our people were quarrelling, saying that we don't want to go. But they told us if we don't go you can die and all your cows can die. We can give you another place, they said. Then the commissioner [local Government authority] came and talked to us and we believed him and we left the place. We went to the place the commissioner showed us. Walking, it took us three hours.

This place, it is not good for us. It is called Guk. It is full of water. It is very muddy when the rain comes. It is not good for people to stay here. There are a lot of mosquitoes. More than two hundred people were moved to this place.

My family lost two *luaks* and three *tukhuls*. We lost fifty cows during the move, some of them died and some of them were lost on the journey. Even now my chest sometimes still pains me from carrying all those things, some things on my head, on my back and in my hands.

We lost many things, we had planted trees and the seeds for crops; all of them we lost.

We had planted mango, neem, guava and bananas even lemon trees were being grown for selling. If the market is good you can get up to 300 Sudanese pounds for a day. But now the family is not growing crops. In the new place there is no way to plant because of the water. There is no market nearby and there is no road.

In Thar Jath we caught fish. You can get 20 Sudanese pounds for one or 10 Sudanese pounds for a smaller one. I don't know how much we got altogether. But everyday we sold fish. We also sold milk. In a year we could get 2,000 Sudanese pounds.

There is no money in the new place. We are cutting grass and taking it to the market and we are selling it, but it is not much. Sometimes people are not buying and we come back with it. It is only 5 pounds for a bundle. When we were in Thar Jath it was good for us because everything we need is there. But the new place cannot feed us, there is too little.

Before we moved we were very happy because in our place, we had everything. We used to be able to go with our money and buy medicine for our children if they were sick. Now we don't have a hospital near to us.

Now we cannot go back, a company is there, they have taken our place. And in fact we don't want to go back to Thar Jath because it is full of the buildings of the company and the water is said to be bad. In the last two years we have lost 206 cows. We have to take them far for grazing because there is too much water and mosquitoes in Guk.

I passed by this month. I went there by foot together with my co-wife, through a lot of water. I saw only the company buildings. There are soldiers, security men there from both the south and north.

I don't know of anybody who has asked for compensation. I know I have the right for compensation but there is no way. We know only it is to be done with the commissioner and state governor. Maybe one day there will be something to come to us.”

Interview by Skye Wheeler, Sudan-based journalist  
Juba, August 23, 2008

### 3. WAR IN BLOCK 5A

#### The Lundin Consortium invests in Block 5A

When the Lundin Consortium signed an Exploration and Production Sharing Agreement for Block 5A with the Government of Sudan in February 1997, it invested in an area on the frontline of Africa's oldest and deadliest civil war. Block 5A had been relatively peaceful until then while it had been widely reported that oil exploration activities had triggered violent conflict in neighbouring blocks. The Government had already armed militias of the Baggara to drive southerners, especially Nuer and Dinka ethnic groups, off their land in the 1980s, thus steadily clearing Blocks 1, 2, and 4 for oil development. The Lundin Consortium expressed confidence in the Khartoum Peace Agreement<sup>49</sup>, signed by the Government of Sudan and Dr. Riek Machar in March 1997, despite the fact that outside the small group of signatories there were very few Sudanese who believed that it would be implemented.<sup>50</sup>

As a report from MSF – who were present in the area from 1988 onwards – shows, Block 5A became the scene of intense fighting and gross human rights violations as soon as the Lundin Consortium started oil exploration activities on the ground.<sup>51</sup> The Government of Sudan pursued a military campaign to access and secure the oilfields by violently depopulating the area, as it had done in its campaign in Block 1, 2, and 4 in the early 1990s. By 1999, the Khartoum Peace Agreement had broken down, mainly because the Government of Sudan had failed to implement it.

In Block 5A, the Lundin Consortium's activities were centred on a location of the Jagei Nuer people called Ryer, which is in the *toic* (seasonally flooded grasslands), ten miles west of the Nile and some distance east of Duar. The Consortium renamed the site Thar Jath and set up its operational headquarters on the Nile nearby, where it also based a seismic operation. In May 1999 the Consortium completed the drilling of its first well.<sup>52</sup> In the same month, its Thar Jath installation was attacked by the South Sudan Defence Forces (SSDF) under the leadership of the prominent Nuer politician Dr. Riek Machar. Operations were suspended for eighteen months.<sup>53</sup>

The oil war that was sparked by the commencement of oil exploration in Block 5A comprised three distinct rounds of fighting:

- 1997–1999: two Government-allied forces against each other; the Southern Sudan Independence Army<sup>54</sup> (SSIM, Dr. Riek Machar with zonal Commander Tito Biel Chuol) against the SSUM<sup>55</sup> (Major General Paulino Matiep with zonal Cmdr. Peter Gatdet Yaka).
- 2000–2001: the Government-supported Sudan People's Democratic Front (SPDF, Dr. Machar, with zonal Cmdr. Peter Paar Jiek) and the SSUM of Paulino Matiep against SPLA-aligned forces (under Cmdr. Peter Gatdet).
- 2002–2003: SPDF and SPLA together against the Government of Sudan and SSUM.

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#### TIMELINE OF EVENTS IN BLOCK 5A, 1997–2003

This summary describes the main military events in Block 5A between 1997 and 2003 only. A full description of all events would fill a bookcase given the complexity of shifts in alliances at different times between various players. This timeline outlines the overall picture.

#### 1997–1999: Commencement of oil exploration by the Lundin Consortium sparks war in Block 5A

In February 1997, two months before the signing of the Khartoum Peace Agreement, Lundin Petroleum obtained its contract to explore for and produce oil and gas in concession Block 5A. Lundin later brought in OMV (July 1997), Petronas and Sudapet. Seismic acquisition commenced in early 1998. Peace soon collapsed, as the Government of Sudan sent in its proxy Major General (Maj. Gen.) Paulino Matiep, supported by regular Government troops and the air force, to keep Dr. Riek Machar's SSDF

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<sup>49</sup> ECOS interview with Christine Batruch, Vice President Corporate Responsibility Lundin Oil AB, Autumn 2000.

<sup>50</sup> Johnson, Douglas H., Expert Report, July 26, 2005, US District Court for the Southern District of New York, File 01 CV 9882 (DLC), p. 6.

<sup>51</sup> MSF (April 2002), p. 9.

<sup>52</sup> Elsevier Engineering Information, "Lundin Oil: Thar Jath first exploration well in Sudan establishes a significant new oil discovery", May 20, 1999.

<sup>53</sup> HRW (2003), p. 581.

<sup>54</sup> SSIM renamed South Sudan Defence Force (SSDF) in 1997 and eventually Sudan People's Democratic Front (SPDF).

<sup>55</sup> South Sudan Unity Movement.

from controlling the oilfields. In May 1999, the Lundin Consortium suspended its operations after an attack on its oil installations by the SSDF.<sup>56</sup>

### **Main opposing parties**

The Government of Sudan, under President and Commander in Chief of the Sudan Armed Forces (SAF) Lt. Gen. Omar Hassan Ahmed al-Bashir, it's allied forces under Maj. Gen. Paulino Matiep (SSUM/A) and his zonal Cmdr. Peter Gatdet Yaka versus Dr. Riek Machar (SSDF) and zonal Cmdr. Tito Biel Chuol (officially Government-allied).

### **Chronology of Events**

February 6, 1997: Lundin Oil (IPC) and Government of the Sudan sign Block 5A Exploration and Production-sharing Agreement.

April 21, 1997: Khartoum Peace Agreement, signed by the Government of Sudan and the South Sudan Independence Movement/Army (SSIM/A), renamed South Sudan Defence Forces (SSDF), led by Dr. Riek Machar, and five other Southern groups.

April 9, 1999: The Lundin Consortium drills first exploratory well at Thar Jath (Ryer).

May 2, 1999: SSDF (Tito Biel) withdraws after attacking the drilling site at Thar Jath. The Lundin Consortium suspends oil operations for 18 months until December 2000.<sup>57</sup>

May 20, 1999: The Lundin Consortium announces "a significant new oil discovery" in the Tar Jath oil field, claiming it to be "on trend with oil fields in Blocks 1 and 2 which contain an estimated 500 to 800 million barrels of reserves currently being developed by the Greater Nile Petroleum Operating Company". Work on the well is "currently being temporarily suspended in preparation for production testing."<sup>58</sup>

September 1999: Cmdr. Peter Gatdet turns against Maj. Gen. Paulino Matiep and the Government and forms the Upper Nile Military Command Council (UMCC) with Cmdr. Tito Biel. Cmdr. Peter Gatdet joins the SPLM/A.

### **2000–2001: Oil is discovered amidst intense violence**

The Consortium's all-weather road from Bentiu to Ryer/Thar Jath is constructed between September and December 2000, while the Consortium has officially suspended operations.<sup>59</sup> After completing the pipeline from the Heglig field in Block 1 to the Red Sea in July 1999, oil revenues start flowing into the Government of Sudan's coffers from production in Blocks 1, 2, and 4. These revenues allow the Government to step up its offensives in Block 5A, using newly purchased large-calibre artillery, helicopter gunships, and armoured combat vehicles.<sup>60</sup> The Lundin Consortium resumes its activities in December 2000.

### **Main opposing parties**

The Government of Sudan + Maj. Gen. Paulino Matiep, supplying Dr. Riek Machar and Cmdr. Peter Paar Jiek (SPDF) versus Cmdr. Peter Gatdet (SPLA).

### **Chronology of Events**

January 31, 2000: Dr. Riek Machar resigns from the Government and creates the Sudan People's Defence Forces/ Democratic Front (SPDF) led by Cmdr. Peter Paar Jiek.

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<sup>56</sup> HRW (2003), p. 581.

<sup>57</sup> Ibid., and Lundin Oil (2001), p.3.

<sup>58</sup> Lundin Oil, "Thar Jath First Exploration Well in Sudan establishes a significant new oil discovery", May 20, 1999.

<sup>59</sup> Lundin Oil (2001), p.3.

<sup>60</sup> HRW (2003), p. 343-344, 353.

February 2000: Construction of the all-weather road from Bentiu to Ryer/Thar Jath in Block 5A starts; the Consortium's other activities continue to be suspended. Cmdr. Peter Gatdet and Dr. Riek Machar (and Cmdr. Peter Paar Jiek) join forces to stop construction of the new oil road.<sup>61</sup>

April 2000: Major Government of Sudan offensive to protect road construction.

May 2000: Road construction is suspended "at the advent of the rainy season in May."<sup>62</sup>

June 2000: Dr. Riek Machar's forces (SPDF, with Cmdr. Peter Paar Jiek) brought over to the Government of Sudan side again. Heavy fighting with SPLA (Cmdr. Peter Gatdet).

September 2000: Road construction is resumed.<sup>63</sup>

December 2000: The Lundin Consortium resumes activities.

January 2001: All-weather road to Thar Jath completed. Drilling starts.

March 5, 2001: The Lundin Consortium announces a major oil strike at Thar Jath. The field reportedly contains recoverable reserves of 149.1 million barrels of oil.<sup>64</sup>

August 2001: Cease fire agreement between Cmdr. Peter Paar (SPDF) and Cmdr. Peter Gatdet (SPLA), followed by reunification of Dr. Riek Machar (SPDF) and Dr. John Garang (SPLM/A) in January 2002. The Lundin Consortium installations are vulnerable to attacks.<sup>65</sup>

### **2002–2003: A Military Solution**

The SPLA and SPDF declare oil operations a legitimate military target. In response, the Government of Sudan launches a final major offensive to control Block 5A and secure the oil industry. The Lundin Consortium is forced to bow out again, this time for a period of 14 months after an attack on its installations in January 2002.<sup>66</sup> In March 2003, the Consortium announced that it would work towards the recommencement of activities in Block 5A.<sup>67</sup> Shortly thereafter Lundin and OMV sold their rights in Block 5A.

### **Main opposing parties**

Government of Sudan + Maj. Gen. Paulino Matiep

Versus

Dr. John Garang and Cmdr. Peter Gatdet (SPLA) + Dr. Riek Machar and Cmdr. Peter Paar (SPDF)

### **Chronology of Events**

January 2002: The Lundin Consortium helicopter shot down. Operations again suspended for 14 months.

Government of Sudan launches final assault to clear the oil areas of civilians.<sup>68</sup>

March 2003: The Lundin Consortium decides to work towards the recommencement of activities in Block 5A.

April 2003: Lundin Petroleum announces the sale of its share in Block 5A to Petronas Caligari (Malaysia). The deal will be finalized in June 2003.

September 2003: OMV announces the sale of its share in Block 5A to ONGC Videsh Ltd (India), to be concluded in May 2004.

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<sup>61</sup> Ibid., p. 251.

<sup>62</sup> Ibid., p. 343-344, 353.

<sup>63</sup> Ibid.

<sup>64</sup> Lundin Petroleum, "Report for the period ended 31 December 2001", February 15, 2002, p.2

<sup>65</sup> HRW (2003), p. 389, 413.

<sup>66</sup> Lundin Petroleum, "Lundin Petroleum AB Annual Report 2002", press release, p. 18; HRW (2003), p.582;

<sup>67</sup> Lundin Petroleum, "Update on activities in Block 5A, Sudan", press release, March 27, 2003.

<sup>68</sup> HRW (2003), p. 393. The heavy attacks are also documented by MSF (2002), p. 29.

September 2003: Naivasha Agreement on Security Arrangements, signed by the Government of Sudan and the SPLM/A. The Comprehensive Peace Agreement (CPA) between the Government of the Sudan and the SPLM/A was signed on 9 January 2005.

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### 3.1 The commencement of oil exploitation by the Lundin Consortium sparks war in Block 5A: 1997–1999

The second Sudanese civil war, which had raged since 1983, had spared Block 5A by and large. Until 1998, no large scale war-related civilian displacements had taken place. Compared with the available 1987 satellite image, the amount of land under cultivation in the Block 5A area in 1998 had increased, probably because of the relative peace that governed the area at that time.<sup>69</sup> This changed when the Lundin Consortium shipped its first equipment into the area (January–February 1998) and Government-allied forces started moving thousands of civilians away from the Consortium's vicinity.<sup>70</sup>

#### The Government's security arrangements

Documents filed in the US District Court for the Southern District of New York, as part of the proceedings of the Presbyterian Church of Sudan, et. al., vs. Talisman Energy, Inc. and the Republic of Sudan<sup>71</sup>, confirm numerous reports<sup>72</sup> that the Government's prevailing security concept was one of forced removal of the population far away from the areas of oil operations and the connecting roads. A transcript of a radio transmission (see below), part of the US Court documents reviewed by ECOS, shows that, in violation of the Khartoum Peace Agreement<sup>73</sup>, as far back as November 1997, the military leadership in Khartoum instructed the Army in Unity State to take control of all oil infrastructures, to dislodge the armed forces loyal to Dr. Riek Machar, and to move the rural population to Government-controlled garrison towns.<sup>74</sup> An internal Talisman report from July 1999 filed in the US court, stated "The military strategy, driven it appears by the GNPOC security management, is to create a buffer zone, (...) inside which no local settlement or commerce is allowed."<sup>75</sup>

**"Your RT [Radio Transmission] secret 179 and 185 dated 15/11/1997. Communication with the Republic Headquarters regarding the content of your RT above-mentioned. Guarding the oil is the sole responsibility of the People Armed Forces. Work for evacuation of all the other forces from the routes leading to oil exploitation and roads. Also relocate all civilians to inside towns."**

Radio transmission from the Khartoum Commander (Sudan Intelligence) to Bentiu Forces Command and El-Obeid Operation Command, Secret, SI/4/2345, November 1997.<sup>76</sup> [Bold added]

There is no suggestion that the members of the Consortium had access to the information contained in the Talisman documents at the time they were written but they offer a valuable insight into the events on the ground in Sudan at the time.

In another document filed in the US court, Talisman writes "The security programme in the field operations is controlled by a specially convened Security Council, headed by the Ministry of Mines and Energy. The council has control of the military, the national security agency (intelligence) and the petroleum security agency that has been formed specifically for the protection of the petroleum industry in Sudan."<sup>77</sup> The same source reads "The Security Council is headed by the Minister of Energy and

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<sup>69</sup> See Annex 5.

<sup>70</sup> HRW (2003), p. 188-209. MSF reported that the war in Western Upper Nile "has escalated since 1997", MSF (2002), p. 12, 13-16.

<sup>71</sup> In October 2009, the U.S. Court of Appeals in New York affirmed a lower court's 2006 dismissal of the tort case against Calgary, Alberta-based Talisman. "Plaintiffs have not established Talisman's purposeful complicity in human rights abuses," the appeals court said in a 68-page opinion. This judgment has been challenged by the petitioners with the argument that the mental element for aiding and abetting liability under both federal common law tort principles and under international law is knowledge rather than purpose. For a full text of the April 15th, 2010 Petition for Writ of Certiorari, see: <http://www.reports-and-materials.org/Cert-petition-Talisman-case-15-Apr-2010.pdf>.

<sup>72</sup> HRW (2003), p. 50; Coalition on International Justice, "Soil and Oil: Dirty Business in Sudan", February 2006, p. 5, 8-9, 24; Civilian Protection Monitoring Team, "Report of Investigation: Violence Against Civilians Along the Bentiu-Leer-Adok Road", August 11, 2003, available at: <http://www.ecosonline.org/>.

<sup>73</sup> Khartoum Peace Agreement, April 21, 1997, Chapter 6, art. 1. See: <http://www.simonrgd.com/THE%20SUDAN.htm> (accessed Oct. 1, 2009).

<sup>74</sup> Presbyterian Church of Sudan, et. al., vs. Talisman Energy, Inc., and the Republic of Sudan. US District Court for the Southern District of New York, File 01 CV 9882 (AGS), Classified "Secret, SI/4/2345", November 21, 1997. Document no. P12387.

<sup>75</sup> Talisman Energy Sudan, "Post Visit Report", by Mark Dingley, appendix of a fax sent to Dave Clement on July 21, 1999. US District Court for the Southern District of New York, File 01 CV 9882. TE0398636.

<sup>76</sup> Presbyterian Church of Sudan, et. al., vs. Talisman Energy, Inc., and the Republic of Sudan. US District Court for the Southern District of New York, File 01 CV 9882 (AGS), Classified "Secret, SI/4/2345", November 21, 1997. P12387.

<sup>77</sup> Talisman Energy Inc, Fax cover letter, from Mark Dingley to Dave Clement, July 21, 1999. US District Court for the Southern District of New York, File 01 CV

includes Ministers of Defence and Finance and the security manager of GNPOC.”<sup>78</sup> Another confidential document filed in the US court explains that Petroleum Security was “formed in 1996” and its “Members are drawn from military/national security/intelligence/ police.”<sup>79</sup> The same document states that Petroleum Security together with the “Military” provided “the following Services to GNPOC: Access control to the concession area (checkpoints on roads); Defensive barrier against insurgents.”

Two divisions of regular Sudan Armed Forces (SAF), the 10th and the 15th, guarded the oilfields in Unity State. They were supported by Islamist militia (the People’s Defence Forces and other mujahedeen units, commanded by army officers) and by irregular murahleen units drawn from Baggara tribes north of the Bahr el Ghazal river.<sup>80</sup> According to a document filed in the US proceedings, among others, their task was “Guarding of oilfield installations (for example 80 to 100 military personnel at each rig site).”<sup>81</sup> Other forces on the ground were the Nuer units under the command of Maj. Gen. Paulino Matiep, a Bul Nuer from an area to the north-west of Block 5A. His troops acted as auxiliary forces to the Government. According to HRW, they operated out of Bentiu and were tasked to challenge UDSF/SSDF’s control over the oil-rich areas.<sup>82</sup>

Government-allied militias should not be considered distinct from or independent of the Sudan Armed Forces. Militias were initially tribal formations, operating in or around related communities. The distinction between the militias and Government paramilitaries (murahleen) was vague. As a rough rule, the murahleen were irregular formations integrated into the military chain of command and had often no relation to tribal structures. According to Small Arms Survey, both the militias and the murahleen were protected from prosecution by the Government.<sup>83</sup> ECOS believes that Maj. Gen. Paulino Matiep’s Bul Nuer forces were essentially auxiliary forces of the Sudan Armed Forces (SAF) as their senior commanders were officers in the SAF, they received orders from the SAF central command, they were financed and armed by the Government of Sudan, and they operated in conjunction with the SAF.<sup>84</sup> In addition, they conducted military operations together with the SAF far outside their places of origin.

### **The Lundin Consortium’s security arrangements**

There is very little information in the public domain about the Consortium’s security arrangements in the early stages of its operations in Block 5A. In 2004, a Lundin representative wrote that on its first visit to the concession area, Lundin met with “key representatives of the local communities.”<sup>85</sup> 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.”<sup>86</sup> These politicians had recently aligned themselves with the Government through the Khartoum Peace Agreement. However, the Agreement proved to be an instrument of temporary convenience only, which was not designed to end the war, but would open up Sudan’s oil fields to exploitation. As explained in greater detail in paragraph 6.3, the Khartoum Peace Agreement was a tactical move within the larger picture of an on-going civil war, rather than a genuine peace agreement, and, as Douglas Johnson, who is an academic who specializes in Sudan, summarised, “oil and the Khartoum Peace Agreement were entwined from the outset.”<sup>87</sup>

Taban Deng Gai of the United Democratic Salvation Front (UDSF) was aligned with Dr. Riek Machar’s South Sudan Defence Forces (SSDF), who, since 1986, had controlled everything south of the Government garrison town of Bentiu, including the towns of Duar, Koch and Ler. Human Rights Watch reported that a security expert, working for the Consortium during that period, claimed that Dr. Riek Machar guarded the Consortium’s operations in Block 5A from 1997 up to 1999.<sup>88</sup> He could rely on about

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9882. TE0398633.

78 Talisman Energy Sudan, “Post Visit Report”, by Mark Dingley, appendix of a fax sent to Dave Clement on July 21, 1999. Public Files Department, US District Court for the Southern District of New York. TE0398635.

79 Presbyterian Church of Sudan, et. al., vs. Talisman Energy, Inc., and the Republic of Sudan, “Opening brief for Plaintiffs – Appellants”, February 26, 2007, p. 24; “STRICTLY CONFIDENTIAL, Security Arrangements – Sudan operations”, File 01 CV 9882 (AGS), Public Files Department, US District Court for the Southern District of New York. TE 0250244.

80 Christian Aid (2001), p. 23.

81 “STRICTLY CONFIDENTIAL, Security Arrangements – Sudan operations”, US District Court for the Southern District of New York, File 01 CV 9882 (AGS). TE0250245.

82 HRW (2003), p. 190-200.

83 Salmon, Jago, “A Paramilitary Revolution: The Popular Defence Forces”, HSBA/ Small Arms Survey, Geneva, December 2007, p. 13.

84 “Subject: Guarding the Oil Companies”, Communication from Col. Ibrahim Shams El Din, State Minister of National Defence, to General Paulino Matiep, 30/A/8/615, July 27, 1998, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), P12397.

85 Batruch (2004), p. 4.

86 Batruch (2004), p. 4.

87 Johnson, Expert Report (2005), p. 8.

88 HRW (2003), p. 242-243.



9,000 troops in this area of Unity State.<sup>89</sup> However, they formed no coherent unified army. Also, he was a strong proponent of Southern independence, which was likely to cause him to fall out with the Government sooner or later.<sup>90</sup> The Consortium appeared to be relying on his protection, blind to the political realities. ECOS believes that it had always been doubtful that the Government of Sudan would leave a separatist Southern politician like Dr. Riek Machar in control of a vital economic resource. Meanwhile, the bigger part of Southern Sudan was under the control of the SPLA that opposed the Khartoum Peace Agreement and rejected the Government's right to exploit the southern oil fields.<sup>91</sup>

Security Levels	
<i>Security Organisation</i>	<i>Primary Responsibility</i>
Government of Sudan Military	Provide general support to GNPOC oilfield security operations
Government of Sudan Petroleum Security	Coordinate overall security for all GNPOC areas of operation
Government of Sudan National Security	Responsible for internal security throughout the country
GNPOC Security Department	Liaison between GNPOC operations and other security agencies (Unarmed)
Talisman Security Personnel	Security advisors to Talisman (Unarmed)

Description of Talisman's security structure in 2000.<sup>92</sup> ECOS understands that Lundin Consortium's security arrangements would have been similar to this structure.

The Consortium had its own expat security consultants. According to HRW, some of its guards were selected by the Government of Sudan and Unity State police units.<sup>93</sup> The same source claims that the Consortium's security team included personnel that was assigned to the Consortium by the Government.<sup>94</sup> It is not clear to ECOS whether the Consortium was in a position to freely recruit staff or whether it had no other choice than to accept Government's proposals for Sudanese nationals in its security team.

Richard Ramsey, an expat security consultant for the Lundin Consortium, reported that the army guaranteed the Consortium's security along the road, and the militias were in charge of security in the whole concession area. According to the Swedish journalist Anna Koblanck, Mr. Ramsey complained that the Consortium did not have any control over how the army and the militias conducted their operations.<sup>95</sup>

### **Destruction and displacement in Block 5A begins**

Before 1997, Commander Paulino Matiep had already been promoted to the rank of Major General in the Sudanese Armed Forces (SAF). In March 1998, his forces were renamed South Sudan Unity Movement/Army (SSUM/A), based in Mankien. That same year, the Government provided them with 2,000 AK47 assault rifles and nine 12.7mm machine guns. HRW reported that in 1998, Paulino Matiep received another 3,000 AK47s, along with 60 machine guns and ammunition.<sup>96</sup> The Government also assisted Paulino Matiep in recruiting soldiers from the Bul Nuer. Training centres were opened in Nhialdiu and Koch. Forced recruitment was systematically used as was the use of child soldiers.<sup>97</sup> HRW reported that by 1999, Paulino Matiep commanded an estimated 10,000 troops.<sup>98</sup>

As documented by Human Rights Watch, in February 1998, Maj. Gen. Paulino Matiep's Bul Nuer forces first moved into the Dok Nuer territories in Block 5A, coinciding with the start of the Consortium's operations.<sup>99</sup> The region had never before seen significant military operations. ECOS believes that this unprecedented campaign by Government auxiliary forces against the

<sup>89</sup> Ibid., p. 195.

<sup>90</sup> Johnson (2003), p. 121-126.

<sup>91</sup> Johnson, Expert Report (2005), p. 7.

<sup>92</sup> Talisman Energy, "2000 Corporate Social Responsibility report", p. 14.

<sup>93</sup> HRW (2003), p. 190, 262.

<sup>94</sup> Ibid., p. 198.

<sup>95</sup> Ramsey, R., Lundin security officer, quoted in A. Koblanck, "Lundin Oil's road. Dagens Nyheter in Sudan: On flight from the war over oil, the road is bordered with misery and military," Dagens Nyheter, April 28, 2001.

<sup>96</sup> HRW (2003), p. 180, note 259.

<sup>97</sup> De Guzman & Wesselink (2002), p. 14.

<sup>98</sup> HRW (2003), p. 180.

<sup>99</sup> HRW (2003), p. 192. Also MSF reported that "the relative stability of the area ended in early 1998", MSF (2002), p. 10.

troops of an official ally of the Government cannot be explained as an inter-tribal affair, but was the first step in the Government's strategy to attain direct military control over the oil area. Short on ammunition and eager to save the peace deal, the SSDF forces loyal to Dr. Riek Machar offered little resistance. Although the Bul and Dok Nuer held no historic grievances against each other and had never engaged in larger confrontations than seasonal cattle rustling, an orgy of raiding and looting followed.<sup>100</sup> According to HRW, Maj. Gen. Paulino Matiep's troops moved straight to the Consortium's intended drilling site at Ryer/Thar Jath and ordered the chiefs in the area to leave with their people or be killed. All inhabitants left the Ryer/Thar Jath area and Maj. Gen. Matiep's men tore down or burnt most *tukhuls*.<sup>101</sup>

According to HRW, as early as April 1998, the Sudan Armed Forces (SAF) were actively participating in the campaign, when a regular infantry unit moved from Bentiu to Dr. Riek Machar's home town Ler. Local forces loyal to Riek Machar did not attack the SAF, even though the move constituted a clear violation of the Khartoum Peace Agreement, under which the Government army's movement was theoretically restricted and coordinated by a joint military technical team from the Government and the SSDF. As documented by HRW, in Ler the army unit built an airstrip and garrison. It sheltered and supplied Maj. Gen. Paulino Matiep's troops when they attacked and captured Ler three times, in June, July and August 1998, causing considerable damage to the infrastructure, but with few casualties as the civilians had fled in advance of the troops. After each attack, Maj. Gen. Paulino Matiep's forces would withdraw after a few days of looting and torching. Koch, another Jagei Nuer area, was also attacked three times in 1998. Its churches were burnt down and in the surrounding villages an estimated fifty small chapels, both Catholic and Presbyterian, four clinics, five schools, and six local Government posts were destroyed.<sup>102</sup>

Under this [divide and rule] tactic, the Government created southern militias and armed them to fight the SPLA and other rebel groups. The Government also tried to displace civilians and capitalize on traditional minor clashes between Nuer and Dinka which would sometimes occur during dry season cattle migrations. The Government would then arm one group or another and would encourage fighting.

Testimony by Reverend Matthew Mathiang Deang, member of the Parliamentary Assembly of Southern Sudan, 2006.<sup>103</sup>

During the following months, several of the larger villages and towns were burnt down and looted. Most of the violence was directed towards the population rather than to UDSF/SSDF forces. Tens of thousands of people in Block 5A were driven out of the areas of oil exploitation. People fled *en masse* deep into the *toic*<sup>104</sup> to wait until the fighting abated. In that extremely unhealthy environment many died from malaria and malnutrition.<sup>105</sup> Later in 1998, at the beginning of the dry season, most forcibly displaced people were, however, able to return home.<sup>106</sup>

"General Paulino Matip Nhial, launched a total and decisive attack as of the date of today 21/6/1998, burnt and destroyed all the two provinces of Ler and Rubkoni with exception of Bentiu town. (...) The impact of the destruction in Ler was great as all the villages were burnt from Dhorlek, Dhorbiel, Jaguar, Tut-Nyang, Kuer-Ryer, Giel and other villages. The result of the destruction affected 150,000 persons now in need of food shelter and medication urgently."

Letter on the security situation in Unity State, Governor of Unity State Mr. Taban Deng Gai to Dr. Riek Machar Teny, July 1998.<sup>107</sup>

In July 1998, the United Nations Operation Lifeline Sudan (OLS) reported that Unity State was experiencing pre-famine conditions as a result of military activity in the area. OLS, a consortium of UNICEF, World Food Programme (WFP) and more than 35 NGOs, was established in April 1989. Operating in southern Sudan after a devastating famine — the result of drought and civil war — OLS negotiated with the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) to deliver humanitarian assistance to all civilians in need, regardless of their location.

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<sup>100</sup> HRW (2003), p. 192

<sup>101</sup> Ibid., p. 191.

<sup>102</sup> Ibid., p. 194.

<sup>103</sup> Declaration of Rev. Matthew Mathiang Deang, May 9, 2006, US District Court for the Southern District of New York, File 01 CV 9882.

<sup>104</sup> Toic are the seasonally river-flooded grasslands of southern Sudan, used for pasture in the dry season.

<sup>105</sup> HRW (2003), p. 190-204.

<sup>106</sup> Ibid., p. 183.

<sup>107</sup> Letter on the security situation in Unity State, April 1998, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), July 4, 1998. P12394-P12396.

More OLS staff had to be evacuated due to the fighting in Unity State than anywhere else in southern Sudan during 1998. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) classified the area as one of two areas of acute emergency in the whole of Sudan. By late 1997, the UN had projected that approximately 250,000 people in Unity State were at risk of starvation in 1998.<sup>108</sup>

On July 10, 1998, the WFP made a special appeal to the "international community to take urgent measures and do everything it can to persuade all the combatants to put down their weapons and end this senseless suffering" in Unity State. It said the fighting was preventing delivery of badly-needed food to thousands of people. In many areas fighting was so frequent that the WFP could not even gain access to assess how many people might be in need of food.<sup>109</sup> The scale and nature of the violence was unheard of in the area and ECOS believes that it can only be explained by the strategic importance of the start of oil operations.

In 1998, the SPLA declared that it considered oil installations potential and legitimate military targets and that it would not hesitate to attack them. It then attacked the GNPOC pipeline in Atbara, followed by a second attack near Erkowit.<sup>110</sup>

### **Lundin Consortium finds first oil**

Human Rights Watch reported that in February 1999, Dr. Riek Machar met with Sudan's Minister of Defence, who insisted that the Sudan Armed Forces had to guard the oilfields, including Block 5A, from any threat. Dr. Riek Machar disagreed, insisting that his forces had guarded the Lundin Consortium since 1997 and should continue to do so.<sup>111</sup> On April 9, 1999, the Consortium announced its first exploratory well in Block 5A at Ryer/Thar Jath. On May 20, it announced the discovery of a substantial oil deposit.<sup>112</sup>

"Yes, it is a major find. We have not had time to make the tests yet. But it seems to be the largest find made in the area up to now. We estimate it to be about 300 million barrels of oil. (...) Because the rainy season now starts we have been forced to move all equipment from the area. (...) But if everything goes as we have planned, we are probably going to be there at the 3rd quarter of 2001. (...) I think that Libya and Sudan alone will make Lundin Oil one of the world's 20th biggest oil companies. And that is absolutely no overestimation."

Adolf Lundin, Chairman of Lundin Oil AB, May 1999.<sup>113</sup>

The discovery of major oil reserves added a sense of urgency to the Government of Sudan's objective to take control of Block 5A. As reported by HRW, the Sudanese Ministry of Defence representatives again met with Dr. Riek Machar and told him the Government army would protect all the oil areas in Unity State. There was no agreement, however. SSDF Commander Elijah Hon described the discussion: "We said the oil workers can go there [Block 5A], but not the Government of Sudan. The Government of Sudan refused this. We said the presence of two armies would involve problems. They said that the Government army should be free to go anywhere in Bentiu [Unity State]. This is in violation of the Khartoum Peace Agreement, which requires our consultation and approval."<sup>114</sup>

After the UDSF/SSDF, headed by Dr. Riek Machar, refused the Government of Sudan's request to position troops south of Bentiu, Maj. Gen. Paulino Matiep ordered the USDF Governor of Unity State, Taban Deng, to leave Bentiu, expressing the

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<sup>108</sup> Ibid., p. 208, footnote 348.

<sup>109</sup> World Food Program (WFP), "WFP Executive Director Catherine Bertini Calls on International Community to Help End Fighting in Southern Sudan", New York, July 10, 1998. Other WFP press releases included: "WFP Staff Evacuated Safely Out of South Sudan After Out-running Militia Attack", Nairobi, July 18, 1998; "WFP Issues Urgent Appeal for Funds to Expand Emergency Food Aid to Needy Sudanese", Rome, July 27, 1998, see: HRW (2003), p. 206.

<sup>110</sup> Héry, Jennifer, "Sudan between Oil and Civil War", 2003, p. 2-3. <http://africa.berkeley.edu/Sudan/Oil/Review-HeryOilSudan.pdf> (accessed October 25, 2008).

<sup>111</sup> Johnson (2003), p. 124.

<sup>112</sup> Lundin Oil, "Thar Jath First Exploration Well in Sudan establishes a significant new oil discovery", May 20, 1999.

<sup>113</sup> Eriksson, R.T., "Major discovery in Sudan boosts Lundin Oil", (translated) Finans Tidningen, May 21, 1999. (Org. title and quote: Storfynd i Sudan lyfter Lundin Oil: "Ja, det är ett stort fynd. Vi har inte hunnit utföra alla tester ännu. Men det verkar vara det största fyndet som hittills gjorts i området. Vi räknar med att det rör sig om ungefär 300 miljoner fat olja...Eftersom regnperioden nu inleds har vi varit tvungna att flytta ut all utrustning från området...Ja, jag tror att vår koncession i Sudan, liksom den i Libyen, kan innehålla mer 1 miljard fat....Totalt måste vi nog borra ungefär tio hål innan vi kan börja producera någon olja i Sudan. Men om allt går som vi tänkt oss ska vi nog kunna vara igång under det 3:e kvartalet år 2001...Ja, Libyen och Sudan kommer att vara våra absolut viktigaste projekt under flera år framöver... Jag tror att Libyen och Sudan ensamma kan göra Lundin Oil till ett av världens 20:e största oljebolag. Och det är absolut ingen överdrift.")

<sup>114</sup> Interview Elijah Hon Top, July 26, 1999, in HRW (2003), p. 264.

Government's lack of trust in the UDSF/SSDF. In a letter to Taban Deng, cited by HRW, Maj. Gen. Paulino Matiep accused the UDSF/SSDF of disrupting oil development. The Government of Sudan also feared that efforts by the New Sudan Council of Churches to start local peace processes would jeopardise its plans to control the oilfields.<sup>115</sup>

Until May 1999, ECOS understands that the Consortium was operating on the assumption that Dr. Riek Machar would maintain control of the area and protect its interests. The events that unfolded show that this was not the case. As the above developments show, by May 1999, the Khartoum Peace Agreement had been abandoned in all but name. The Government of Sudan moved a convoy of 15 trucks with almost 400 troops and heavy weapons south from Bentiu into the Ryer/Thar Jath areas and on to the Ler (Payak) garrison, flanked by over 1,000 of Maj. Gen. Paulino Matiep's troops.<sup>116</sup> Dr. Riek Machar's SSDF were ineffective in protecting their territory in Block 5A from attacks by Paulino Matiep's militia. The two forces were, technically, both on the Government's side, but the SSDF was less well-armed by the Government and therefore at a military disadvantage. The SSDF withdrew after attacking the oil camp at Ryer/Thar Jath in May 1999, damaging the exploratory rig and executing three Government employees. The Lundin Consortium evacuated a hundred workers from the site the same day. The Consortium did not recommence operations in Block 5A until November 2000.

The extensive documentation of HRW reveals that from May to September 1999, the SAF and Maj. Gen. Paulino Matiep and his Commander Peter Gatdet fought fiercely against Dr. Riek Machar's SSDF, which received ammunition from the SPLA in June 1999.<sup>117</sup> This marked the first rapprochement between the SPLA and Riek Machar's forces since the SPLM/A had split in 1991. Continued fighting in the Block 5A area caused thousands more civilians to flee to other areas. The Lundin Consortium's suspension of its operations in May 1999 marked the beginning of the real battle for control of Block 5A according to HRW. The Government of Sudan was keen to gain full control to enable the oil companies to continue their work.<sup>118</sup>

**"We have defeated all the foreign enemies wishing to stop the export of the oil. We must now defeat the internal enemy who may try to halt the full utilisation of the oil revenue."**

Proclaimed by the Government-run radio Omdurman, August 1999.<sup>119</sup>

As far as ECOS can determine, the Lundin Consortium made no public statement condemning the destruction and displacement in Block 5A, despite the press attention it garnered and the regular warnings by UN agencies about the dire state of the needy in this area. The WFP put out an alarming press release on July 10, 1999, stating that it feared "a worsening humanitarian crisis as it is unable to deliver urgent relief assistance to tens of thousands of people trapped by the fighting. WFP is extremely concerned for thousands who left their homes last month for safety and moved further inside Unity State as they are now even more difficult to reach. WFP is also worried that thousands who moved towards the bordering areas of north-western Bahr el Ghazal and Jonglei will put extra strain on these areas still suffering from last year's devastating famine and floods."<sup>120</sup> The WFP estimated that war was blocking food delivery to 150,000 people in rebel-contested areas of Unity State.

Several times in 1998 and 1999, Dr. Riek Machar appealed in writing to President Omar al-Bashir to stop arming Maj. Gen. Paulino Matiep. He also appealed to the oil companies to exert pressure on the Government to remove Matiep in order to ensure peace in their areas of operation.<sup>121</sup> As far as ECOS can determine, they never did.

**In the course of 1998, some 150,000 civilians were displaced and at risk of starvation in the oil-rich region of Western Upper Nile, where instability and violence rendered United Nations emergency humanitarian aid deliveries difficult, if not impossible.**

U.N. Commission on Human Rights *Situation of human rights in the Sudan*, 55th session, May 1999.<sup>122</sup>

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<sup>115</sup> HRW (2003), p. 264-265.

<sup>116</sup> *Ibid.*, p. 202.

<sup>117</sup> *Ibid.*, p. 262-304.

<sup>118</sup> *Ibid.*, p. 304.

<sup>119</sup> Bol, N., "Islamic Regime Begins to Export Oil", Inter Press Service, August 30, 1999.

<sup>120</sup> WFP, "150,000 Trapped by Renewed Fighting in Sudan's Western Upper Nile", July 10, 1999.

<sup>121</sup> Dr. Riek Machar interview, Nairobi, August 8, 2000, in HRW (2003), p. 136.

<sup>122</sup> UNCHR, "Report of the Special Rapporteur on the situation of human rights in the Sudan", May 17, 1999, E/CN.4/1999/38/Add.1, p. 17-18.

ECOS could not identify any evidence that the Lundin Consortium expressed any concern about the fighting or mass displacement at this time or on the well being of the people living in its concession area. Neither did it mention that rebel attacks had motivated the suspension of activities in May 1999. Lundin merely stated that it was “not directly affected by the fighting”, but nevertheless “worried about the safety of its staff and its operations.”<sup>123</sup>

“The Special Rapporteur was informed that in early May [1999], in a 10-day offensive, Government forces swept through Ruweng county in Western Upper Nile, attacking and killing scores of civilians with Antonov bombers, helicopter gunships, tanks and artillery, abducting hundreds and burning over 6,000 homes, with a view to clearing a 100-km swathe of territory around the oilfields (...) The economic, political and strategic implications of the oil issue have seriously compounded and exacerbated the conflict and led to a deterioration of the overall situation of human rights and the respect for humanitarian law, as well as further diminishing the already slim chances for peace.”

Leonardo Franco, Special Rapporteur, Commission on Human Rights, October 1999.<sup>124</sup>

In 1999, a socio-political assessment was commissioned by Lundin that recommended mainly “that the company should monitor socio-political developments in the concession area and reinforce its existing relationship with the local community.”<sup>125</sup> ECOS suggests the real issue was not the company’s poor relations with communities, but that the communities were seriously victimised by the fighting around them/directed at them.

“The Government of Sudan is occupying our land and destroying our people because of this oil. (...) Wherever oil is found, they refer to it as an asset for the whole country; then they remove it from the people. There is complete displacement (...). I made this move so I can attract the attention of other South Sudanese, so we can all come together and face a common enemy (...). We have given enough warnings. If the oil companies don’t leave, we will attack the fields and make them go.”

Commander Peter Gatdet, October 1999.<sup>126</sup>

#### **Commander Peter Gatdet’s forces turn against the Government of Sudan**

HRW reported in 2003 that in September 1999, disgusted with the Nuer-Nuer infighting while the Government of Sudan drained their land of its oil, Cmdr. Peter Gatdet turned against Maj. Gen. Paulino Matiep and the Government of Sudan, taking several thousands officers and troops (both Bul and Leek Nuer) with him. This mutiny radically changed the military and political landscape in Unity State, causing a sizeable increase in the number of anti-Government Nuer forces and leaving the Government of Sudan with far fewer Nuer troops to act as its proxies in this oil area. The ensuing clashes between Cmdr. Peter Gatdet and the Government army in October 1999 again caused many civilians in Block 5A to flee from the garrison towns of Nhialdiu, Boaw, and Dorkhan.<sup>127</sup>

In early November 1999, a large group of Nuer commanders made peace with each other, including Cmdr. Peter Gatdet and Cmdr. Tito Biel (of Dr. Riek Machar’s SSDF) to form the Upper Nile Provisional United Military Command Council (UMCC), which was to have supreme military authority over all their forces in the Upper Nile. The participants included commanders or former commanders of Dr. Riek Machar’s SSDF, the SPLM/A, and pro-Government forces, including that of Maj. Gen. Paulino Matiep. This group included some forces that had already been informally cooperating with each other. The commanders declared war on the Government of Sudan and their willingness to join forces with others fighting against it. Their platform, unlike that of the SPLM/A, called for an independent south.<sup>128</sup> In respect of Dr. Riek Machar, they “recognised the fact that he can no longer play any role in the renewed and rapidly escalating military situation in the Upper Nile region.”<sup>129</sup>

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<sup>123</sup> Batruch (2004), p. 4.

<sup>124</sup> Franco, Leonardo, “Special Report on the situation of human rights in the Sudan”, Commission on Human Rights, 54th session, Agenda item 116 (c) A/54/467, October 14, 1999, paragraphs 66 and 75.

<sup>125</sup> Ibid.

<sup>126</sup> Turner, M., “Oil Fuels the Conflict in Southern Sudan”, Financial Times, London, October 15, 1999.

<sup>127</sup> HRW (2003), p. 316-320.

<sup>128</sup> Ibid., p. 328-330.

<sup>129</sup> “South Sudan Liberation Movement Press Announcement”, January 31, 2000, available at: <http://www2.reliefweb.int/rw/rwb.nsf/db900SID/ACOS-64CTCJ?OpenDocument> (accessed September 29, 2009).

“The situation in Sudan is complicated. But we have the impression that oil exploration contributes to make the situation much calmer in this particular area.”

Magnus Nordin, Deputy Managing Director Lundin Oil AB, December 1999.<sup>130</sup>

## 3.2 Oil is discovered amidst intense violence: 2000 – 2001

### Oil road construction

Faced with the new alliance created by Nuer disgust with his partnership with the Government of Sudan, and having little to show for this almost four-year long collaboration, Dr. Riek Machar formally resigned from the Government in January 2000. He returned to the south to create another movement, the Sudan's People Defence Forces/Democratic Front (SPDF). At this point, Cmdr. Peter Gatdet joined the SPLM/A, rather than joining Dr. Riek Machar. He nevertheless cooperated with the SPDF forces under Cmdr. Tito Biel and Cmdr. Peter Paar. HRW reported that for a while they all attempted to stop the construction of the new oil road in Block 5A as well as further roads in Blocks 1 and 4 — but without success.<sup>131</sup>

Mark Reading, security officer for Talisman Greater Nile B.V which operated just north of Block 5A, suggested that the Lundin Consortium was frustrated by the Government of Sudan's inability to secure their operations and pushed for swift military action to allow it to complete the roads. In an internal Talisman report in February 2002, he explained; "There remain the constant difficulties between IPC [Lundin] and Petroleum Security. IPC [Lundin] are extremely frustrated by the lack of progress in their concession and this they feel is entirely down to problems with Petroleum Security and the lack of Army resources to provide the level of protection that they need to complete the 2 roads to their rig site. The main road that will be an all weather road requires 700 troops to provide a safe corridor for this work to start. This road will take 18 weeks to complete and so the frustrations are starting to mount as the end of May is of obvious significance [due to wet season]."<sup>132</sup>

In February 2000, the Lundin Consortium announced that drilling operations had been delayed due to slow progress in the road construction.<sup>133</sup> In March 2000, the Consortium announced that activity in Block 5A remained suspended because of “logistical difficulties and safety considerations.”<sup>134</sup>

While the Consortium did not officially resume operations until December 2000, it commissioned the building of a bridge over the Bahr el Ghazal River in early 2000, linking Rubkona to Bentiu.<sup>135</sup> Furthermore, the Consortium commissioned the Hagleig Petroleum Services and Investment Company (HPSIC, also known as Hagleig Construction Company or HCC) to construct an 80 kilometre all-weather road from Rubkona, south towards the drilling sites in Ryer/Thar Jath and Jarayan.<sup>136</sup> According to HPSIC, the Consortium later commissioned the extension of the road to Ler and its Sudanese army garrison.<sup>137</sup> According to the Talisman security report, the entire road construction operation was heavily militarised.<sup>138</sup> Another internal security report of Talisman stated that on August 10, 2002, work on the road was halted after 80% of the equipment was destroyed by a sabotage incident. Work resumed around September 8 and a week later four construction workers were killed and 16 wounded in landmine incidents.<sup>139</sup> According to the Talisman report, 40-45 civilian construction workers, mainly from Hagleig Construction Company, were reportedly killed between 2000 and October 2002 while working for the oil industry.<sup>140</sup>

<sup>130</sup> Eriksson, R.T., “Lundin stays in Sudan”, (translated) Finans Tidningen, December 2, 1999. (Org. title and quote: “Lundin Oil stannar kvar i Sudan: ”... vi har fått intrycket av att oljeutvinningen medverkat till att situationen i just det här området blivit betydligt lugnare.”)

<sup>131</sup> HRW (2003), p. 334.

<sup>132</sup> Talisman Security Report, February 1-8, 2000, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), TE 0520901.

<sup>133</sup> On December 4, 1999, Amy McLellan wrote after an interview with Mr. Lundin; “The company plans to build a 100 km all-weather road to allow operations year-round. The cost is in the region of \$6m and construction could begin as early as the end of this month.” In: “Lundin plans \$35m exploration in 2000”, Lloyd's List International.

<sup>134</sup> Lundin Oil, “Further delay in Sudan”, press release, March 21, 2000.

<sup>135</sup> The bridge cost the Consortium a couple of million US dollars, see: “Lundin Oil in Sudan”, 2001, p. 17, 19.

<sup>136</sup> See: <http://www.hagleig.com/projects.htm> (accessed: September 29, 2009)

<sup>137</sup> Ibid. Also see: HRW (2003), p. 335.

<sup>138</sup> Talisman Security Report, February 1-8, 2000, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), TE 0520901. MSF reported “road clearing” from 2000 onwards by the Government of Sudan and allied forces. After this, “Government garrisons were then established at 30-minute intervals along the road”, MSF (2002), p. 16.

<sup>139</sup> Talisman Security Report, September 4 – October 1, 2002, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), TE0521059.

<sup>140</sup> Ibid., TE0521060.

Earlier, in 1999, the Lundin Consortium had also refurbished an airstrip at Rubkona.<sup>141</sup> Rubkona was the Consortium's base camp, but also headquartered the 15th Division of the Sudan Armed Forces.<sup>142</sup>

"When I was living in Duar in 2000, an all-weather road was being built from Rubkona to the oil operations in Ryer. (...) I knew that in building this road, the Government had forced people to move away and had bombed and attacked villages to get the people to move. (...) In 2000 the all-weather road from Rubkona to Ryer was constructed through my land where my *luak* and *tukhuls* were destroyed by Government troops."

Testimony by Chief Peter Ring Patai, March 2005.<sup>143</sup>

On March 1, 2000, Talisman's security officer wrote in an internal report: "Statements coming from [Riek] Machar last week suggested that the forces of Tito [Biel] and [Peter] Gatdet were joining together and that they would leave IPC and its operations alone with no interference. This was under the proviso that Paulino [Matiep] was not involved with IPC. A report was received yesterday, originating from Nairobi, stating that [Peter] Gatdet has now joined forces with the SPLA. If true I would consider this to be a very serious development. The SPLA have a vast amount of material, weapons, and equipment at their disposal in comparison to any Nuer factions. It would also open up the SPLA supply chain into the area. In any event, this will not be the last incident in Block 5A. The general feeling is not if but when the next incident happens. It is considered that the situation within Block 5A is probably the most volatile it has been in recent times and is deteriorating. It is evident from yesterday [February 29, 2000] that the Government forces along with civilians are considered the legitimate targets for whichever of the factions are responsible."<sup>144</sup>

During the spring of 2000, the Government of Sudan launched a major offensive, supported by hundreds of muraheleen (Baggara forces) on horseback, artillery, gunships, and Antonov high-altitude bombers. Village chiefs reported to Christian Aid in 2001 that systematic attacks on the villages along the oil road began in March 2000. First, Antonovs would bomb the villages to scatter people, and then Government troops would come into the villages by truck and helicopter to burn huts and kill anyone who had stayed. In visits to Unity State in August and November 2000, Christian Aid found thousands of Nuer civilians displaced from villages along the road.<sup>145</sup>

"The Special Rapporteur has found that the Government is continuing to practice indiscriminate bombing, which appears to have intensified during recent weeks, with a heavy toll of civilians (...). He also regrets that the Government has forced civilians of ethnic Nuer populations to relocate, with the purpose of ensuring military control of oil industry operations in Upper Nile. According to consistent reports, this practice is allegedly followed by the settlement of ethnic Baggara groups (...). The Special Rapporteur expresses concern at the use of oil industry airstrips for military purposes and at the practice of seriously hindering humanitarian assistance, particularly in Western Upper Nile, mainly by restricting access by air to many humanitarian distribution sites, as well as by imposing flight bans on certain occasions (...). Further the Special Rapporteur is convinced that the oil issue, in Western Upper Nile, lies at the heart of the conflict and believes that it is not fair for the civilian population to be once again the most affected target in this scenario. Oil exploitation has resulted in the exacerbation of the war. (...) He recommends that unhindered humanitarian access be granted to the areas of concern. He also recommends that all efforts be made to facilitate the return of displaced people to their areas of origin. He further recommends that the use of oil facilities for military purposes come to an end."

U.N. Commission on Human Rights, Geneva, April 2000.<sup>146</sup>

<sup>141</sup> "Lundin Oil in Sudan", 2001, p. 19.

<sup>142</sup> Christian Aid (2001), p. 25.

<sup>143</sup> Testimony of Chief Peter Ring Patai, March 2005, US District Court for the Southern District of New York, File 01 CV 9882 (AGS).

<sup>144</sup> Talisman Security Report, March 1, 2000, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), TE 0520936

<sup>145</sup> Christian Aid (2001), p. 7.

<sup>146</sup> UNCHR "Situation of human rights in the Sudan, summary of the draft report of the Special Rapporteur", Geneva, E/CN.4/2000/36, April 19, 2000, p. 5, item 21. <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/a24f12b8a7877a8ac125692d00397392?Opendocument> (accessed Sept. 28, 2009).

Christian Aid reported in 2001 that oil company infrastructure, including air strips and oil roads, were being used by Government forces.<sup>147</sup> Furthermore, Governor Taban Deng apparently confirmed to Christian Aid that Government bomber planes used the airstrip that had been refurbished by the Lundin Consortium at Rubkona.<sup>148</sup>

In a letter to its shareholders in March 2001, Lundin stated that the road “increases the mobility of the local population and provides them better access to amenities available in Bentiu and Rubkona such as schools, clinics, and markets.”<sup>149</sup>

HRW explained in its 2003 report that historically, the Bahr el Ghazal River provided a barrier to Baggara horseback penetration to Nuer settlements south of this river. With the exception of its north-eastern corner, Block 5A lies south of the Bahr el Ghazal River, which protected its population from raids by the Baggara. This area provided a safe haven for the terrorised Leek and Jikany Nuer population fleeing south from Blocks 1, 2, and 4 in the 1980s and early 1990s. These displaced people had swollen the number of people and cattle living south of the river. The historical barrier was breached when the Lundin Consortium commissioned the bridge over the river at Bentiu in early 2000. The bridge enabled the Baggara bands to cross year-round, penetrating south in great numbers, and hunting down Nuer civilians in Government-organised destroy and displacement raids.<sup>150</sup>

The elevated roads extended the Government of Sudan’s military reach deep into Nuerland. Without these roads, it would have been impossible to carry out such large military operations. Passable all year long, the roads changed the fundamentals of warfare in that part of southern Sudan, allowing the Government of Sudan to build and maintain permanent army garrisons in territory that used to be inaccessible to vehicles except for a few months during the dry season.

“The road is open for all and it is not about any heavy troop movements to wipe out the area.”

Christine Batruch, Vice President Corporate Responsibility Lundin Oil AB, March, 2001.<sup>151</sup>

#### **SPDF/SPLA alliance ends**

The SPDF remained anti-Government for several months in 2000, sometimes actually fighting against it with the SPLA (under Cmdr. Peter Gatdet). HRW reported that the SPDF/SPLA alliance broke down in late June 2000, after Cmdr. Peter Paar had accepted large offers of supplies and cash from the Government of Sudan. The balance of power shifted in favour of the Government again; the Sudan Armed Forces and allied forces retook the initiative and chased communities away from the oil road, eventually allowing the road construction to be finalised.<sup>152</sup>

#### **Sudan’s military budget**

Sudan’s military budget more than doubled from US\$162 million in 1998 to US\$327 million in 2000.<sup>153</sup> In June 2000 Christian Aid reported that an army spokesman announced that revenues from the Sudan’s oil industry had enabled the Sudan to begin its own arms manufacturing industry, aiming for self-sufficiency in light, medium and heavy weapons.<sup>154</sup> According to Douglas Johnson, between 1999 and 2002, the Sudanese Government attack helicopter fleet more than tripled from six to twenty two. They were first used in operations against civilians in the oil field area in Unity State, and more recently against civilians in Darfur.<sup>155</sup>

#### **Attack on Nhialdiu**

HRW reported that, in July 2000, the town of Nhialdiu, then controlled by Cmdr. Peter Gatdet, was attacked by Government-supported troops. The town was methodically burnt down and its residents were displaced, including the estimated 11,000 displaced persons from the oil road area who had sought refuge there. The fighting between the Government forces and Cmdr.

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<sup>147</sup> Christian Aid (2001), p. 3.

<sup>148</sup> Ibid., p. 25.

<sup>149</sup> Lundin Oil, “Letter to shareholders”, March 23, 2001.

<sup>150</sup> HRW (2003), p. 589.

<sup>151</sup> Tidningarnas Telegrambyrå, “Lundin Oil: Industry important for the people of Sudan” (translated), March 22, 2001. (Org. title and quote: LUNDIN OIL: OLJEINDUSTRIEN VIKTIG FÖR SUDANS BEFOLKNING: "Vägen är öppen för alla och det handlar inte om tunga trupper för att rensa område.")

<sup>152</sup> HRW (2003), p. 353-354.

<sup>153</sup> International Monetary Fund, “IMF Staff Country Report No. 00/70”, June 2000, p. 11.

<sup>154</sup> Christian Aid (2001), p. 18.

<sup>155</sup> Johnson, Expert Report (2005), p. 9.



Peter Gatdet's forces left a wide swath of territory between Nimne and Nhialdiu burnt to the ground and tens of thousands of civilians uprooted.<sup>156</sup>

### **Ban on humanitarian access**

Christian Aid reported that in October 2000, the Government of Sudan aggravated the suffering of the displaced by imposing flight bans on aid agencies. Airstrips that were almost exclusively used for the delivery of relief supplies were bombed. Unlike in other regions, the ban on humanitarian access to Unity State would stay in effect for more than two years.<sup>157</sup> Meanwhile, the Lundin Consortium continuously asserted that oil was a force for peace and development.

"I believe oil is an opportunity for Sudan and is able to contribute to peace and development."

Carl Bildt, Member of the Board Lundin Oil AB, March 2001.<sup>158</sup>

### **The Lundin Consortium strikes oil, March 2001**

As a consequence of SPDF Cmdr. Peter Paar's change of sides in June 2000 and the ensuing Nuer-Nuer carnage, the construction of the oil road was secured. Cmdr. Peter Paar now effectively guarded the operation, supplied by the Government through Maj. Gen. Paulino Matiep, according to HRW's 2003 report.<sup>159</sup> The Consortium appeared to adapt easily to the new situation. Having claimed Dr. Riek Machar and Taban Deng to be the key representatives of the area in 1997, in 2001 Lundin wrote that it now considered Maj. Gen. Paulino Matiep, Cmdr. Peter Lehr and Cmdr. Peter Paar to "represent the majority of the population in the area."<sup>160</sup>

In January 2001 the main road was completed. Drilling and testing operations were soon to restart.<sup>161</sup> According to HRW, human rights investigators and Operation Lifeline Sudan (OLS) personnel reported that villages along the road continued to be bombed and burnt down after the recommencement of activities.<sup>162</sup> In March 2001, the Lundin Consortium struck oil at Thar Jath, a source of an estimated 4,260 barrels a day.

"There is fighting going on and villages have surely been burnt, but not close to the road."

Ian Lundin, President and CEO of Lundin Oil AB, March 2001.<sup>163</sup>

In June 2001, SPLM/A leader John Garang said the oil companies drilling in southern Sudan were threatening the security of the people there, and were therefore targets. Furthermore, he declared that no ceasefire agreement would be signed until oil production was stopped.<sup>164</sup>

### **The Lundin Consortium in denial**

ECOS has found no evidence that the Lundin Consortium recognised or, if it did, it never acknowledged or mentioned the consequences of the measures taken by the Government to secure its operations on the local population. The documents filed in the Talisman proceedings in the U.S. were not available to Lundin and the other members of the Consortium at the time but they offer a valuable insight into what was happening on the ground at the time. In 2004, Lundin Petroleum's Vice-President for Corporate Responsibility, Christine Batruch wrote that Lundin at the time was "worried about the safety of its staff and its

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<sup>156</sup> HRW (2003), p. 350.

<sup>157</sup> Christian Aid (2001), p. 12-18; HRW (2003), p. 441-443.

<sup>158</sup> Göteborgs Posten, "Lundin Oil holds crisis meeting. Many delegates want to know more about the allegations" (translated), March 18, 2001, p. 32. (Org. title and quote: Lundin Oil håller krismöte Flera av delägarna vill veta mer om anklagelserna: "Jag tror att oljan är möjligheten för Sudan och kan bidra till fred och utveckling.")

<sup>159</sup> HRW (2003), p. 364.

<sup>160</sup> "Lundin Oil in Sudan", 2001, p. 5.

<sup>161</sup> Ibid., p. 3.

<sup>162</sup> HRW (2003), p. 387.

<sup>163</sup> "Carl Bildt has said that the area of Lundin Oil in Sudan is very sparsely inhabited. But according to the UN, there are fifty thousand refugees in Sudan from those areas where the oil exploitation is taking place", in: Koblanck, Anna, "Självkritik från FN", Dagens Nyheter, March 30, 2001, p. 4 section C. (Org. title and quote: "Det pågår strider och säkerligen har byar bränts men inte i närheten av vägen."). Three days before, Aftonbladet had written: "In the debate on Lundin Oil is the most important forgotten - the refugees. Now, thousands of starving refugees gathered outside a small village just two miles from Lundin Oil's area. They live on water lilies and berries - and the war gets closer", in: Cantwell Oisín, "Dokument SUDAN: De som inte flydde dödades - Aftonbladet träffade oljeskandalens offer i Sudan", March 27, 2001, p. 13.

<sup>164</sup> BBC News Africa, "Garang: Oil firms are targets", June 17, 2001, <http://news.bbc.co.uk/2/hi/africa/1393481.stm>.

operations.”<sup>165</sup> ECOS believes that the company and its consultants failed to see what was obvious to the numerous human rights and international organisations who were reporting on developments within Sudan at the time. ECOS submits that the true position was summarised in the widely published 2001 report by Christian Aid: “The Government of Sudan is clearing huge tracts of southern Sudan to make way for oil production. Troops are terrorizing civilians, burning homes and attacking villages from the air in a war for oil.”<sup>166</sup>

Early in 2001, some sections of the Swedish press sounded the alarm about a Swedish company’s alleged involvement in atrocities in Sudan and the Swedish Government announced that it would carry out an investigation.<sup>167</sup> Lundin reacted with a public relations campaign in Sweden that, much to the surprise of outside observers, silenced its critics by claiming that matters were not really that bad, that Lundin had not much to do with it anyway, and that oil was in fact bringing development and peace to Sudan.<sup>168</sup> In its first quarter report for 2001, Lundin stated that “the Company has faced some heavy criticisms mainly in the Swedish media about its involvement in Sudan. Those criticisms are misplaced and based on unreliable information.” In 2001, Lundin posted a Sudan policy declaration on its website that contained no reference to human rights or the war that was going on in its concession area.<sup>169</sup>

“Having carried out our own investigation we can now state categorically that there has been no forced population displacement along the 80 km all-weather road which runs from our base camp at Rubkona to the present drill site at Jarayan, no burning of villages to make way for the road. There are witnesses on the ground who are prepared to testify about this.”

Lundin Oil Press Release 3 April 2001.<sup>170</sup>

Lundin kept the Swedish Government directly informed of its experience in Sudan.<sup>171</sup> It claimed that its activities fell within the European Union’s policy of constructive engagement with Sudan “in so far as it ensured that its activities were not affecting the conflict negatively.”<sup>172</sup> ECOS has not found any proof that the Governments of Sweden and Austria have ever seriously assessed whether that was indeed the case. Confronted by credible allegations that international crimes and human rights abuses were committed by the Government of Sudan to protect the commercial interests of their national companies, the Swedish, Austrian and Malaysian Governments should have acted to investigate the allegations immediately. Governments have a strong international legal obligation to prevent human rights violations and to ensure that citizens and organisations under their territorial jurisdiction are not complicit in international crimes. If they fail to do so, ECOS suggests that they then share in the responsibility. The fact that their companies did not operate the concession does not pardon the Austrian and Malaysian Governments. In fact, these Governments are under a greater duty to investigate because they wholly or partially owned OMV and Petronas.

To counter allegations of potential complicity in human rights abuses, Lundin maintained that “foreign oil companies (...) effectively act as human rights watchdogs.”<sup>173</sup> To illustrate this, Lundin claimed to engage “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>174</sup> To the best of ECOS’ information, no results of these extensive discussions have been reported or observed.

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<sup>165</sup> Batruch (2004), p. 4.

<sup>166</sup> Christian Aid (2001), p. 6. Sudan Focal Point-Africa reported during this period several bombardments in Block 5A, in: “Aerial Attacks on Civilians by Government of Sudan: Summary January to June 2000”, Nairobi, July 27, 2001, which was widely circulated to a mailing list of well over 1,000 people.

<sup>167</sup> Koblanck, Anna, “Mass escape from the oil areas”, (translated) Dagens Nyheter, March 22, 2001 (Org. title and quote: Massflykt från oljeområdet: “Carl Bildt har sagt att det område där Lundin Oil verkar i Sudan är mycket glest bebott. Men enligt FN:s utsände i Sudan är femtio tusen människor på flykt från just de områden där oljeexploateringen pågår”).

<sup>168</sup> Carl Bildt, Member of the Board Lundin Oil, for example, reacted to the allegations by saying: “In limited areas [oil] is able to increase the possibilities for both development and stability. And that is, I think, the result we have seen up to now in Sudan”, in: “Bildt wants to leave assignment”, Dagens Nyheter, March 21, 2001, (org. title and quote: Bildt vill lämna uppdrag: “I begränsade områden kan ge bättre möjligheter till både utveckling och stabilitet. Och det är, tycker jag, det resultat vi hitintills sett i Sudan.”). Adolf Lundin, Chairman of Lundin Oil, was quoted saying two days later: “We are completely convinced that our presence is positive for the people and that we contribute to peace and prosperity, and with time democracy”, in: “Drillings in Sudan continue”, Dagens Nyheter, March 23, 2001 (org. title and quote: Borrningarna i Sudan fortsätter: vi fullständigt övertygade om att vår närvaro är positiv för folket och att vi bidrar till fred och välstånd, och demokrati så småningom.”). For a critique of this tactic see Johnson (2003), p. 163-164.

<sup>169</sup> Lundin Oil, “Sudan Policy of Lundin Oil A.B.”, issued in December 1999 according to a letter from Lundin to ECOS, dated November 2008.

<sup>170</sup> Lundin Oil, “Sudan: Lundin Oil refutes the allegations”, press release, April 3, 2001.

<sup>171</sup> Batruch (2004), p. 10.

<sup>172</sup> Ibid.

<sup>173</sup> “Lundin Oil in Sudan”, p. 6.

<sup>174</sup> Ibid., p. 16.

“Since 1999 there have been a succession of reports into human rights violations in the oilfields, (...). All document in considerable detail the violent escalation of fighting in the oilfield areas, as well as the contribution of oil revenues to the Sudan Government’s war effort. The reaction of companies and Governments to this evidence is instructive in its repetition of the relief and development debate: the formulation of policy is divorced from any evidence coming from the field, and the policy of ‘constructive engagement’ is employed as a shield against criticism.”

Douglas H. Johnson, “The Root Causes of Sudan’s Civil Wars”, p.163-164.

### **LUNDIN PETROLEUM CODE OF CONDUCT:**

We are committed to uphold generally accepted principles on the protection of human rights and the environment. Wherever we operate we are committed to observe and, through our example, promote the rule of law.

To ensure that communities benefit from our presence, we are committed to:

- Minimize disturbances that may be caused by our operations.
- Be mindful of the impact of our security arrangements on the communities.
- Refrain from any implications in tribal or internal armed conflicts or acts of violence

This Code constitutes the commitment of the company and its employees to aspire to the highest standards of conduct. It is an integral part of employment contracts. Any violation of this Code by anyone within our company will be the subject of an inquiry and appropriate remedial measures.

Lundin Petroleum, Code of Conduct, 2001.<sup>175</sup>

In 1999, Lundin started a small charity program, the Community Development and Humanitarian Assistance Program, which 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>176</sup> In three years, the Consortium spent US\$1.7 million on different small projects, a tiny fraction of what aid agencies spent on emergency food and elementary health care in the area.<sup>177</sup>

From an internal security report that was filed in a US court, it appears that Talisman’s security officer questioned Lundin’s understanding of the security situation as well as its approach to community relations “Recent thoughts of pulling out of Rubkona due to security reasons further illustrates that the current Lundin (Sudan) management does not have a good understanding of the environment with particular regard to the security situation. This lack of understanding continues to manifest in the approach to community development, for example the emphasis of consultant surveys and with regards to employees, those in charge of community development being almost exclusively from the north of Sudan, seen by southerners as patronising and simply there to take money that should be earned by locals.”<sup>178</sup>

## **3.3 A Military Solution: 2002–2003**

### **SPDF/SPLA unity**

In August 2001, Cmdr. Peter Paar (SPDF) and Peter Gatdet (SPLM/A) reached a cease fire agreement, followed by a peace covenant in February 2002. SPLM/A leader Dr. John Garang and SPDF leader Dr. Riek Machar signed the Nairobi Declaration of Unity in January 2002, announcing their merger under the name SPLM/A.<sup>179</sup>

<sup>175</sup> See: [http://www.lundinoil.com/eng/code\\_of\\_conduct.php](http://www.lundinoil.com/eng/code_of_conduct.php)

<sup>176</sup> Lundin Petroleum, “Temporary suspension of activities in Sudan”, January 21, 2002.

<sup>177</sup> Batruch (2004), p. 5.

<sup>178</sup> Talisman Security Report, 04 Sept – 01 Oct, 2002, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), TE 0521057.

<sup>179</sup> SPLM/SPLA press release, “Declaration: Nairobi Declaration on Unity between the SPLM/SPLA and SPDF”, January 7, 2002, see:

The SPLM/A-SPDF merger completely upset the already precarious military balance in Unity State. HRW reported that because Cmdr. Peter Paar no longer guarded the Lundin Consortium's installations, they were in immediate danger. The SPDF/SPLA declared all oil installations military targets. In December 2001, one of the Consortium's helicopters was shot down.<sup>180</sup> Between 13 and 25 January 2002 several convoys were brutally attacked.<sup>181</sup> The new SPDF/SPLA assertiveness immediately escalated the war. Throughout January and February 2002, the Government of Sudan attacked Tagil, Padeah, Koch, and many other locations from the air, using both high altitude bombers and helicopter gunships. Chiefs Gatluak Deng and Yang Tueth from Waak said that they had never seen gunships or Antonovs around their villages before 2002: "That all changed with the peace agreement between SPLA and SPDF. Then the Government troops came in force with helicopter and Antonov support. All livestock was looted and the villages burnt to the ground."<sup>182</sup>

### **Lundin Consortium forced to bow out again**

On January 22, 2002, Lundin Petroleum announced that the operations in Block 5A would be suspended temporarily "as a precautionary measure to ensure maximum security for its personnel and operation."<sup>183</sup> The road construction workers and the Consortium staff were evacuated. In releasing its half yearly report for 2002, Lundin Petroleum underlined its continuing desire to develop its Sudanese assets: "We are long-term investors and remain fully committed to exploiting the resources in Sudan... The quality of our assets in Sudan is world-class with the Thar Jath discovery estimated to contain 1 billion barrels in place and the rest of our acreage having excellent exploration potential."<sup>184</sup> Oil operations in Block 5A were suspended for fourteen months until March 2003.

"Question: Matiep's forces were attacking Peter Gatdet's forces in Nhialdu, correct? (...)

Answer: Yes.

Question: So this was a battle between Government of Sudan forces and your forces on one side and the SPLA on the other side, correct?

Answer: Yes. (...)

Question: And did your forces along with the Government of Sudan military kick any civilians out of Nhialdu?

Answer: There was a road that was going; that is why there is fighting. If there cannot be removal of these people from Nhialdu, then this road will not go through."

Testimony on the capture of Nhialdu in January 2002 by James Gatduel Gatluak, second-in-command for Maj. Gen. Paulino Matiep.<sup>185</sup>

### **Final assault**

HRW reported that at the end of January 2002, the Government bombed Koch, Ler and Mayendit, in the south of Block 5A<sup>186</sup>, followed by attacks on villages along the southern end of the road and other areas far from the road such as Chang, Kuey, Waak, and Ngop.<sup>187</sup> By mid-February 2002, three major areas had been effectively depopulated – the area between Nimne and Bentiu, the villages around Nhialdu, and the areas between Buoth and Rubnyagai. Satellite images confirm these massive displacements (see the images in Chapter 4). The Government claimed that its purpose was to dislodge SPLA forces, but the available evidence shows that the civilian population was expressly targeted in an extended area along the road from Ryer/Thar Jath to Ler and

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<http://www.sudan.net/news/press/postedr/66.shtml> (accessed May 28, 2008).

<sup>180</sup> According to HRW (2003) the helicopter was shot down reportedly by SPDF elements in retaliation for Petroleum Security refusing air transport to SPDF officers; p. 599, note 1374.

<sup>181</sup> De Guzman & Wesselink (2002), p.18.

<sup>182</sup> Ibid., p. 10.

<sup>183</sup> Lundin Petroleum, "Lundin Petroleum Announces a Temporary Suspension of Activities in Block 5A Sudan", Stockholm, January 22, 2002.

<sup>184</sup> C. Ashley Heppenstall addressing Lundin shareholders in "Report for the first six months 1 January – 30 June 2002", p. 4, see:

[http://www.lundinoil.com/Documents/qr\\_2\\_2002\\_e.pdf](http://www.lundinoil.com/Documents/qr_2_2002_e.pdf) (accessed March 3, 2009).

<sup>185</sup> Testimony by James Gatduel Gatluak, March 9, 2005, "Deposition of James Gatduel Gatluak", p. 72; and March 10, 2005, "Continued Deposition of James Gatduel Gatluak", p. 9-10, US District Court for the Southern District of New York, Civil Action No. 01 CV 9882 (DLC).

<sup>186</sup> HRW (2003), p. 560.

<sup>187</sup> De Guzman & Wesselink (2002), p. 13.

along the new road to Nhialdiu.<sup>188</sup> Uprooted and dispossessed of all means of survival, they faced famine and death in the unfamiliar areas to which they fled.

Sudan researchers Diane de Guzman and Egbert Wesselink reported that the people generally headed south in an attempt to put as many rivers and swamps between them and the Government of Sudan ground forces as possible. The bulk of the population of the northern part of Block 5A in Unity State headed southwest for refuge, just as the people of Blocks 1 and 2 in Ruweng County were pushed into the northeast and southeast corners of their county.<sup>189</sup> In all, the depopulated areas formed a wide circle around the operating sites of the Lundin Consortium and its access road. The displaced could not return to their villages. The entire northern part of Unity State – from north of Nhialdiu, east to Nimne, west to Buoth, and south to Duar, Ngop, Ryer/Tar Jath, Pultutni, Kuey and Chang – was a war zone.

“In 2002 the Government attack against the unarmed citizens of Nhialdiu began at 6.00 am. There were no SPLA in Nhialdu at the time of the attack. In 2002 I saw Government troops invade Nhialdiu in vehicles, on horseback and on foot. They were supported by tanks, gunships and Antonovs. The village was in panic and everyone ran for their lives. I saw two helicopter gunships shooting civilians indiscriminately. I saw one Antonov bomber target lines of refugees struggling to flee Nhialdu, including myself and my family, dropping bombs from morning to evening. I saw Government troops burning *tukhuls* and *luaks* as the attack advanced through Nhialdiu in 2002. During the night I returned to Nhialdiu under cover to see if there was anything left of Nhialdiu village. We found it had been completely destroyed by Government forces including my 3 *tukhuls* in the town centre, and 3 *tukhuls* and 2 *luaks* in the outskirts of Nhialdiu. The Government troops were in Nhialdiu with tanks and vehicles so we stayed some distance away.”

Testimony by Chief Tunguar Kueigwong Rat, Nairobi, 2006.<sup>190</sup>

In mid-February 2002, Lundin made a statement on Sudan to its shareholders, which singularly failed to acknowledge the extent of the human rights violations and other crimes that were being committed in Block 5A: “As announced on January 22, 2002, operations have been suspended temporarily as a result of deteriorating security conditions. However the potential remains huge and although Sudan is proving to be a very challenging project we intend to persevere until the value of the asset can be fully realised. In addition to logistical difficulties, our engagement in Sudan has raised ethical issues as a result of the ongoing conflict in that country. The question being raised is whether oil fuels the war or sets the conditions for peace by providing the country with the necessary means to lift itself out of poverty. We believe in the latter. Peace and stability are basic necessities for any investor. Long-term investors, such as us, require long-term solutions. This is a message that we have delivered and will continue to deliver to all parties to the conflict, including the Government of Sudan.”<sup>191</sup>

During the period of the suspension, from January 2002 to March 2003, the Government of Sudan tried to re-establish control over the area, as HRW and ECOS have reported.<sup>192</sup> Attacks by helicopter gunships were launched on Pultutni, Koch, Ler, and Mayendit in January 2002 and Ryer/Thar Jath in February 2002. This offensive was noticed by Talisman’s Security Advisor, who wrote in an internal report of January 2002<sup>193</sup>: “As covered in the last security report (10-28 Dec 2001) the army may become more proactive in Block 5A. This could accentuate the problem (instability) even further; the root of the problem could be the presence of GOS [Government of Sudan] in the first place, this together with compensation and complex local issues. The army is talking of “area clearance” and operating in a “different way”, this could be bad news. The only way to do business in this area is by negotiation and consensus ...”<sup>194</sup>

<sup>188</sup> Sudan Focal Point- Africa recorded twelve aerial attacks in the mentioned area, in: “Aerial Attacks on Civilians by Government of Sudan January – April 2002”, Pretoria, July 9, 2002, which was widely circulated to a mailing list of well over 1,000 people.

<sup>189</sup> De Guzman and Wesselink (2002), p. 11.

<sup>190</sup> Testimony by Chief Tunguar Kueigwong Rat, May 10, 2006, US District Court for the Southern District of New York, File 01 CV 9882 (AGS).

<sup>191</sup> Ian H. Lundin addressing shareholders in “Report for the period ended December 31, 2001”, Geneva, February 15, 2002, p. 2. See: [http://www.Lundin-petroleum.com/Documents/qtr\\_4\\_2001\\_e.pdf](http://www.Lundin-petroleum.com/Documents/qtr_4_2001_e.pdf) (accessed March 3, 2009)

<sup>192</sup> HRW (2003), p. 390-393 and ECOS (May 2002).

<sup>193</sup> All security reports of Talisman quoted here are internal reports, subsequently filed at the US District Court for the Southern District of New York.

<sup>194</sup> Talisman Security Report, December 29-January 07, 2002, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), TE 0521187.

But Sudan was not ruled by consensus. In the first week of February 2002, Talisman's Security Advisor reported in an internal report: "The continued military build up goes on. Military activity is very heavy. Gun-ships have been active in Block 5A, operating from Unity airstrip (currently 4 gun-ships and one troop carrier). Some reports suggest they have been in action around Lehr and Nimne areas. Any air activity would be a normal pre-cursor before ground troops move in. Generally the area of this upheaval is an information void, there are no NGOs, reporters or foreign workers etc."<sup>195</sup>

Shortly later, in an internal report, Talisman's Security Advisor reported: "Reports received of a steady flow of IDPs [Internally displaced persons] arriving into Bentiu and Rubkona from the southeast (mainly) and further south. While still considered a trickle (1,100 families), it will almost certainly worsen due to increased fighting and decreased stability in Block 5A. Further reports also indicate fighting at Kilo 7 (7 km south of Bentiu)... Reports received of gunship activity in Block 5A, suggesting activity in Kwash, Nimne and Lehr areas."<sup>196</sup>

A major offensive on Nhialdiu followed mid-February 2002. The Government of Sudan Army arrived from Bentiu in great numbers, supported by tanks and helicopter gunships, to capture Nhialdiu. The city was emptied. Large numbers of civilians fled south to Ngop, and to Wunlit or Pam in the west.

Towards the end of February, Talisman's Security Advisor wrote in an internal report: "The fighting south of Rubkona and Bentiu continues. It is now entering its third month. Government strengths are vastly increased and military command is resolute in its plans to restabilise Block 5A. There is no sign that peace will break out soon. The Government is pursuing a military solution. They are putting in a lot of resources into this localised conflict. The buffer zone that previously existed with the Lundin operation has been replaced by a huge military presence. At this time of the year (dry season) the advantage is with the Government. It appears they are using that advantage to the maximum. [...] There are no signs of Lundin recommencing operations, in fact they continue to wind down their operations almost daily."<sup>197</sup>

On February 20, 2002, two Sudanese Air force helicopters attacked the village of Bieh, north of Ler, when food was being distributed, and killed twenty-four civilians, injuring many more.<sup>198</sup> The attack was witnessed by United Nations food monitors, and condemned worldwide.

In March, Talisman's internal security report read: "The situation in Block 5A remains fluid. The reporting period was dominated by the final capture of Nhialdu by the GOS. The area south of the river (Bahr el Ghazal) remains a no-go area. [...] The other main incident that has dominated the news was the gunship attack on WFP food distribution site at Bieh, 80 kms south of Bentiu."<sup>199</sup>

The Government's reaction was to put a flight ban on all areas west of Nuer villages on March 1, 2002. Associated Press reported "the Government has placed most of the area around Bentiu off limits to aid workers. The newly banned areas include the region where Government and western oil companies have tapped into a large oil field."<sup>200</sup>

Talisman's April 2002 internal security report reads: "This year will in my opinion mark a change in the strategy on both sides. Fighting can be expected to continue, probably through the wet season, whereas in the past this was not the case. The fighting south of the oilfields has intensified, of that there can be no doubt. There are more troops (on both sides), more weapons, better weapons and more mobility (due to roads); these are some of the factors in the increase of intensity."<sup>201</sup>

"The military strategy that was adopted by the Government in the oilfields was similar to earlier strategies aimed at civilians in Abyei, the Nuba Mountains and northern Bahr el Ghazal, but there were important developments that made it unique. (...) In all three places the objective was to separate the SPLA from its civilian population base and remove that population forcibly from rebel-

<sup>195</sup> Talisman Security Update Bentiu/Rubkona, February 7, 2002, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), TE 0520993.

<sup>196</sup> Talisman Security Report, Period February 1-11, 2002, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), TE 0520996.

<sup>197</sup> Talisman Security Report, Period February 12-22, 2002, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), TE 0521009.

<sup>198</sup> WFP, "WFP condemns attack on civilians at food distribution in Southern Sudan", February 21, 2002. See:

[http://www.wfp.org/search/apachesolr\\_search/WFP%20condemns%20attack%20on%20civilians%20at%20food%20distribution%20in%20Southern%20Sudan](http://www.wfp.org/search/apachesolr_search/WFP%20condemns%20attack%20on%20civilians%20at%20food%20distribution%20in%20Southern%20Sudan)

<sup>199</sup> Talisman Security Report, Period February 23 -March 5, 2002, File 01 CV 9882 (AGS), US District Court for the Southern District of New York, TE 0521012.

<sup>200</sup> Associated Press, "Rebels Lay Cease-Fire Blame", Sudan, March 1, 2002.

<sup>201</sup> Talisman Security Report, Period April 26-May 6, 2002, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), TE 0521206.

held territory to Government-held territory. The attacks were primarily ground attacks, timed to disrupt the seasonal economic activity of the population so targeted.

In the oilfields a new combination of air and ground attacks was adopted that could be deployed during any season of the year, increasing the vulnerability of the civilian populations. The object was the quick and total removal of the population from the vicinity of the operations. More indiscriminate as well as more direct methods of extermination were used. Whereas in the earlier theatres of war women and children were abducted, here they were killed, whether through aerial bombardment or by militiamen.

The main difference between the two strategies is that in the other theatres the Government attacked livelihoods in order to remove the people, in the oil fields they had the hardware and the road and air networks to attack the people directly, and repeatedly. Unlike in the other theatres where deserted territory was usually left abandoned, in the oilfields the Government created a defensive military parameter, devoid of civilian inhabitants, within which the oil companies and military could operate. It was a strategy that, once developed in the oilfields, was transferred to the new theatre of war in Darfur.”

Expert Report by Dr. Douglas H. Johnson, July 2005.<sup>202</sup>

#### **Peace talks while the war reaches its final stage**

By late March 2002, talks between the Government of Sudan and the SPLM/A, brokered by US Special Envoy John Danforth, reached a break-through and real prospects emerged for a negotiated end to the war. The two sides signed an agreement that prohibited "attacks on civilians or civilian objects" and a US-funded Civil Protection Monitoring Team (CPMT) was established to monitor that. In July 2002, the Machakos Protocol was signed by Dr. Ghazi Salahuddin Atabani for the Government of Sudan and Cmdr. Salva Kiir Mayardit for the SPLM/A, providing a six-month, pre-interim period during which hostilities would end and a formal ceasefire would be negotiated. On October 15, 2002, a Memorandum of Understanding was signed and the two parties agreed to a cessation of hostilities for the duration of talks. On October 26, 2002, the Government of Sudan and the SPLM/A agreed to lift all restrictions on humanitarian aid. The cease-fire reduced the overall levels of violence but was never fully implemented. The CPMT continued to report fighting and helicopter gunship attacks in Block 5A.<sup>203</sup>

From Talisman's July 2002 internal security report: "What was essentially a low tech bush war has changed at least for the GOS [Government of Sudan]. The GOS is now far stronger and has a distinct technical superiority over the rebels. That allied with complete air superiority and the increases in manpower and military equipment in the last 12 months has changed the face of things on the ground [...] Probably the most significant development has been the apparent change to coordinated battle tactics, commencing with air support initially (Antonovs and gunships) followed by armour and infantry on the ground. [...] The situation in Block 5A while quieter over the last month does not appear to be settled. There is a growing IDP influx from Lehr and Adok moving north to Thwan (large IDP area south of Bentiu) and Rubkona. This highlights increased instability in those areas and does not bode well for Lundin redeployment anytime soon."<sup>204</sup>

Between July and August 2002, Gogrial County in Warrap State received an estimated 50,000 people from Unity State due to continued fighting.<sup>205</sup> While humanitarian access dramatically improved elsewhere, in Unity State the Government of Sudan continued from time to time to prevent aid organisations from reaching the people it had displaced from the oilfield areas, in violation of the ceasefire agreed to in October 2002, notably in January and February 2003.

From Talisman's January 2003 internal security report: "The eagerness to complete the Lundin road over the past year indicates the Government's position regarding future oil development. They appear desperate to open up Block 5A (followed by 5B) for

<sup>202</sup> Johnson, Expert Report (2005), p. 12-13

<sup>203</sup> CPMT, "Final Report: Military Events in Western Upper Nile, 31 December 2002 to 30 January 2003", Khartoum, February 6, 2003, and CPMT, "Report of investigation: Violence against civilians along the Bentiu-Leer-Adok road", Khartoum, August 11, 2003. Available at <http://www.ecosonline.org>

<sup>204</sup> Talisman Security Report, Period June 24–July 8, 2002, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), TE 0521032-33.

<sup>205</sup> Famine Early Warning Systems Network (FEWS NET) Southern Sudan, "Food Security Report – August 14, 2002", p. 4. See:

[http://v4.fews.net/docs/Publications/Sudan\\_200207en.pdf](http://v4.fews.net/docs/Publications/Sudan_200207en.pdf) (accessed Sept. 29, 2009).

oil activity... Both sides [Government of Sudan and SPLA] are largely adhering to the cease-fire but appear to be working around it by proxy to achieve their aims.”<sup>206</sup>

In January 2003, the Civil Protection Monitoring Team reported: “Many thousands of civilians have been forcibly displaced from their villages by direct military attack in the areas Lara-Tam-Nhialdiu-Leel and the villages south of Mankien and Mayom. Conditions are equally bad along the new Bentiu-Adok main road where most villages are now empty or destroyed altogether. Eyewitness accounts of military attacks and subsequent actions by soldiers and forces violate the letter and spirit of the Agreement on Attack Against Civilians.”<sup>207</sup> The CPMT concluded that the depopulation was accompanied by multiple rapes of captured women, torture, disfigurements and murders.<sup>208</sup>

“This deal is a demonstration of how value can be created in cash terms through successful exploration. The exploration business requires both vision and the willingness to take a long term view.”

C. Ashley Heppenstall, President and CEO of Lundin Petroleum, August 2003.<sup>209</sup>

In March 2003, the Lundin Consortium announced that it had decided to work towards the resumption of its operations.<sup>210</sup> One month later, the Lundin Petroleum announced the sale of its share in Block 5A to Petronas Carigali of Malaysia. In June 2003, Lundin received US\$142.5 million in cash from the sale, gaining US\$92,6 million.<sup>211</sup> The other European partner in the Consortium followed Lundin’s example almost a year later. In May 2004, OMV concluded the sale of both its stakes in Sudan (Block 5A and 5B) to the Indian company ONGC Videsh for EUR 105.6 million and reported an overall net profit of EUR 48.37 million on its Sudanese adventure.<sup>212</sup> By then, the Thar Jath field was believed to contain gross proven and probable oil reserves of 149.1 million barrels. In all, between 1997 and 2003, the value of the Consortium’s assets had jumped by US\$200 million.

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<sup>206</sup> Talisman Security Report, December 17– January 23, 2003, US District Court for the Southern District of New York File 01 CV 9882 (AGS), TE 0521095.

<sup>207</sup> CPMT, “Final Report: Military Events in Western Upper Nile, 31 December 2002 to 30 January 2003”, February 6, 2003.

<sup>208</sup> CPMT, “CPMT Report to IGAD Military Events in Leer, 26 to 30 January 2003”, p. 3.

<sup>209</sup> Lundin Petroleum, “Report for the 6 Months ended June 30 2003”, August 14, 2003 p. 2.

<sup>210</sup> Lundin Petroleum, “Update on activities in Block 5A, Sudan”, March 27, 2003.

<sup>211</sup> “Lundin Petroleum sells interest in Block 5a, Sudan to Petronas for USD142.5 million” ([http://www.lundinoil.com/Press/pr\\_sudan\\_28-04-03\\_e.html](http://www.lundinoil.com/Press/pr_sudan_28-04-03_e.html)) and “Year End Report 2003” ([http://www.lundinoil.com/Press/pr\\_corp\\_24-02-04\\_e.pdf](http://www.lundinoil.com/Press/pr_corp_24-02-04_e.pdf); accessed October 30, 2008). The US\$ amounts mentioned are calculated with the Currency Converter from the European Central Bank for June 2003 (US\$1,00=SEK7,78).

<sup>212</sup> OMV, “OMV on the move in 2004: Annual Report”, p.30, 110; footnote 1.



## **“WE AS A COMMUNITY ARE CRYING AND NOBODY IS HEARING US”**

“I am Reverend James Kuong Ninrew. My age now is 48 years. I was born in Western Upper Nile; the particular place is Adok, which is now part of Ler County in Unity State.

Now I am a pastor in the Presbyterian Church of Sudan. My area is Payinjiar Parish, far south in Unity State. My wife is currently in Bentiu, some of my children are in Nairobi for their schooling. I have seven children.

In 1995 my church assigned me to Koch County. It was a contested area between the Government of Sudan and the SPLA.

This Government of Sudan needed to clear the area, they said from the SPLA, but actually there were no SPLA in the area. They were moving civilians.

Before the oil company moves into a location, that location must be secured. “Securing” is to send in army troops to clear the area and once people – the oil company - feels it is secure enough for them and there are no inhabitants, they come in.

Lundin: of course they were the one. At the time we did not know exactly but we later came to know the names.

The clearing was done in a systematic way. First of all they came with Antonovs, and then they come with helicopter gun ships. There was random shelling of the villages, shelling even of cows. Once they see some of these animals on the ground, they know there are people also living there.

So, first they install fear in the people. Then the next step is to send ground troops. It was the Sudan Government soldiers officially and then their allies, the militias.

The ground troops checked from village to village, house to house. People ran away. The soldiers would wait to see if people would come back to their homes. Then one or two months later they would do the same thing again, until people ran away for their lives and did not come back again.

Many of these incidents ended in my compound, people ran into the church. They thought that the soldiers would not destroy the church. But it happened: they burnt churches. There was no safe place. Even women and children were killed in this indiscriminate kind of killing.

I saw one incident when women and children were killed in the distribution of food. Even the United Nations World Food Program was there. This one was documented.

The first things to be destroyed were always the *tukhuls*. In those days there was a kind of Kalashnikov that would light houses immediately. In my family we lost at least seven in Koch and another seven in Leer.

As communities we lost a lot of grazing areas. During that period the whole of Block 5A and 5B, half of those areas were under the companies and there was no access to it. We have all lost a lot of cattle.

Farmland was also lost. For my family this was between 10 and 15 *feddans*. The war situation could not allow access to so many markets. But the land was enough to sustain us, to sustain our families we got a little out of selling the milk, selling the cows, the crops. Every year the lowest that could come if you turned it into cash that could come into 12,000 Sudanese pounds.

But because of the fighting, we could not stay there any longer. I evacuated the family to Nairobi. I came and went.

I lost a brother, I lost also a sister, I lost a mother-in-law, I lost one of my cousins, all this. My mother-in-law was being chased away, she was running for her life and in the process she drowned. My brother was shot. The others were also gunned down by the Sudan Army.

That is directly my family. If you look at the whole (Koch) community I guess 20 to 30 percent of the population has gone. That would be, I think, 2,000 to 3,000 people. These are civilians not soldiers. This is from the clearing.

As a family we went back only after the CPA. Koch was empty. There was nothing there. The people had to start from zero. The oil installation is still there. Some of the land is occupied still by the oil companies. Other people have taken the land. There are a lot of land disputes now.

I have the right to compensation. And the whole community has the right. Together with some others I have opened up a case against Talisman. But it is a very big, very powerful company.

You know you can talk to 10,000 people and they will all have the same story as my one.

Of course our Government in the south and the Government in the north are the same. They are the ones who signed the CPA together and they don't want to enter into the issue of compensation that but we as a community are crying and nobody is hearing us."

Interview by Skye Wheeler, Sudan-based journalist  
Juba, August 23, 2008

## 4. THE DAMAGES

### Overview

A complete account of all damages caused by the fight for control of the oil areas of Block 5A in Sudan would require a formidable effort. Set out below, is ECOS' best estimate based on the available reports by international organizations, humanitarian agencies and researchers. ECOS submits that this estimate confirms that oil exploitation in Block 5A brought tremendous damage and human suffering.

ECOS' estimate is:

- 12,000 people killed or dead from hunger, exhaustion and conflict-related diseases
- 160,000 people forcibly displaced, often multiple times
- 20,000 people permanently uprooted; having lost their cattle and houses, they took refuge in urban centres and never managed to return
- 40,000 *tukhuls* (huts) and *luaks* (livestock shelters) destroyed
- 500,000 cattle lost, mostly looted
- Enormous quantities of goats, food stocks, personal belongings, farming and fishing utensils looted, and communal assets, including churches, schools, markets, and medical clinics, destroyed
- Immense loss of income because of interrupted agricultural cycles and otherwise thoroughly disturbed economic life
- Incalculable moral damage and lost opportunities, including employment, education and social benefits.

### Population

There are no population figures available for Block 5A, only for Unity State as a whole. Médecins Sans Frontières (MSF) estimated its population around 500,000 in the early nineties. In 2000, the Organization for Relief and Community Development (ORCD) calculated that the population numbered between 680,000 and 750,000.<sup>213</sup> In 2004, the World Food Programme (WFP) estimated its population at 1.5 million, citing the 1994 census.<sup>214</sup> This range was confirmed by the 2005 World Health Organisation (WHO) estimate of 770,400. In 2006, the UNMIS office in Bentiu indicated that the population had been about 700,000 during the period 2003 to 2006. Based on these figures, it seems reasonable to assume that in 1997 the population of Unity State stood at around 600,000.

The total surface of Unity State is 35,956 square kilometres. Block 5A covers 29,885 km<sup>2</sup>, of which two-thirds (2/3) lie in Unity State. Its most populous areas are found along the Bahr el Ghazal River, with considerable concentrations around Ler, Adok, and Nimne - all in Block 5A- and in Parieng county, which lies partially in Block 5A. ECOS estimates that in 1997, at least 40% of the total population of Unity State, or 240,000 people, lived in Block 5A.<sup>215</sup>

### 4.1 Forced displacement

Satellite image analysis by PRINS Engineering (explained in Annex 5) shows that between 1999 and 2003, up to 80% of the grazed and cultivated surface of the most densely populated parts of Block 5A has at some point in time been abandoned.<sup>216</sup> This analysis only covers prolonged displacement while particularly in the earlier periods many people managed to return to work their lands within a few months and thus their land did not show noticeable changes in agricultural use. ECOS concludes from this satellite analysis that two thirds of the population of Block 5A have faced forced displacement at least once. Assuming that the population stood at 240,000 in 1999, ECOS estimates that 160,000 people have been forcibly displaced in Block 5A, often multiple times.

<sup>213</sup> ORCD, "Humanitarian Assessment Mission to Western Upper Nile Region: Bul, Leek, Jagei and Jikany Counties", November 2000. See: <http://southsudanfriends.org/ORCD/wunneeds.htm> (accessed Sept. 28, 2009).

<sup>214</sup> WFP, "Unity State: Annual Needs Assessment 2004–2005", WFP Rubkona Sub-office, Unity State, 2004, p. 1.

<sup>215</sup> The parts of Block 5A that lie outside of Unity State have not been taken into account as there were no oil operations there.

<sup>216</sup> Prins, Erik, "Satellite mapping of land cover and use in relation to oil exploitation in concession Block 5A in Southern Sudan: 1987–2006", PRINS Engineering, Copenhagen, August 2009. Available at: <http://www.ecosonline.org>.

“The first attack on Koch by Government of Sudan forces was in 1998 when they attacked with gunships, tanks and ground troops. We were chased away by the attack to Ngony. (...) Again, when it seemed safe, we went back to Koch, but there was another Government attack. This time we were displaced to Pultutni. From there we were displaced to Mirmir and from there we were displaced to Bieh. In each of these locations I built a shelter in which to live. Each time I was forced to leave by Government forces, these shelters were either destroyed or abandoned. (...) In 2001 I was in Ngony when it was attacked by Government of Sudan ground forces and helicopter gunships. I was shot in the foot by a Sudanese soldier. I still suffer the effects of this wound. All these places were near an all-weather road that was being built from Rubkona to Ler for the use of the oil companies.”

Testimony by Chief Thomas Malual Kap.<sup>217</sup>

During the first four months of 2002, between 150,000 and 300,000 people in Unity State had been displaced.<sup>218</sup> As many as 50,000-60,000 came from the areas of Ryer/Pultutni, Nimne, Nhialdiu and Buoth.<sup>219</sup> During the whole of 2002, it was estimated that 500,000 people had been displaced from the oil areas in Unity State. By November, the IDP population in garrison towns of Bentiu, Rubkona, Pariang, Mayom and Kumagon had grown to over 100,000 people.<sup>220</sup> As the displacement campaigns became more frequent and more intense, large numbers left Unity State for the adjacent states, mostly to the west and the south<sup>221</sup>, but some also went to South Kordofan, Kassala, Malakal and Khartoum. The Global IDP Project indicated that several groups had arrived from Unity State in various other locations including:

- 13,000 IDPs in five camps in Malakal (Upper Nile),
- 40,000 Nuer in Bahr el Ghazal,
- over 127,000 in Northern Bahr el Ghazal.<sup>222</sup>

As many large scale military operations in 2002 took place in Block 5A, it can be safely assumed that an important percentage of these people originated from there.

Other IDPs found shelter in barren expanses (usually their former grazing lands) where they struggled to build new settlements, including in Bahr el Ghazal State. Many Nuer ended up in the Dinka territories to the south and west. Fortunately, they were welcomed by their traditional rivals, showing the immense importance of the 1998 South Sudan People to People Peace conference in Wunlit (Bahr el Ghazal State) sponsored by the New Sudan Council of Churches, which reconciled major sections of the Dinka and Nuer peoples, issuing a persuasive message for peace that would lay the foundation for the CPA.

Some IDPs from Block 5A succeeded in reaching Malakal by dug out boat or raft, and from there went on to Khartoum. While treating cases of kala azar (leishmaniasis) in IDP camps in Khartoum, MSF learned in 2002 that all 800 infected persons originated from Unity State. They hence discovered an outbreak of an epidemic of kala azar in Unity State, and the presence of IDPs from Unity State in Khartoum camps.<sup>223</sup>

Available data indicate that, at present there are approximately 20,000 IDPs from Unity State in the Khartoum area and many thousands still camp in urban centres in Unity State itself. A small number of displaced people have crossed international borders to become refugees in the many camps along Sudan's borders.<sup>224</sup>

<sup>217</sup> Testimony by Thomas Malual Kap, March 2005, US District Court for the Southern District of New York, File 01 CV 9882 (AGS).

<sup>218</sup> UN OCHA cited in Global IDP Project/ Database, “Profile of Internal Displacement: Sudan”, March 31, 2003. Available at: <http://www.reliefweb.int>

<sup>219</sup> Dan Church Aid/Christian Aid, “Hiding between the streams: The war on civilians in the oil regions of southern Sudan”, 30 April 2002.

<sup>220</sup> Global IDP Project/ Database, “Profile of Internal Displacement: Sudan”, March 26, 2002 and March 31, 2003. Available at: <http://www.reliefweb.int>

<sup>221</sup> UN Office for the Coordination of Humanitarian Affairs, “OCHA Sudan Humanitarian Update Aug2002”, September 17, 2002. See:

<http://www.reliefweb.int/rwarchive/rwb.nsf/db900sid/OCHA-64DDFZ?OpenDocument&query=sudan&cc=sdn&rc=1>.

<sup>222</sup> Global IDP Project/ Database, “Profile of Internal Displacement: Sudan”, March 31, 2003. Available at: <http://www.reliefweb.int>

<sup>223</sup> MSF (2002), p. 10.

<sup>224</sup> WFP distribution lists, UN OCHA database, Global IDP Database.

## 4.2 Changes in farming activity 1994-2003 indicate massive displacement in Block 5A

Satellite images show evidence of recent human activity (cultivation and grazing) in green.<sup>225</sup>

Prins Engineering's interpretation of these images is that they catalogue a decrease of approximately 80% in agricultural land use of the most densely populated area of Block 5A in the period 1994 to 2003. This conclusion is consistent with reports of the many leading human rights organisations of massive forced displacement at the time (cited in UNPAID DEBT).

ECOS suggests that a correlation can be observed between a decrease in human activity and attacks by Government and militia forces on villages in Block 5A and the timing of activities of the Lundin Consortium as reviewed in detail in UNPAID DEBT.

ECOS submits that food production and livestock levels in the area must have dropped substantially between 1999 and 2003, suggesting extreme hardship for the population.

Comprehensive satellite image analysis by PRINS Engineering is to be found at [www.ecosonline.org](http://www.ecosonline.org)

### **December 7, 1994**

The image shows a stable situation during the early dry season, with significant agricultural activity west of 29°40'E down to 8°40'N, along two agricultural corridors running from Bentiu to Nimne and from Bentiu to Leer, as well as sizeable farming activity around Ler up to Koch.

### **January 8, 1995**

This image confirms the stable situation of farming activity in the early dry season with the north-western part of Block 5A, being the main area for growing crops and permanent settlements along the sand banks of streams, another concentration around and north of Leer, and finally two small corridors of agricultural activity, one from Bentiu to Nimne and one from Bentiu to Leer.

### **November 27, 1999**

A similar pattern as in 1994 but with reduced farming south of the line Touc-Pam-Bow and around Koch. A larger area of activity now lies outside Block 5A, north of Buoth, on the northern banks of the Bahr el Ghazal river (which appears white in the images).

### **March 2, 2000**

This image confirms the reduced farming pattern of the early stage of the dry season period, as seen in the image of November 27, 1999.

### **March 8, 2002**

Compared to the available earlier years, a drastic reduction of the farmed surface is manifest south of Nhialdiu, north of Buoth, and along the new road from Bentiu to Jarayan (north-east of Leer). Increased agricultural activity can be observed between Bentiu and Nimne, which corresponds with contemporary reports of a large influx of internally displaced persons from areas south of Nhialdiu.<sup>226</sup>

### **November 3, 2002**

The farming pattern here is similar to the March 2002 image, although the farming areas now stretch further south of Touc. There is a decrease in farming activity on the northern part of the newly established all-weather road between Bentiu and Kuac (in the vicinity of the village area of Guit). Farming can be observed in the areas between Bentiu and Nimne, and there are some toic grazed areas in the east close to the White Nile river.

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<sup>225</sup> All information on satellite images is derived from: Erik Prins, "Satellite mapping of land cover and use in relation to oil exploitation in concession Block 5A in Southern Sudan, 1987-2006", PRINS Engineering, Copenhagen, 2009. Available at: [www.ecosonline.org](http://www.ecosonline.org).

<sup>226</sup> MSF (2002), p. 13-14; Dan Church Aid/ Christian Aid (2002), p. 6.

### December 21, 2002

Up to 80% of the formerly farmed areas in the observed part of Block 5A are no longer in use.<sup>227</sup> The Nhialdiu area comprises many higher laying sand banks on which staple food crops can be grown. This activity can be observed to have mostly ceased. To the south, around Touc and further, new agricultural activity can be observed. Along the road between Bentiu and Jarayan, agricultural activities have dropped to marginal levels.

### January 23, 2003

A similar pattern as in December 2002. No resumption of farming activity can be spotted in the traditional farming/cropping areas. In the vicinity of oil activity areas agricultural land use has become sporadic.

## 4.3 Deaths

Estimating deaths, injury, and damage to property is even more difficult than displacement. Humanitarian organizations do not accurately record that kind of information. Testimonies of victims invariably mention indiscriminate bombing, targeting of civilians, and routine killing.<sup>228</sup> Witnesses of attacks on villages almost invariably mention cases of the violent death of family members or neighbours. The attacks on Nhialdu and the campaigns along the oil road were especially deadly.

Many people ended up in the unhealthy swamp areas and outside the reach of humanitarian assistance. Displaced populations usually flee to places with which they are familiar, and, in most cases, these were the former wet-season gardens and grazing lands. In a normal transhumant cycle, the wet season provides them with a viable livelihood, but the dry season rendered the area inhospitable. There are few permanent sources of water and the land is barren, thus unfit for agriculture. Partially flooded during the wet season, it is dry and unsuitable for production during the dry season, a combination that makes it largely unfit for human existence. Hungry and weakened, mortality rates must have been high, especially among the elderly and children.

MSF which has been present in Block 5A since the late 1980s, operating from its hospital at Ler and treatment centres in Nimne and Jikany, has acquired a vast knowledge of the health conditions and the diseases which mostly affect the population in the area. Among the diseases that MSF lists are: kala azar (leishmaniasis), meningitis, measles, shigella (bacillary dysentery), polio, hepatitis E, cholera, relapsing fever, and tuberculosis. Unity State is one of a handful of regions around the world where kala azar is present. If untreated, the disease can kill over 95% of cases. The war seriously disrupted MSF's life-saving interventions.<sup>229</sup>

“The total mortality from violence, disease and hunger in Western Upper Nile will never be known. The conflict has affected the lives of thousands. Each individual has a story. What is clear is that the war in Western Upper Nile is inexorably killing off the people of the area.”

Médecins Sans Frontières, 2002.<sup>230</sup>

Continuous or serial displacement together with the bombing, and sometimes, destruction of hospitals, has prevented the population from receiving adequate health care. The loss of cattle has deprived children of their most important nutriment, milk. One result is a high rate of malnutrition and a decrease in children's immunity, which exposes them to disease.

The WFP Sudan Annual Needs Assessment 2002/2003 gives the following rates of global malnutrition for Unity State:

1999: 26.3%

2000: 25.1%

2001: 38.4%

2002: 22.4%

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<sup>227</sup> Prins (2009), p. 13, 20.

<sup>228</sup> The public files for the case Presbyterian Church of Sudan, et. al., vs. Talisman Energy, Inc., and the Republic of Sudan contain many testimonies that concern events in Block 5A where Talisman was not present. Available at: Public Files Department, US District Court for the Southern District of New York, File 01 CV 9882 (AGS).

<sup>229</sup> During the 1990s, Kala-azar killed an estimated 100,000 people in Upper Nile. See: Moszynski, P., “Health Organisation Warns that Kala-azar has returned to South Sudan”, The Lancet, no.360:1672, November, 2002. During the 1990s, aid agencies started to treat the disease that can kill up to 95% of the affected population if not treated. The oil wars seriously disrupted this work. See e.g. MSF (2002).

<sup>230</sup> MSF (2002), p. 1.

According to the WFP, these alarmingly high malnutrition rates were caused specifically by an escalation in the conflict.<sup>231</sup> There is no generally accepted correlation between malnutrition rates and mortality, but in combination with endemic diseases this can be very high, especially among young children.

Between 1999-2004, mortality rates in Unity State were not systematically recorded, contrary to its neighbouring states, which was partly due to repeated denial of access to aid agencies. The few available figures are disturbing. In 2003, crude mortality rate in the northern area of Block 5a stood at 3.9/10,000 per day<sup>232</sup>, compared to an average rate of 0.25/10,000 per day in 2004-2006.<sup>233</sup>

There is no reliable way of calculating the number of deaths, but it is clear that a substantial percentage of the population must have died as a result of war crimes and crimes against humanity. ECOS believes that the 2003 survey among chiefs is a reliable starting point. They had counted 12,433 people who had been directly killed (see Box below). The survey was highly incomplete, and ECOS estimates that the total number of dead must have been higher by the consequences of prolonged presence in inhospitable environments, malnutrition, deprivation of medical care, and preventable diseases. Therefore, ECOS' most conservative estimate is that 5% of the total population of Block 5A has died as a result of the oil war, or 12,000 people.

In 2003, a group of prominent citizens from Unity State compiled data from village chiefs, who have a record of being very reliable sources of information about their communities. These were among their findings:

- September 15, 1999 to April 2000: 90,000 persons displaced from Rubnyagai, most of them went to Nhialdiu. 4,433 civilians killed of which 1,433 children, 1,259 women, 308 men. 1,500 children were abducted to be enslaved.
- July 10, 2000 to December 2001: Number of displaced persons, Jikany 60,000; Jagei 50,000; Dok 40,000. 4,500 civilians killed, mostly children, women and elderly men, many of them burnt to death in their huts. Many villages torched between Bentiu and Ryer, including Ler, Duar, Ryer, Koch, Ngony. Cattle raided.
- January 2002 to June 30, 2003: 4,000 people killed, of which 2,130 children, 955 women, and 420 men. Over 100 children kidnapped, some of whom were later killed, others disappeared, believed taken by the murahleen. All villages around Nhialdiu, Kuey, and Waak area burnt down.<sup>234</sup>

This is a rare attempt at consolidating available data on loss of life and property as a result of the hostilities. Its accuracy is difficult to verify, but again, it indicates that the level of losses has been astounding.

## 4.4 Destruction of dwellings

Displaced agro-pastoralists in Sudan usually leave most of their possessions behind during flight, with the main exception of their cattle. In some circumstances, they go back to their villages after the departure of the soldiers or the militia to salvage what remains. There is an abundance of testimonies indicating systematic looting and destruction of the deserted villages and settlements by the attackers.

Mr. Leonardo Franco, UN Special Rapporteur on Human Rights in Sudan from 1999 to 2000, collected information on the burning of more than 6,000 *tukhuls* in Ruweng County (now Parieng County, which lies partially in Blocks 1 and 5A).<sup>235</sup> According to HRW, civilian survivors estimated that 60% of the total number of dwellings had been destroyed.<sup>236</sup> Franco's successor, Gerhart Baum, reported in 2001 that all the villages around Nhialdiu and Nimne had been burnt to the ground, and that all villages on the road to Pultutni, near Ryer/Thar Jath had been similarly destroyed.<sup>237</sup> *Tukhuls* were deliberately torched to discourage their owners from returning.

<sup>231</sup> WFP, "Unity State: Annual Needs Assessment 2002-2003", WFP Rubkona Sub-office, 2002, p. 17.

<sup>232</sup> The United Nations considers a crude death rate of more than 1/10,000 per day a humanitarian emergency. "Normally, in a resident African population, the crude mortality rate is less than 0.5/10,000/day", according to MSF (2002), p. 18, footnote 25.

<sup>233</sup> WHO Collaborating Centre for Research on the Epidemiology of Disasters (CRED), Complex Emergency Database, Survey #64 Unity State 2003 and Surveys Unity State 2004-2006, available at: <http://www.cedat.be>.

<sup>234</sup> Rev. Gaduel, J.S. and S. Kueini Gatjiek, C. Machieng Kuol, M. Nyaliak Low, P. Gatkuoth Thot, and others, "On the oil war in Upper Nile", (not published), Nairobi, 2003.

<sup>235</sup> Harker, John, "Human Security in Sudan: The Report of a Canadian Assessment Mission", Ottawa, January 2000, p. 10.

<sup>236</sup> HRW (2003), p. 256.

<sup>237</sup> Oral statement by Gerhart Baum, Special Rapporteur on Human Rights in Sudan to the U.N. Commission on Human Rights, Geneva, March 29, 2001. <http://www.unhchr.ch/huricane/hurricane.nsf/0/072FE7F713DE0F4FC1256A29002A3757?opendocument>.

In respect of a total of 160,000 displaced persons, with the average house being home to about six people, and 60% of the dwellings destroyed on average, the number of destroyed *tukhuls* was in the order of 16,000. *Luaks*, which are larger versions of the *tukhul* and mainly used to shelter animals, were also destroyed. There is one *luak* for every three *tukhuls* on average. After an attack, people would build new *tukhuls* and *luaks*, either after they had returned to the destroyed village, or at a new settlement following displacement. If displacement was repeated twice on average, the number of destroyed dwellings throughout Block 5A would be over 40,000.

## 4.5 Destruction of livelihood

The forced displacement and concomitant loss of livestock had a severely disruptive effect on the already precarious economy of Unity State. "Agricultural activities were abandoned, food stocks left behind or destroyed, and other local coping mechanisms, such as fishing, wild food collection, and trade, were severely affected."<sup>238</sup>

Attacks had a cumulative effect, destruction of property, looting of livestock and loss of grain reserves made survival in the conflict-affected areas extremely difficult, eroding survival strategies to the point where moving elsewhere was the only option that remained.<sup>239</sup> WFP's Annual Needs Assessment for 2000 identified the Pariang/Ruweng County area and the oil area around Duar and Koch as suffering acute food shortages directly linked to insecurity: "An estimated 30–40% of the population will have no harvest this year since they were forced to move away from their land at different times during the cultivation period."<sup>240</sup>

## 4.6 Looting and destruction of cattle

For the Nuer, cattle are the most valued property. They have social, economic, and cultural value, as well as spiritual and religious properties. The loss of cattle constitutes a major disaster for them. Typically, a raid on a village would entail theft of cattle. Regular Government of Sudan troops would take all the livestock that they could take to their garrisons to feed the soldiers, whereas the local militias, who share the same cultural values as the villagers and would be very motivated to steal cattle, would use them in the more traditional way as wealth. The scale of cattle theft was immense. In December 1998, World Food Programme staff recorded that approximately 24,000 head of cattle had been stolen by the fighting forces during the attack on Ler alone.<sup>241</sup> A small MSF survey of 271 families showed that nine out of ten had lost all their cattle in the 1999 fighting.<sup>242</sup>

"The link between the conflict, food security and malnutrition is clearly demonstrated in the example of Padeah village, near Ler: a June 2000 survey by MSF found that 75% of Padeah's families had been displaced and 93.4% had lost cattle in the 1999 fighting."

Médecins Sans Frontières, 2002.<sup>243</sup>

Nuer households in the area usually owned 15–30 head of cattle. Before the conflict, there would have been around one million head of cattle for 40,000 households (see above) in Block 5A. Considering the scale of the displacement and the systematic pattern of theft and looting, a total loss of 500,000 head of cattle seems a conservative estimate.<sup>244</sup>

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### POPULATION DISPLACEMENT IN UNITY STATE

The magnitude of the civilian population displacement in Unity State at the time is supported by contemporary reports. A selection taken from publicly available reports follows:

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<sup>238</sup> WFP cited by USAID in: "Sudan - Complex Emergency Situation Report #2 (FY) 2001", USAID, September 28, 2001.

<http://www.reliefweb.int/w/rwb.nsf/vLCE/573414C7445E91DB85256AD80066BB0E?OpenDocument&StartKey=Sudan&ExpandView>. (accessed October 24, 2008).

<sup>239</sup> Gagnon & Ryle (2001), p. 3.

<sup>240</sup> Harker (2000), p. 26.

<sup>241</sup> WFP, "WFP delivers first food in months to tens of thousands of Sudanese cut off by war in southern Sudan", December 8, 1998, <http://one.wfp.org/english/?ModuleID=137&Key=390> (accessed May 28, 2008).

<sup>242</sup> MSF (2002), p. 18.

<sup>243</sup> Ibid.

<sup>244</sup> These figures refer only to cattle, a source of wealth and power. Other livestock (goats) are used as food and do not carry the same importance. Armed groups however, also steal goats and other animals for food.



- July and August 2000: 44,757 IDPs with about 100,000 cattle, fleeing hostilities, particularly around Koch, Ler, and Adok, were recorded entering Bentiu ad Rubkona, bringing total IDP population in the Bentiu/Rubkona area to over 60,000, with women and children making up over 65% of this.<sup>245</sup>
- August 2000: Sulaf al-Din Salih, a Government humanitarian aid commissioner, stated that displaced people were arriving in Bentiu at a rate of 150 to 200 per day, with the total number in August running at 40,000.<sup>246</sup>
- The WFP Annual Needs Assessment for the year 2000 identified Ruweng County and the area around Duar and Koch, the site of the Consortium's operations, to suffer the highest food shortages directly linked to insecurity: "An estimated 30–40% of the population will have no harvest this year since they were forced to move away from their land at different times during the cultivation period."<sup>247</sup>
- February 2001: SPLA forces displaced 15,000 civilians when they attacked and destroyed the town of Nyal.<sup>248</sup>
- "IDP influx into Bentiu from Leek continued in small numbers following an escalation of fighting in the area. Over 12,000 new arrivals have been registered. The IDPs were mostly women and children."<sup>249</sup>
- "Bahr el Ghazal is also hosting up to 40,000 Nuer displaced from the fighting in Unity State, who have gathered along the length of the Nuer-Dinka dividing line. Their condition is poor after having walked long distances to reach safety."<sup>250</sup>
- First two weeks of October 2002: "Intensive fighting in Koch and Ler displaced over 27,000 households to the southern parts of Unity State."<sup>251</sup>
- In January 2003: "Fighting in the northern part of Leech (Unity State) led to the displacement of 50,000 people (FEWS, 20/02/03). The north part of Leech was already considered as food insecure (see RNIS 40); the new displacement will probably aggravate the situation."<sup>252</sup>

Serial displacement makes IDP data difficult to compile. Some attempts were made to consolidate existing information for Unity State. For example:

- The UN Special Rapporteur on Human Rights in the Sudan, Gerhart Baum, noted that 200,000 people were displaced in Unity State in 2002 alone.
- Georgette Gagnon and John Ryle, citing WFP, estimated 204,000 displaced in Unity State between mid-1998 and February 2001.<sup>253</sup>
- Between 150,000 and 300,000 people were displaced in Unity State from January to April 2002, according to UN OCHA.<sup>254</sup>
- The Famine Early Warning System Network (FEWS) mentions 127,000 displaced in Unity State during July–August 2002.<sup>255</sup>
- The International Crisis Group estimated that "some 500,000 people were displaced from the oil areas of Unity State" since 1997.<sup>256</sup>
- A combined FAO/WFP mission reported "In 2002, a further escalation of the conflict in the western part of the region [Upper Nile] has seen about 230,000 people fleeing their homes. Farm production is thus severely affected and losses of livestock are high."<sup>257</sup>

These figures concern both the GNPOC and the Lundin Consortium operated concession areas.

<sup>245</sup> UNICEF, "Emergency programmes: Sudan Northern Sector Donor Update", September 25, 2000, p. 1. Available at: <http://www.reliefweb.int/rwarchive/rwb.nsf/db900sid/OCHA-64BTTP?OpenDocument&query=sudan&cc=sdn&rc=1> (accessed Sept. 29, 2009).

<sup>246</sup> Reuters, "Refugee Flow Strains Relief in Sudan's Unity State", August 7, 2000.

<sup>247</sup> WFP, "Annual Needs Assessment Report from FEAU in South Sudan", February 15, 2000, p. 43. <http://www.reliefweb.int/rwarchive/rwb.nsf/db900sid/OCHA-64D7KG?OpenDocument>.

<sup>248</sup> Catholic World News, "Sudan Rebels Raze Town, Comboni Mission", March 15, 2001. <http://www.catholicculture.org/news/features/index.cfm?recnum=15062>.

<sup>249</sup> UN OCHA, "Sudan Situation Report March 2001", March 31, 2001. See: <http://www.reliefweb.int/rwarchive/rwb.nsf/db900sid/OCHA-64D2R3?OpenDocument&query=sudan&cc=sdn&rc=1> (accessed Oct. 1, 2009).

<sup>250</sup> UN OCHA, "2000 Mid -Term Review of the UN Consolidated Inter-Agency Appeal for Sudan, January to June 2000", July 14, 2000, p. 1. <http://www.reliefweb.int/rwarchive/rwb.nsf/db900sid/OCHA-64DFP6?OpenDocument&query=sudan&cc=sdn&rc=1> (accessed Oct. 1, 2009).

<sup>251</sup> "Save the Children UK, South Sudan Programme, Quarterly Report", October-December 2002, p. 23

<sup>252</sup> United Nations Standing Committee on Nutrition, "Report on the Nutrition Situation of Refugees and Displaced Populations", RNIS 41, April 2003, p. 8-9.

<sup>253</sup> Gagnon and Ryle (2001), p. 10.

<sup>254</sup> UN OCHA quoted in: USAID, "Sudan - Complex Emergency Situation Report #5", August 14, 2002. See: <http://www.reliefweb.int/rw/rwb.nsf/db900sid/OCHA-64CT9X?OpenDocument&query=sudan&cc=sdn&rc=1> (accessed Sept. 28, 2009).

<sup>255</sup> FEWS, "Situation worsens in Upper Nile/Jonglei", August 2002. Available at: <http://www.fews.net/>

<sup>256</sup> International Crisis Group, "Ending Starvation as a Weapon of War in Sudan", Africa Report No. 54, November 14, 2002. See: <http://www.crisisgroup.org/home/index.cfm?id=1621&l=1> (accessed May 28, 2008).

<sup>257</sup> Food and Agriculture Organisation of the UN (FAO), "Special report FAO/WFP: Crop and food supply assessment mission to Sudan", December 24, 2002. See: <http://www.reliefweb.int/rwarchive/rwb.nsf/db900sid/ACOS-64DA3D?OpenDocument&query=sudan&cc=sdn&rc=1> (accessed Sept. 28, 2009).

## **“WE ARE TRYING TO CLAIM FOR COMPENSATION BUT NO ONE IS RESPONDING”**

“My name is Rebecca Nyandair Chatiam Deng. I am 53 years old and have eight children, six boys and two girls. I did not go to school and I was married when I was still in the cattle camp. My family is from a place called Kharasana but I was married into Wan-Kay Payam in Mayom County in Unity State in Western Upper Nile.

I was displaced from Wan-Kay in April 1998.

After the CPA, when the Arabs went away, I went back to Wan-Kay with my husband and the smaller children. We lost everything. My family lost four hectares, the *luak* and the *tukhuls*. We had six *tukhuls* and three *luaks*. We grew sorghum, maize, groundnuts, okra, beans, tomato, sweet yam and we had a small farm for mangoes and bananas and cassava. We used to sell some and some was for consumption.

My uncle and the son of my brother and the wife of my brother were killed when the cattle raiders came. They were burnt inside their *tukhul*. A lot of people were injured but I can't remember how many.

They come with horses and they shoot at you, others push you down. When they find you at home they kill you. They burnt the crops, the *tukhuls*, whatever is of benefit to the human being they don't want to see. They killed children and raped ladies.

They would also take children. One of my uncle's sons was taken away but he was found this year, in Barbanusa. He was taken as a cattle keeper. They circumcised the children; they turned them into another society. They told them if you don't do this you will be killed.

These horse people are the Jaleen. They were sent because of the oil, to frighten the people. This was the beginning.

We had 705 cows in the three *luaks*. We had some bulls, some heifers; they were mixed. About 37 of the cattle were bulls. When the bulls were grown we sold them and then bought another one. The female ones would produce milk and so we wouldn't sell that one until it was old.

By that time it was 7000 dinars (about 700 Sudanese pounds) for a bull and about half for the heifers. They were all taken, there was nothing left.

When the grazing was good we would produce milk for selling. A week - but it depended on demand – we made 300 to 350 Sudanese pounds. We would fill gourds in the evening and then again in the morning.

On the day we were displaced we were forced to leave by the Sudan Government. We were waiting for the Chevron to come and open the oil. In 1998 they came and opened it but it was not Chevron.

Soldiers came in big numbers, 15,000 were brought from Rubkona County. They arrested the chiefs. They wanted to arrest my husband but he escaped and went to Abyei Town. They fired at everybody. They killed many. Some of my neighbours died. More than one thousand were killed from my community. We wrote their names down.

After we were displaced we went to Majok in Dinkaland and after that we went to Embefi camp in Uganda. We went by road using SPLA busses and then from Rumbek to Uganda we used public transport.

But from our homes we were running on our feet. Three days we were running before we reached Majok. It was the rainy season. There was a lot of water. I carried my children. The smallest one was on the shoulder and one on each hip. When they attack the family altogether it is not good; some of the family go one way and others the other way. You never know in which way you are running.

We tried to go back in 2005 but we were chased away. But when the soldiers went away we went back again, this year.

The farm, the houses were burnt. They even cut some trees like the mango trees and those others that bore fruit. There is an installation in our old place. Our new place in Wan-Kay is about a kilometre from the first place.

Even now I am not happy. I know when I construct a family in the house, that house can be destroyed. With my neighbours I was told to move this year because they found oil in the ground. This was WNPOC security. We will have another problem in the oil field again.

We are trying to claim for compensation but no one is responding. The chief tried go talk to the South Sudan Government and he went to America and tried to talk to people there. Since Dr. John [Dr. John Garang] died we have never got any person to respond.

There are 60 wells in our area, our *payam* [district] alone. The governor and the commissioner have agreed with the Government of Southern Sudan, they have shares in the oil so they don't say anything."

Interview by Skye Wheeler, Sudan-based journalist  
Juba, August 30, 2008

## 5. COMPENSATION

In 2009, the UN Security Council warned that the CPA was in peril; “With little over two years of the interim period remaining, the Comprehensive Peace Agreement has reached a critical juncture where any action or inaction on its provisions will have a profound impact on the future of the Sudan.”<sup>258</sup>

Sudan’s Comprehensive Peace Agreement (CPA) establishes a right to compensation for victims of oil contracts. The victims are too poor to take legal initiatives and the companies and the Government of Sudan have failed to deal with the issue. ECOS believes that the perpetuation of this injustice is undermining the peace in Sudan. Remarkably absent on the agendas of Sudan’s political leadership and the international community, the issue of compensation and reparation is very much alive among the people of Unity State in Sudan. The Sudanese churches have consistently stressed its importance, as in the Statement of the Sudanese Heads of Churches at the Juba People’s Forum, August 1–5, 2008: “We commit ourselves to advocate and lobby for the compensation for those displaced by the oil and other commercial interests (...).”<sup>259</sup>

In 2001, the Ministry for Energy and Mining established a Compensation Committee to deal with damages caused by oil operations.<sup>260</sup> This committee was not established under the terms of the CPA, it is a separate process that is not meant to compensate for damage that was caused by the oil war and oil-related security operations, even though it may occasionally have dealt with some claims related to this category of damage.

Sudan’s Interim National Constitution (INC) of July 9, 2005 is the supreme law of the country and incorporates the CPA. The INC provides for Sudan to be administered by the Government of National Unity (GONU), while the South enjoys a high level of autonomy, being administered by the Government of Southern Sudan (GOSS) under the Interim Constitution of Southern Sudan (ICSS). In 2011, after a six-year interim period, Southern Sudan will have the right to vote on self-determination in an internationally monitored referendum.

Overall, the compensation clause of the CPA has remained a dead letter, as confirmed by the United Nation’s most recent report about the implementation of the CPA, “no action has been taken on compensation of victims of oil contracts provided for in the wealth-sharing agreement.”<sup>261</sup>

As far as ECOS can determine, the members of the Lundin Consortium have never accepted any responsibility for the oil war or its consequences for the population, nor have they expressed willingness to compensate the victims for it.

Adding to the frustration is the concern that the existing compensation process managed by the Compensation Committee appears to be inadequate. It deals with common types of damages such as the loss of land, gardens and trees. Research by ECOS in 2007 revealed that in Block 5A, generally there was a feeling that this form of compensation was not paid, or not paid fully, or that it was paid only to some (usually those who had the loudest voices or with friends in high places). An ECOS research trip in December 2007 identified that there was also a concern that in some cases compensation might have been paid to the commissioners but not passed on to the displaced people themselves. Leben Moro, an academic specialised in Sudan, has documented concerns that compensation monies have rarely reached the intended beneficiaries.<sup>262</sup>

### 5.1 The constitutional right to compensation

The INC mirrors the CPA when it creates a material right to compensation for past injustices that have occurred as a result of oil exploitation. INC article 208 (5) and article 4.5 of the CPA’s Wealth Sharing Agreement both read: “Persons whose rights have

<sup>258</sup> UN Security Council Report of the Secretary-General on the Sudan S/2009/61, 30 January 2009

<sup>259</sup> Sudan Council of Churches/ Juba People’s Forum, “Statement of the Sudanese Heads of Churches at the Juba People’s Forum, August 1–5, 2008”, p. 3, available at: <http://www.cmi.no/sudan/doc/?id=1026> (accessed October 2, 2009).

<sup>260</sup> Sudan Vision Daily, “Economic: Oil Industry-Affected People Compensation Committee”, March 12, 2001. <http://www.sudanvisiondaily.com/modules.php?name=News&file=article&sid=19133>.

<sup>261</sup> UNMIS, “The CPA Monitor”, Vol. 6, issue 52, March 2010, p. 17.

<sup>262</sup> Moro, Leben Nelson, “Oil, Conflict and Displacement in Sudan”, thesis Oxford University July 2008, p. 211.

been violated by oil contracts are entitled to compensation. On the establishment of these violations through due legal process the Parties to the oil contracts shall be liable to compensate the affected persons to the extent of the damage caused.”<sup>263</sup>

This is significant. ECOS believes that there can be no doubt that the terrible events described in this report are at the heart of the injustices that Art. 208 (5) of the Constitution intends to remedy. The article would otherwise have no meaning.

“Although there is a provision for compensation in the peace agreement, the question is whether it is adequate or not to restore back the former social existence.”

Paul Mayom Akec, Minister of Police and Security, Government of Southern Sudan, November 2006.<sup>264</sup>

## 5.2 Interpretation of the Interim National Constitution, article 208 (5)

The wording of article 208 (5) of the Interim National Constitution is awkward and requires interpretation. The article refers to "rights violated by oil contracts", but these contracts by themselves do not violate anyone's rights. From the limited information that is publicly available on specific contracts, ECOS believes that they do not directly contravene national or international law.<sup>265</sup> In addition, article 208(5) requires that alleged violations be established "through due legal process" before "the Parties to the oil contracts" can be held "liable to compensate the affected persons", but all Sudanese oil contracts are strictly confidential and the Agreement on Wealth Sharing even implicitly bars independent courts from accessing oil contracts<sup>266</sup>, making it impossible to legally establish any violations by oil contracts.

In ECOS' opinion, it should not be assumed that article 208(5) is simply nonsensical and therefore irrelevant. ECOS submits that the signatories to the CPA had in mind violations of rights of the type that occurred during the process of carrying out the terms of the oil contracts, which would, ECOS submits, include the Government of Sudan's actions to enable exploitation of oil in Block 5A.

Another difficulty is that the remedy provided for in the agreement— redress through "due legal process" — is not feasible in Sudan. The legal institutions and mechanisms in the oil regions of Southern Sudan are not ready for such a task. Popular access to the justice system is erratic and the court system is very fragile. There is a desperate shortage of textbooks and lawyers, courts are understaffed, and enforcement of court orders is weak. In addition, the victims are very poor and have no means to hire legal council or support their claims with appropriate research.

In an ideal world, the victims would bring civil tort cases to the court and the Government and the oil companies would comply with court orders.<sup>267</sup> The fact that the legal system is incapable of realising the Constitutional right to compensation obliges the signatories and international guarantors of the CPA<sup>268</sup> to take action. The Assessment and Evaluation Commission (AEC) of the CPA, in which the signatories and international guarantors of the CPA are represented, noted in its 2007 report "Persons whose rights have been violated by oil contracts should be able to seek remedy."<sup>269</sup> The AEC does not say how that can be achieved, but ECOS submits that it is clear that not much will happen without an adequate court system and outside assistance to the victims.

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<sup>263</sup> "Sudan Comprehensive Peace Agreement: Chapter III Wealth Sharing", article 4.5. The full text of the CPA is available at: <http://www.aec-sudan.org/cpa.html> (accessed October 2, 2009).

<sup>264</sup> ECOS and NESI Network, "Conference Report: Oil and the Future of Sudan", Juba, Southern Sudan, November 1-2, 2006, p. 10. Available at: [http://www.ecosonline.org/reports/2006/%5Eindex.html/Oil\\_and\\_the\\_future\\_of\\_Sudan.html](http://www.ecosonline.org/reports/2006/%5Eindex.html/Oil_and_the_future_of_Sudan.html) (accessed September 29, 2009).

<sup>265</sup> The main Sudanese contract, the 1997 agreement that governs GNPOC's operations in Unity State, can be purchased at [www.barrowscompany.com](http://www.barrowscompany.com). Close reading shows that, whilst disregarding social and environmental issues, the contract does not directly contravene national or international law. People with access to the other Sudanese oil contracts have privately declared to ECOS that these are similar in this respect.

<sup>266</sup> CPA, Agreement on Wealth Sharing, art. 4.1: "The SPLM shall appoint a limited number of representatives to have access to all existing oil contracts. (...) All those who have access to the contracts will sign confidentiality agreements." The full text of the CPA is available at: <http://www.aec-sudan.org/cpa.html> (accessed October 2, 2009).

<sup>267</sup> A right that which is guaranteed by the Interim National Constitution of the Republic of the Sudan, art. 35: "The right to litigation shall be guaranteed for all persons; no person shall be denied the right to resort to justice". Available at: [www.sudan-embassy.de/c\\_Sudan.pdf](http://www.sudan-embassy.de/c_Sudan.pdf) (accessed October 2, 2009).

<sup>268</sup> Kenya, Uganda, Egypt, Italy, The Netherlands, Norway, the UK, the U.S., the regional Intergovernmental Authority on Development (IGAD) and its International Partners Forum, the Arab League, the United Nations (UN), the African Union (AU) and the European Union (EU).

<sup>269</sup> "Factual Report on the Status of CPA Implementation", Assessment and Evaluation Commission, Khartoum, October 2007, p. 30. Available at: <http://www.aec-sudan.org/publications.factual.html>.

Respect for the Constitution and success of the CPA are paramount to lasting peace and stability in the whole of Sudan. Delays and inaction are undermining the credibility and solidity of the CPA. INC art. 185 (4) and CPA art. 1.6 recognise that conflict affected areas urgently need "rehabilitation and reconstruction/construction of the social and physical infrastructure."<sup>270</sup> Instead, peace dividends are in short supply in war-affected areas, reducing popular support for a peaceful end to the CPA-era.

## 5.3 Basic principles for the provision of compensation

In 2005 the UN General Assembly adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. These principles state that "Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law."<sup>271</sup>

According to the Basic Principles and Guidelines compensation should be provided for damages such as:

- Physical or mental harm.
- Lost opportunities, including employment, education and social benefits.
- Material damages and loss of earnings, including loss of earning potential.
- Moral damage.
- Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

## 5.4 The way forward

ECOS believes that the UN and the CPA's international guarantors have a political duty to ensure that the provisions of the CPA are implemented and that the home countries of the oil companies have a strong moral duty to ensure that this happens. ECOS suggests that among the actions that might be taken are:

- initiatives to improve the court system in Sudan in order to make it easier for victims to seek judicial remedies;
- the completion of a survey of the victims and creation of an inventory of the victims and the damage they suffered; and
- the provision of legal aid to victims.

There should be no more war over oil in Sudan. The parties to the CPA are discussing arrangements for the future management of the oil industry. These should include compensation, and the oil companies and their home governments can play a key role in bringing that about.

A genuine compensation process, that is designed to achieve reconciliation and forgiveness through justice, would bring crucial peace dividends and contribute to a much needed atmosphere of confidence and trust in Unity State of Sudan. It is ECOS' position that the oil companies should reconcile with the victims of the oil war and ask them for forgiveness. Reconciliation requires readiness to act, which in this case would include paying for damage suffered.

**"The issue of compensation is a hot topic that will come back to politics."**

Angelina Teny, State Minister for Energy and Mining, Government of Sudan, November 2006.<sup>272</sup>

The helplessness of the victims does not exonerate the Government of Sudan and the oil companies from their responsibility to provide adequate compensation to all victims for the harm that they have suffered, especially when those victims are effectively disenfranchised by the system (or lack thereof). As set out in the preamble of the Universal Declaration of Human Rights, all

<sup>270</sup> "Sudan Comprehensive Peace Agreement, Chapter III: Wealth Sharing", article 1.6. The full text of the CPA is available at: <http://www.aec-sudan.org/cpa.html> (accessed October 2, 2009).

<sup>271</sup> "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law", Resolution adopted by the UN General Assembly, A/Res/60/147, March 21, 2006. Available at: <http://daccess-ods.un.org/TMP/9562403.html>.

<sup>272</sup> ECOS and NESI Network, "Oil and the Future of Sudan", Conference Report, Juba, Southern Sudan, November 1-2, 2006, p. 31. Available at: [http://www.ecosonline.org/reports/2006/%5Eindex.html/Oil\\_and\\_the\\_future\\_of\\_Sudan.html](http://www.ecosonline.org/reports/2006/%5Eindex.html/Oil_and_the_future_of_Sudan.html) (accessed September 29, 2009).

members of society have a responsibility to promote peace and respect for human rights.<sup>273</sup> Companies, like all other citizens, must support the purpose and meaning of the Constitution.<sup>274</sup>

“I concur with your opinion that there is a right to compensation, based on both the CPA and national and international law on civil remedies.”

Prof. Dr. Liesbeth Zegveld in a letter to ECOS concerning this report, January 13, 2009.<sup>275</sup>

A damage calculation submitted to support the claim of the *Presbyterian Church Sudan vs. Talisman Energy* estimates the average price per head of cattle in Unity State during the relevant period at US\$1,500 and of *tukhuls* and *luaks* at around US\$500.<sup>276</sup> Even at half these prices, estimated loss of cattle and houses due to violations of rights in Block 5A adds up to over US\$375 million. Adding losses in income during several years<sup>277</sup> and compensation for death, injury, land, pain, hardship, lost opportunities, et cetera, total damages would easily surpass US\$600 million.

The INC and CPA read that that “the Parties to the oil contracts shall be liable to compensate the affected persons to the extent of the damage caused.” It is ECOS' interpretation of the relevant laws that the Consortium's members are legally obliged to compensate the people whose rights were violated during the 1999–2003 oil war in Block 5A. ECOS proposes that the members of the Consortium, all of them Parties to the same contract with the Government, together pay half of the damage caused. ECOS believes this figure to be in the region of US\$300 million.

ECOS suggests that investors should require Lundin, OMV and Petronas to fully cooperate with investigations into their role in Sudan and to compensate the victims of the oil war in Block 5A in accordance with the provisions of the CPA and UN guidelines. It is ECOS' opinion that no responsible investor should maintain an interest in companies that do not cooperate with investigations into credible allegations of potential complicity in international crimes.

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<sup>273</sup> See also the Preamble to the Universal Declaration of Human Rights.

<sup>274</sup> Interim National Constitution of Sudan, art. 23(2)(i): All members of society must abide by the Constitution and shall be guided by ‘the principles enshrined in this Constitution’. Available at: [www.sudan-embassy.de/c\\_Sudan.pdf](http://www.sudan-embassy.de/c_Sudan.pdf) (accessed October 2, 2009).

<sup>275</sup> Prof. Dr. Liesbeth Zegveld is professor of International Humanitarian Law at Leiden University, a member of the International Law Association's Committee for Compensation for War Victims and partner at the Amsterdam law firm Böhler Franken Koppe Wijngaarden.

<sup>276</sup> Supplemental Expert report of Professor James Levinsohn, May 26, 2006. Civil action No 01 CV 9882 (DLC), US District Court for the Southern District of New York.

<sup>277</sup> Sudan's average per capita income stood at US\$310 in 2000 according to the World Bank; “World Development Report 2000/2001: Attacking Poverty”, August 2000, Oxford University Press.

## 6. THE LUNDIN CONSORTIUM'S ACCOUNTABILITY FOR INTERNATIONAL CRIMES

“The taking of private property without due legal process and fair compensation may amount to pillage. Moreover, international humanitarian law stipulates that, in situations of occupation or in times of civil war, civilians cannot be forcibly relocated except in limited circumstances and only temporarily when their security or imperative military reasons so demand. In this sense, the expulsion of civilians by armed groups acting on behalf of a business enterprise cannot be justified. In fact, if such practices were closely linked to an armed conflict, they could give rise to significant legal liabilities, both criminal and civil.”

International Committee of the Red Cross (ICRC), 2006.<sup>278</sup>

### 6.1 Corporate accountability under international law

International humanitarian law binds all parties that are involved in an (international or internal) armed conflict. War crimes are those violations of international humanitarian law that incur individual criminal responsibility. War crimes may be committed by combatants and non-combatants, i.e. civilians. Crimes against humanity are actions that are part of a widespread or systematic practice of atrocities tolerated by a Government or a *de facto* authority. These crimes can be committed by both state organs (i.e. individuals acting in an official capacity) and by non-state agents acting in furtherance of an organisational policy.

The number of jurisdictions in which corporations can be charged with international crimes is increasing as more states have ratified and incorporated international crimes into domestic law. Where national legal systems already provide for the criminal prosecution of companies, the international standards for individuals will be extended to companies. In Sweden, for instance, any crime under international law is punishable as a criminal offense.

The international tribunals have developed a clear standard for individual criminal aiding and abetting liability: knowingly providing practical assistance, encouragement, or moral support that has a substantial effect on the commission of the crime.<sup>279</sup> This will not be substantially different from complicity standards for corporate entities under domestic law.

The International Commission of Jurists (ICJ) holds that any company may be held criminally liable for complicity in gross human rights abuses when three elements are present:

**1. Causation/Contribution:** the company's conduct enabled, exacerbated, facilitated, or had otherwise substantial effect on the perpetration of the crimes.

**2. Knowledge & Foreseeability:** the company knew or should have known, that its conduct would be likely to contribute to the crimes.

**3. Proximity:** the company was close or proximate (geographically, or in terms of the duration, frequency and/or intensity of interactions or relationship) to the principal perpetrator of the human rights abuses or the victims.<sup>280</sup>

According to the International Commission of Jurists the failure to act can also amount to aiding and abetting if this omission has a decisive effect on the crime.<sup>281</sup> Liability thus depends on a physical element (substantial effect), a mental element (knowledge) and a relational element (proximity).

In his 2008 report to the UN Human Rights Council, the UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Prof. John Ruggie, clarified the concept of aiding and abetting for corporate entities as follows:

<sup>278</sup> “Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law”, ICRC Publication 2006, ref. 0882, p. 24. Available at: <http://www.icrc.org/web/eng/siteeng0.nsf/html/p0882> (accessed September 28, 2009).

<sup>279</sup> Ruggie, John, “Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises”, UN Human Rights Council, A/HRC/4/35, February 19, 2007, par. 31. Available at: <http://daccess-ods.un.org/TMP/8783250.html> (accessed October 2, 2009).

<sup>280</sup> International Commission of Jurists, “Corporate Complicity & Legal Accountability”, vol. 1, Geneva, 2008, p. 8. Available at: [www.icj.org/IMG/Volume\\_1.pdf](http://www.icj.org/IMG/Volume_1.pdf) (accessed October 2, 2009).

<sup>281</sup> *Ibid.*, p. 11-12.



- The assistance need not cause, or be a necessary contribution to, the commission of the crime. In other words, it does not have to be shown that the crime would not have happened without the contribution.
- The assistance may occur before, during or after the principal crime has been committed, and it need not occur within geographic proximity to the crime. A substantial and direct contribution could be, for example, the means that enable the perpetrator to commit the crime.
- Aiding and abetting has not required that the individual share the same criminal intent as the principal perpetrator, or even desire that the crime occur. It is also not necessary to show that the accused knew either the precise crime that was intended and which was actually committed, but only that one of several crimes might be committed. The knowledge requirement can be established through direct and indirect or circumstantial evidence.<sup>282</sup>

“We wish to state categorically that we have not witnessed any such acts [displacement] nor would we tolerate such acts to take place for our presumed benefit.”

Lundin Oil, Letter to shareholders, March 2001<sup>283</sup>

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## NORMS OF INTERNATIONAL LAW

### International Humanitarian and Criminal Law (IHL/ICL)

International humanitarian law (IHL) governs the conduct of parties to international and internal armed conflicts. IHL rules that parties to a conflict must at all times distinguish between the civilian population and combatants in order to spare the civilian population and civilian property. The four Geneva Conventions of August 1949 are the core treaties of IHL, complemented by Additional Protocol I and II of 1977. Protocol II specifically relates to non-international armed conflict. Sudan acceded to the four Geneva Conventions on September 23, 1957, to the Additional Protocol I on March 7, 2006 and to the Additional Protocol II on July 13, 2006.<sup>284</sup> The Protocols came into force six months after accession. However, its core provisions are applicable as customary law and were therefore already applicable at the time when the Lundin Consortium was active in Sudan.

#### • Additional Protocol II (1977)

“The civilian population, as well as individual civilians, shall not be the object of attack” (Art. 13)

“It is prohibited to attack, destroy, remove or render useless for that purpose, objects indispensable to the survival of the civilian population such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works.” (Art. 14)

“The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.” (Art. 17)

“If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as food-stuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned.” (Art. 18.2)

**The Rome Statute for the International Criminal Court (1998)** defines international criminal law. Relevant signatories are:

- Sudan; signed on September 8, 2000.
- Sweden; signed on October 7, 1998 and ratified on 28 June 2001.
- Austria; signed on October 7, 1998 and ratified on 28 December 2000.
- Malaysia; has not signed the Rome Statute.

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<sup>282</sup> Ruggie, J., “Clarifying the concepts of “sphere of influence” and “complicity” : report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises”, UN Human Rights Council, Eighth session, Agenda item 3, A/HRC/8/16, May 15, 2008, p. 11, 13. Available at: <http://www.unhcr.org/refworld/topic/459d17822,466942422,484d1fe12,0.html> (accessed September 29, 2009).

<sup>283</sup> Lundin Oil, letter to shareholders, March 2001, quoted in HRW (2003), p. 591.

<sup>284</sup> Art. 18(a) of the Vienna Convention on the Laws of Treaties states that a state is obliged to refrain from acts which would defeat the object and purpose of a treaty if it has signed the treaty. Available at: <http://untreaty.un.org/>.

The Rome Statute defines “**crimes against humanity**” as any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; ... (d) Deportation or forcible transfer of population; (Art. 7)

“**[W]ar crimes**” means:... (c) (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture... (e) (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities... (viii) Ordering the displacement of the civilian population for reasons related to the conflict... (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict (Art. 8).”

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There is ample evidence in public reports from MSF, Christian Aid, HRW, ECOS and UN agencies, that all parties to the conflict in Unity State, Sudan, committed war crimes and crimes against humanity including, but not limited to, direct attacks and assaults on civilian targets, unlawful killing, rape, underage recruitment, enslavement, indiscriminate use of landmines, and destruction and seizing of property from civilians without necessity.

As evidenced by instructions to senior commanders of the Sudan Armed Forces in Unity State, the Government of Sudan deliberately depopulated areas in the vicinity of oil operations with attacks that were planned, systematic, widespread, and designed in a way to prevent resettlement.

“The Major General in charge of the 15th division in Rubkona told us you have to chase away the enemy that are threatening our country, that are threatening the work of the oil companies that are disturbing the population and all that... **Each soldier was given a match so that when we reach there, then they go and burn the houses.** So this is by itself displacement. They said if you want to get rid of Peter Gatdet from the area, you make sure that you go and burn all those villages so that Gatdet will not stay there. But if it is Gatdet, Gatdet of course is not the one owning those huts, so those who are the civilians living in those huts, when their houses are burnt, they will have no choice. They will either be displaced with Gatdet, they run after forces of Gatdet or if some of them are too weak they will go to the towns.

Question: and this happened in 2000, 2001 and 2002?

Answer: Yes... In order to protect this oil road [near Thar Jath] ...they told us you have to clear the SPLA from the Nhialdu area so that they are very far from here; they don’t disturb the company... There are two purposes: one is that they have to rid Peter Gatdet of the population so that they are short of population so they will have no choice; the second thing, which is the hidden agenda of the Government, is to clear those areas so they don’t feel potential threat to the oil companies.”

Testimony by Commissioner James Pui Yak, Guit County, March 2005.<sup>285</sup> [Bold added]

## 6.2 The Lundin Consortium’s activities enabled the commission of international crimes by others

ECOS believes that the reports and evidence documented in chapters 1-4 of UNPAID DEBT support its case that the members of the Lundin Consortium should have known that its activities in and around its concession in Block 5A enabled the commission of war crimes and crimes against humanity by others in the following ways:

- The building and/or commissioning of infrastructure by the Consortium enabled the Sudan Armed Forces and allied armed groups to perpetrate crimes against humanity which could not have otherwise been committed.
- The Consortium’s commercial oil exploitation in Block 5A was the motivation for the Government of Sudan and other militia to commit the crimes reported by so many organisations.

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<sup>285</sup> Testimony by James Pui Yak, March 16, 2005, US District Court for the Southern District of New York, Civil Action No. 01 CV 9882 (DLC), P129331.

In addition, ECOS believes that there are grounds to investigate whether the Lundin Consortium provided logistical assistance or directly or indirectly financed the Sudan Armed Forces and allied armed groups, who stand accused of having systematically committed war crimes and crimes against humanity against the civilian populations living in and around Block 5A in Sudan. Each of these are considered in turn below.

Lundin denies that it violated international law or that it participated in or had or ought to have had knowledge of any of the illegal acts that are documented in this report.

Prof. Liesbeth Zegveld, in a letter to ECOS concerning this report, January 13, 2009, confirmed the author's conclusions and interpretation of international law, specifically the CPA and national and international law on civil remedies.<sup>286</sup>

**"In regards to your classified (sirri) commands 179 and 185 dated 11/15/97: The Leadership of the Republic was contacted on the contents of your above-mentioned order [ishara]. Among the responsibilities of the forces of the People of Maslaha are to protect petrol [production] from being blocked. You must work toward evacuating all other forces from the paths and roads of drilling for "exploration" [for oil]. And also you must work toward transferring the residents to inside the cities."**

11/21/97, Classified, In the name of God the All-Merciful, Order, From the Commander in Khartoum; A.S. to the Commanders of the Forces of Bentiu A.S.<sup>287</sup> [Bold added]

#### **The Consortium's infrastructure enabled the commission of international crimes**

In 1999, the Lundin Consortium built a base camp and refurbished the airstrip at Rubkona, and partly operated it.<sup>288</sup> Rubkona also housed the headquarters of the SAF's 15th Division. According to Christian Aid, Governor Taban Deng, a former Minister of State for Roads in the Government of Sudan and Governor of Unity State from 1997 until 1999, claimed that the airstrip was used for Antonov bombers that arbitrarily raided villages in Unity State.<sup>289</sup>

**"Any person may use the company's road, Government army as well as humanitarian aid organizations. The company's airstrip has some time been used by the Government for military purpose, but Lundin Oil has disapproved in these cases."**

Alexander Schneider, Vice President Exploration of Lundin Oil AB, March, 2001.<sup>290</sup>

During its 18-month, suspension of oil exploitation from May 1999 to December 2000, the Consortium commissioned a bridge over the Bahr el Ghazal River that linked Rubkona to Bentiu.<sup>291</sup> For centuries, the Bahr el Ghazal River had served as a natural barrier that offered protection to the Nuer people against large incursions by Baggara tribesmen from the north. The new bridge, called El Salaam, allowed Government-supported bands of Baggara horsemen and motorized army units to penetrate in large numbers south of the river for the first time.<sup>292</sup> They would hunt down Nuer civilians in organized destroy and displacement raids. In January and February 2002, for instance, the Government's offensive around Pultutni was supported by horse-backed Baggara militia, who had crossed the Bahr el Ghazal River over the El Salaam bridge.<sup>293</sup>

**"We have reported a situation where the GOS forces use airstrip facilities built by oil, for oil, facilities denied to the NGOs."**

Harker Report, January 2000.<sup>294</sup>

<sup>286</sup> Prof. Dr. Liesbeth Zegveld is professor of International Humanitarian Law at Leiden University, a member of the International Law Association's Committee for Compensation for War Victims and partner at the Amsterdam law firm Böhler Franken Koppe Wijngaarden.

<sup>287</sup> US District Court for the Southern District of New York, File 01 CV 9882 (AGS), P12387.

<sup>288</sup> Gagnon & Ryle (2001), p. 32.

<sup>289</sup> Christian Aid, (2001), p. 25.

<sup>290</sup> Koblanck, Anna, "Drilling in Sudan continues", (translated) Dagens Nyheter, March 23, 2001. (Org. title and quote: Borrningarna i Sudan fortsätter: "Vem som helst kan använda bolagets väg, såväl regeringstrupper som hjälporganisationer. Bolagets flygfält har någon gång utnyttjats av regeringen i militära syften, men Lundin Oil har då protesterat.")

<sup>291</sup> Lundin Oil in Sudan (2001), p. 3.

<sup>292</sup> HRW (2003), p. 334, 394.

<sup>293</sup> Ibid., p. 393-394.

<sup>294</sup> Harker (2000), p. 19.

“Much of the population of Ler has been driven out by direct military attack. Villages leading into Ler from the North are totally depopulated due to direct military action by GOS and GOS-allied forces... Civilians along the Bentiu-Adok road continue to suffer attacks, regular lootings, abductions and gang rape. It is becoming increasingly difficult for the few people who have stayed in their villages to continue to remain. (...). The area close to the road is too insecure to receive food interventions.”

Civil Protection and Monitoring Team, January 2003.<sup>295</sup>

Lundin claimed that the bridge contributed to the well-being of local communities and classified it under its Community Development and Humanitarian Assistance Program. In a letter to its shareholders in 2001, Lundin said that the residents were glad to have the bridge over the Bahr el Ghazal River to get to market in Rubkona.<sup>296</sup> The letter did not mention that an Arab-Nuer market had existed and flourished between 1986 and 1997 in Rubnyagai, which is south of the river and periodically accessible from the northern side without a bridge. In September 1997 Rubnyagai was one of the first towns destroyed in the fighting between Maj. Gen. Paulino Matiep and Dr. Riek Machar, precisely because it was the location of a booming market and also of the homes of several commanders.<sup>297</sup>

### **The building of an all-weather road enabled the commission of countless international crimes by Government and other militia forces**

According to the relief organizations that worked out of Ler for a decade, and as documented by HRW, no oil-related civilian displacement had taken place in Block 5A prior to 1998.<sup>298</sup> The roads built subsequently by order of the Lundin Consortium constituted both the motive and the means for the violent depopulation of the oil areas. All the Nuer communities in Block 5A were considered to be potentially hostile to the Government of Sudan and without the road from Rubkona to Ryer/Thar Jath, and eventually to Ler and Adok, the Government would have been unable to transport large forces deep into Nuerland and attack its inhabitants. The Consortium's road expanded the geographical reach of military forces which already had a confirmed record of committing international crimes.

“Lundin takes these accusations seriously about crimes against human rights committed in relation to the road construction. The company has not noticed these offensives and does not accept any crimes against human rights in its area.”

Ian Lundin, President of Lundin Oil AB, March 2001.<sup>299</sup>

One of the villages where the Consortium's road cut through was Kuac. Chief Peter Ring Patai, the village's chief, reported to HRW that in all, Kuac had been bombed 10 times as of February 2001 by the Government's air forces.<sup>300</sup> HRW also reported that a UN official overflying the area saw that the road also cut through what was a UN relief airstrip for Kuey. The official's interviews with chiefs from the area who had taken refuge in Nimne, confirmed that the road cut through the village and relief strip of Kuey. Its residents had fled and walked for three days to the swamps east of Kuey, in the direction of the Nile, where living conditions were very hard.<sup>301</sup>

The establishment of Sudan Armed Forces garrisons followed the expansion of oil development. In 2001, Ian Lundin acknowledged the militarised character of the road when he said “there are small camps of soldiers every 4–5 kilometres along the road and one larger camp near our drill site at Jarayan.”<sup>302</sup>

<sup>295</sup> CPMT, “CPMT Report to IGAD: Military events in Leer, January 26-30, 2003”, Khartoum, February 2, 2003, p.4. The CPMT – with the initial consent of the GOS and the SPLA – was mainly composed of former US military personnel, though some civilian experts on Sudan joined the team later, and operated out of Khartoum and Rumbek.

<sup>296</sup> Lundin Oil, Letter to shareholders, March 2001, quoted in HRW (2003), p. 592.

<sup>297</sup> HRW (2003), p. 592-593.

<sup>298</sup> HRW (2003), p. 182.

<sup>299</sup> Tidningarnas Telegrambyrå, “Lundin Oil requested to suspend their activities in Sudan”, (translated), Stockholm/London, March 15, 2001. (Org. title. and quote: LUNDIN OIL UPPMANAS UPPHÖRA MED VERKSAMHETEN I SUDAN: “Lundin ser mycket allvarligt på anklagelserna om brott mot de mänskliga rättigheterna som gjorts i samband med vägbygget...Företaget har inte bevittnat övergreppen och accepterar inte några brott mot mänskliga rättigheter i sitt område.”)

<sup>300</sup> Ibid., p. 387.

<sup>301</sup> Ibid., p. 340

<sup>302</sup> Lundin Oil, “Sudan: Lundin Oil refutes the allegations”, press release, April 3, 2001.

“(…) it was much more difficult for that company [Lundin Petroleum] to maintain any kind of separation from the Sudanese military, if only because the main access road to its concession was under constant attack and was the road used by the Government to reinforce several tenuously held garrisons.”

Nicolas Coghlan, Canadian diplomat in Sudan from 2000-2003.<sup>303</sup>

**ECOS believes that the reports it has reviewed justify an investigation into whether the Lundin Consortium provided logistical assistance to those who systematically committed international crimes.**

Since the 1980s, it was not uncommon for oil companies in Sudan to provide logistical support to the Government’s security forces and allied militias. Talisman’s helicopter “was used to transport Gen. Maj. Paulino Matiep himself on at least one occasion”.<sup>304</sup> In a document filed in a US court, Talisman reports that “GNPOC provides the following supplies/services to Security (…): Transportation: some vehicles are provided to security on a permanent basis but more often transportation is provided for military personnel within concession area (…): i.e. flatbeds, trucks, aircraft flights. (…): In the past, GNPOC has indirectly provided transportation, fuel or other services/support to security forces other than the four described above [Petroleum Security, National Security, Military, and GNPOC Security]”.<sup>305</sup> The Lundin Consortium was no exception. HRW reported that in December 2001, The Consortium’s helicopter was shot down by officers from Maj. Gen. Paulino Matiep, possibly because they were denied their helicopter ride.<sup>306</sup> In addition, the Canadian diplomat Nicholas Coghlan noted that “(…) the pilot of the Lundin-contracted helicopter was known to often transport troops at the Government’s request.”<sup>307</sup>

“... a business enterprise that provides (...) logistical support that is likely to facilitate the commission of violations of international humanitarian law may attract legal liability.”

International Committee of the Red Cross (ICRC), 2006.<sup>308</sup>

**ECOS believes there are grounds to investigate whether the Lundin Consortium financially and materially supported the commission of international crimes**

A number of recognised experts have claimed that financial support by oil companies to SAF and militias was not uncommon in Sudan. According to Douglas Johnson, Chevron financed a Misseriya militia to protect its camp at Muglad during the early 1980s.<sup>309</sup> 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.<sup>310</sup> Considering the prominent role of this Ministry in the day to day provision of security for the oil industry, any payment to it brought with it the risk that it would be used to support the commission of international crimes. The intercepted communication from the Ministry of Defence to Maj. Gen. Paulino Matiep (see quotation underneath), suggests that money paid by oil companies to the Ministry of Energy and Mining was used to finance militia groups.

It was not unusual for oil companies to provide material support to Government security agencies or militias in Sudan. In a document filed in a US court, Talisman reports that GNPOC provided the following support to Government Security agencies: “Accommodation: converted containers are provided to rig sites, checkpoints. Communications: use of Heglig camp radios, fax, etc. Construction of pads for camps. Food: provided by GNPOC on an ad hoc basis (for specific delegations/groups). Fuel from Heglig fuel depot provided for security vehicles, barrels are filled and taken to strategic locations.”<sup>311</sup> The Lundin Consortium operated under similar conditions with the same security agencies as GNPOC, and ECOS believes this to be sufficient reason to investigate whether it provided similar supplies and services to the Government agencies.

<sup>303</sup> Coghlan, (2005), p. 47

<sup>304</sup> Harker (2000), p. 15.

<sup>305</sup> “STRICTLY CONFIDENTIAL, Security Arrangements – Sudan operations”, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), TE 0250245.

<sup>306</sup> HRW (2003), p. 389-390

<sup>307</sup> Coghlan (2005), p. 47.

<sup>308</sup> ICRC, “Business and International Humanitarian Law - Questions & Answers”, December 5, 2006. See:

<http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/business-ihl-questions-answers?opendocument> (accessed October 25, 2008).

<sup>309</sup> Johnson (2003), p. 83, footnote 3.

<sup>310</sup> ECOS interviews with two serving Government Ministers, Khartoum, 2006–2008. Neither of them agreed to be publicly quoted.

<sup>311</sup> “STRICTLY CONFIDENTIAL, Security Arrangements – Sudan operations”, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), TE 0250245.

“Subject: Guarding of the Oil Companies

1. Reference is made to the above-mentioned subject brigade 28 Rubkona is instructed to provide all you asked for (weapon, ammunition artilleries commodity supplies) according to the list.
2. You are to contact Col. al-Hussieni for delivery.
3. In regards to vehicles, oil companies will avail some cash through Ministry of Energy and Mining.
4. You are now to clean all the villages and pockets of the rebels that are near areas of exploration up to Gogrial’s border.”<sup>312</sup>

Instructions from Col. Ibrahim Shams el Din, State Minister of National Defence, to Maj. Gen. Matiep, July 27, 1998, as filed in the US District Court.<sup>313</sup> [Bold added]

**ECOS believes there are grounds to investigate whether the Lundin Consortium's employment of Mohamed Mokhtar constituted support for the Government's security policies**

According to a senior manager of an international oil company working in Sudan, oil consortiums in Sudan cannot freely recruit their Chief Security Manager, but are obliged to employ officers with military or other security backgrounds, who are designated by the Ministry of Energy and Mining.<sup>314</sup> According to Jalduong Matuek, Finance Minister for Unity State, “The reality is that these oil companies were full of SAF soldiers who were employed as intelligence.”<sup>315</sup> The Minister claimed that numerous SAF officers were employed by oil companies as security officers. If so, this raises the question whether oil companies in fact employed more than a few people who effectively reported to the country’s security organs and, if so, whether the companies employed them knowingly and freely.

Talisman’s internal security report of October 2-21, 2002, a document filed in a US court, reads “09 October - It was announced that Mohammed Mokhtar would be moving from GNPOC to Lundin to take over the role as security manager.”<sup>316</sup> He was described by Talisman, in a document filed in a US court, as “formerly colonel in the military, also worked for national security (from Nuba mountains to Adok).”<sup>317</sup> In an earlier document filed in a US court, Talisman reports “A Special Security Council has been formed to command the military in the above mentioned role [securing the GNPOC operations]. The Security Council is headed by the Ministry of Energy and includes Ministers of Defence and Finance and the security manager of GNPOC. It reportedly sits weekly in Khartoum although there is some doubt that there is such regularity. Direct access has been given to the GNPOC security manager to any member of this council and it is claimed to the 1<sup>st</sup> Vice-President of Sudan. There is no reason to challenge this claim as evidence of such influence has been observed.”<sup>318</sup>

In another document filed in a US court, Talisman observes that Mr. Mohamed Mokhtar “Officially reports to President of GNPOC; Effectively reports directly to Ministry of Energy (MEM is head of Security Council of Sudan).”<sup>319</sup>

“The [Christian Aid] report does not discuss the positive aspects of the involvement of foreign oil companies such as the fact that they effectively act as human rights watchdogs (...).”

Lundin Oil in Sudan, 2001, p. 6.

ECOS believes that at the time of his employment, Mr. Mokhtar’s security background was well known in the industry and submits that Lundin should have known about the connection between its chief security manager and the Special Security

<sup>312</sup> Gogrial was one of the three counties of Warrap State (at present divided into six counties), its border spanning Mayom to Ler county in Unity State.

<sup>313</sup> “Subject: Guarding the Oil Companies”, Communication from Col. Ibrahim Shams El Din, State Minister of National Defence, to General Paulino Matiep, 30/A/8/615, July 27, 1998, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), P12397.

<sup>314</sup> ECOS confidential interview, May 2009.

<sup>315</sup> Sudan Radio Service interview with Jalduong Matuek, Finance Minister for Unity State, “SAF Working as Oil Company Security to be Replaced by Civilians”, January 23, 2008.

<sup>316</sup> Talisman Security Report, October 2-21, 2002, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), TE 0521074.

<sup>317</sup> “STRICTLY CONFIDENTIAL, Security Arrangements – Sudan operations”, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), TE 0250244.

<sup>318</sup> Talisman Post Visit Report, July 21, 1999, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), TE0398635-6.

<sup>319</sup> “STRICTLY CONFIDENTIAL, Security Arrangements – Sudan operations”, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), TE 0250244.

Council of Sudan. ECOS further believes that it was no secret that the Special Security Council controlled the Government's security programme in the oil regions and that the Consortium should have been aware of this fact. By employing Mr. Mokhtar as its chief security manager, the Lundin Consortium appeared to condone the way the Government provided security to the oil industry. However, it is not clear to ECOS whether the Consortium was in the position to freely recruit staff or whether it had no other choice than to accept the Government's proposals for Sudanese nationals in its security team. In either case, ECOS calls for an investigation into the extent to which the employment practice of the Consortium constituted support for the security policies of the Government.

In addition, ECOS calls for an investigation into whether Mr. Mokhtar, while working for the Consortium, effectively reported to the head of the Special Security Council, as he reportedly did in his previous assignment with GNPOC. If he did, an investigation into whether the members of the Consortium were or should have been aware of that, and whether such a fact would constitute support for the commission of international crimes is required.

## 6.3 The Lundin Consortium should have known that its activities contributed to the commission of international crimes by others

### **The Government of Sudan had a record of committing international crimes**

By 1997, when the members of the Lundin Consortium signed their contract, the Sudanese Government's pattern of disregard for international law had been well documented and widely publicised.

In the early 1990s, the Sudan Human Rights Organization and Amnesty International started issuing periodic reports on human rights abuses in Sudan, documenting cases of illegal detention, torture, suppression of dissent and free expression, extrajudicial killing, discrimination, and crimes against humanity, including the deliberate targeting of civilians, looting, forced displacement, denial of humanitarian aid, and indiscriminate and disproportionate use of violence.<sup>320</sup> By 1996, the Government of Sudan had been condemned for human rights violations by the UN General Assembly, the UN Commission for Human Rights, and the African Commission on Human and Peoples' Rights.

ECOS submits that the members of the Lundin Consortium should have been aware of these reports, the general trend of their contents, and the specific condemnations by the different international bodies. If still unaware in 1996, they should have been alarmed in 1997 when Sudan's National Security Council resolved that all military resources should be made available for controlling the oil fields, even if that would mean giving up the rest of the South to the SPLA.<sup>321</sup> Despite the growing body of evidence, the members of the Consortium nevertheless decided to go into business with the Government of Sudan.

### **A practice of violent cleansing of oil areas was a matter of public record before 1997**

As early as 1983, the Government of Sudan employed Baggara militias to drive Nuer and Dinka people away from the oil rich northern parts of Unity State, steadily cleansing Blocks 1, 2 and 4 from its original population. Anthropologist Sharon Hutchinson wrote in 1996: "By late 1984 I had learned that my principal field sites in both eastern and western Nuerland had been destroyed. Tharlual had been overrun and razed by a band of northern Baggara (Misseriya) Arabs that had been armed with automatic weapons and ammunition by the Government and instructed to clear the oil-rich lands of the Western Upper Nile [now Unity State] of its Nilotic inhabitants."<sup>322</sup>

All Southern politicians at the time saw a close link between the displacement and oil. Mulana Abel Alier, Vice-President of Sudan 1971–1981, wrote in 1992 that oil played a crucial role in South-North relations and that all Chevron's oilfield areas were practically cleared of civilians in 1985–86.<sup>323</sup> He maintained that Chevron itself had a role in destabilizing the area, leading to the attack on it staff in 1984, and eventually its departure in 1990. Africa Watch noted that the murahleen operating in the area in

<sup>320</sup> Amnesty International, "Sudan: Progress or Public Relations?", May 29, 1996. Available at: <http://www.amnesty.org/en/library/asset/AFR54/006/1996/en/dom-AFR540061996en.pdf>. Between 1990 and 1996, numerous other reports were published by e.g. African Rights, Africa Watch and Human Rights Watch.

<sup>321</sup> Sudan Democratic Gazette, no. 84, May 1997 and no. 88, September 1997, quoted in: Johnson, Expert Report (2005), p. 7.

<sup>322</sup> Hutchinson, Sharon E., *Nuer Dilemmas: Coping with Money, War, and the State*, University of California Press, Berkeley and Los Angeles 1996, p. 5.

<sup>323</sup> Alier (1992), p. 243.

the early 1980s had been organised by the Government to protect Chevron's oilfields in Bentiu.<sup>324</sup> The Misseriya militia that Chevron had financed to protect its camp at Muglad tried to raid into Bahr el Ghazal in 1990.<sup>325</sup>

Lundin's Vice-President for Corporate Responsibility, Christine Batruch, suggested in 2004 that the company was well aware of the earlier forced displacement in the neighbouring Blocks when she wrote *"the GNPOC concession area was sparsely inhabited, which gave credence to the claim that population displacement had taken place prior to the commencement of operations, even though this was disproved by satellite images."*<sup>326</sup>

"During the past five years thousands of civilians are reported to have been killed in deliberate and indiscriminate attacks, including aerial bombardments on civilian targets by Government forces. (...) Indiscriminate and deliberate aerial bombardments by the Government of Sudan (GOS) forces on civilian targets continued in 1995... In southern Sudan prisoners of war are the exception. Those captured have been and are being tortured and summarily executed."

Gáspár Bíró, Special Rapporteur, Commission on Human Rights, February 1996.<sup>327</sup>

### **The 1997 Khartoum Peace Agreement was unlikely to bring peace**

The Khartoum Peace Agreement raised hope that the operations of the Lundin Consortium could be secured despite the civil war. A careful examination of the Peace Agreement and the circumstances surrounding its drafting and adoption would have revealed that this hope was unfounded.<sup>328</sup> Many Southerners, including Nuer military commanders, did not find it acceptable. "These fighters were angered when the Government began moving troops into "Nuer areas" in 1997/98."<sup>329</sup> But most importantly, it was vehemently rejected by the Government's most formidable enemy, the SPLM/A. The Government's true intentions became clear when no action was taken on crucial issues like the creation of a joint ceasefire commission and an oil revenue allocation commission, and the re-settlement of internally displaced people. But the Agreement delivered what the Government sought most in 1997: access to the oil areas of Unity State that were controlled by troops loyal to Dr. Riek Machar.<sup>330</sup> It was unlikely, however, that the cash-strapped Government would let a keen supporter of Southern independence like Dr. Riek Machar have control over the country's main source of income.<sup>331</sup>

It was widely recognized at the time that the Khartoum Peace Agreement was more about oil than about peace. It was a tactical move within the larger picture of an on-going civil war, rather than a genuine peace agreement. The Sudan Democratic Gazette (SDG) reported in May 1997: "Mr. Machar, a native of Bentiu in Upper Nile, where the current oil find exists, seems to have encouraged both the NIF [National Islamic Front] regime and Arakis Energy Corporation [operating in Blocks 1, 2 and 4] to believe that his was the last word on the matter; having given his word, both the regime and the oil company were at liberty to exploit this vital Southern resource even while the war rages on. This is a view not likely to be shared by many Southern Sudanese, including Mr. Machar's own Nuer supporters. (...) The NIF regime is banking on the oil revenues as the last hope for clinging on to power. The national security council meeting resolved that all resources should be put into protecting the oilfields, even if that means giving up the rest of the South to the SPLA."<sup>332</sup>

Initially, Dr. Riek Machar seemed to believe that the Khartoum Peace Agreement meant that his SSDF was to provide security in the oil regions that were under his control at the time, but within months, the Government sent rival Nuer leader Maj. Gen. Paulino Matiep's forces after him. The Government never sincerely complied with the Agreement, while presenting its campaign to gain control over the oil areas as a manifestation of traditional inter-tribal strife.<sup>333</sup>

<sup>324</sup> Africa Watch, *Denying 'the Honor of Living': Sudan, A Human Rights Disaster*, March 1990, p. 88.

<sup>325</sup> Johnson (2003), p. 83.

<sup>326</sup> Batruch (2004), p. 7. In ECOS' opinion the satellite image analysis that Talisman used to refute allegations of oil-related displacement in its Block was patchy and deeply flawed as it focussed on a tiny surface and ignored seasonal migration.

<sup>327</sup> Bíró, Gáspár, "Situation of Human Rights in Sudan: Report of the Special Rapporteur, submitted in accordance with Commission on Human Rights resolution 1995/77", E/CN.4/1996/62, February 20, 1996. See: <http://www1.umn.edu/humanrts/commission/country52/62-sdn.htm> (accessed Sept. 28, 2009).

<sup>328</sup> Johnson, Expert Report (2005), p. 6.

<sup>329</sup> Harker (2000), p. 58.

<sup>330</sup> Johnson (2003), p. 123-124, 163.

<sup>331</sup> Ibid.; Institute for Security Studies (ISS), "South Sudan Situation Report", Pretoria, April 8, 2004, p. 6. See: [www.iss.co.za/AF/current/2004/sudanapr04.pdf](http://www.iss.co.za/AF/current/2004/sudanapr04.pdf) (accessed Sept. 28, 2009).

<sup>332</sup> Sudan Democratic Gazette, no. 84, Khartoum, May 1997, cited in: Johnson, Expert Report (2005), p. 7.

<sup>333</sup> Jok, Jok Madut, *Sudan, Race, Religion and Violence*, Oneworld Publications, Oxford 2007, p. 199.



## **The increase in human rights violations and international crimes following the commencement of oil exploitation in Block 5A was publicly reported**

From 1998 onwards, numerous human rights organizations and UN Special Rapporteurs for human rights in Sudan reported a major human catastrophe and gross human rights abuses occurring in Block 5A. The WFP reported that the fighting around Nhialdiu, which it said lasted from June 1997 to November 1998, displaced around 70 percent of its population. Most people fled to Bentiu and Mankien. After the hostilities diminished, some returned to Nhialdiu, joined there by displaced persons from other areas.<sup>334</sup> In May 1998, CARE, which was based in Bentiu and Mayom, reported that 20,000 Sudanese had fled the towns of Unity State.<sup>335</sup>

In July 1998, MSF-Holland warned in a press release that insecurity in Unity State was seriously hampering the delivery of urgently needed food assistance. The fighting had forced MSF, the WFP, and other humanitarian agencies to evacuate the area, and looting of compounds by Government soldiers had forced the shutdown of key programs, including the MSF hospital in Ler.<sup>336</sup>

The WFP reported that Ler, once a hub for food and health services, “is now a ghost town.” It confirmed that “militia factions have raided Ler three times since June [1998], looting and burning homes and destroying schools, a hospital and clinic. Crops have been trampled, burnt and eaten by the raiders. Renegade forces have also stolen and slaughtered thousands of cattle. The WFP estimated that the fighting forces had stolen a total of 24,000 cattle, leaving families with no assets to trade or slaughter.”<sup>337</sup>

“In the course of 1998, some 150,000 civilians were displaced and at risk of starvation in the oil-rich region of Western Upper Nile, where instability and violence rendered United Nations emergency humanitarian aid deliveries difficult if not impossible. This area, belonging to the Nuer people, has been the stage of confrontation between two pro-Government Nuer leaders, Machar and warlord Matiep, fighting each other for political and military control of the territory. Both factions have been directly armed by the Government.”

Leonardo Franco, UN Special Rapporteur, Commission on Human Rights, May 1999.<sup>338</sup>

In May 1999, the SPLA responded to the fighting in Block 5A by expressing its view that “the exploitation of oil resources at present will not be of any economic benefit to the Sudanese people but will rather lead to the escalation of the civil war.”<sup>339</sup>

“The company is lying low in Sudan for the moment. This has nothing to do with the civil war in Sudan, but that the rainy season is going on now.”

Magnus Nordin, Deputy Managing Director Lundin Oil AB, September 1999.<sup>340</sup>

In March 2001, Special Rapporteur on Human Rights in Sudan, Gerhart Baum, stressed to the U.N. Commission on Human Rights that he “had received information whereby the Government is resorting to forced eviction of the local population and destruction of villages to depopulate areas and allow for oil operations to proceed unimpeded.”<sup>341</sup> His reports in 2002 and 2003 were similarly urgent.

<sup>334</sup> WFP, “Sudan Bulletin”, no. 74: February 6-13, 1999

<sup>335</sup> CARE, “CARE responds to the crisis in South Sudan with Emergency Aid”, press release, Atlanta, May 5, 1998.

<sup>336</sup> MSF Holland, “Insecurity hinders provision of humanitarian assistance in Southern Sudan”, press release, Nairobi, July 7, 1998.

<sup>337</sup> WFP, “WFP Executive Director Catherine Bertini Calls on International Community to Help End Fighting in Southern Sudan”, press release, New York, July 10, 1998. Other WFP press releases included: “WFP Staff Evacuated Safely Out of South Sudan After Out-running Militia Attack”, Nairobi, July 18, 1998; “WFP Issues Urgent Appeal for Funds to Expand Emergency Food Aid to Needy Sudanese”, Rome, July 27, 1998.

<sup>338</sup> Franco, Leonardo, “Situation of human rights in the Sudan”, Addendum 1, Commission on Human Rights, Fifty-fifth session, E/CN.4/1999/38/Add.1. May 17, 1999, paragraph 75. See: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/a32a934fa6d8682a802568180049c6aa?OpenDocument> (accessed Sept. 29, 2009).

<sup>339</sup> Dr. Samson L. Kwaje, SPLM/A Secretary for Information and Official Spokesman, May 4, 1999, quoted in: HRW (2003), p. 276.

<sup>340</sup> Pettersson, C., “Lundin Oil continues in Sudan”, (translated), Dagens Industri, September 29, 1999. (Org. title and quote: Lundin Oil fortsätter i Sudan: “företaget ligger lågt i Sudan för tillfället... inte har med inbördeskriget i Sudan att göra utan att det råder regnperiod.”)

<sup>341</sup> 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. See: <http://www.unhchr.ch/huridocda/huridoca.nsf/0/072FE7F713DE0F4FC1256A29002A3757?opendocument>.

In January 2000 the Harker report, prepared for the Canadian Minister of Foreign Affairs, already concluded that oil extraction had a destructive impact on the conflict in Sudan. One year later Christian Aid published the report "Scorched Earth: Oil and War in Sudan" about the devastating impact of oil exploitation in Unity State: "The Government of Sudan is clearing huge tracts of southern Sudan to make way for oil production. Troops are terrorizing civilians, burning homes and attacking villages from the air in a war for oil."<sup>342</sup> More reports that reinforced these findings followed, by Human Rights Watch, ECOS, Amnesty International and various humanitarian NGOs with operations on the ground.

"Furthermore, the Special Rapporteur is convinced that the oil issue, in western Upper Nile [Unity State], lies at the heart of the conflict and believes that it is not fair for the civilian population to be once again the most affected target in this scenario. Oil exploitation has resulted in the exacerbation of the war."

Leonardo Franco, Special Rapporteur, UN Commission on Human Rights, April 2000.<sup>343</sup>

In May 2001, Lundin wrote "The Company has engaged 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>344</sup> The company did not report what explanations were obtained. It is not known to have implemented a human rights protection program, as is required by its 2001 Code of Conduct on corporate responsibility.<sup>345</sup> No guarantees were received from the Government that the security measures for the Consortium would respect and protect norms of international law. Overall, the Consortium is not known to have taken adequate steps to prevent its potential complicity in international crimes.

"Basically we are doing good and constructive work in Sudan. (...) The accusations about attacks that have been made in the past do not correspond to the picture Lundin Oil's personnel have. We do not believe there have been any displacements of people. (...) The accusations though are so serious that we will leave no stone unturned to bring light to this. We also welcome an investigation from the Swedish Government."

Adolf Lundin, Major shareholder and Chairman of Lundin Oil AB, March 2001.<sup>346</sup>

## 6.4 The Lundin Consortium was proximate to perpetrators of international crimes

The Lundin Consortium was geographically and commercially proximate to the human rights abuses committed in Block 5A and to the victims of the abuse. Its all-weather road was heavily militarised. It also maintained close commercial relations with the main perpetrators, the Government, its army, and allegedly its allied militias. The Government was the Consortium's main business partner and held a 5% share in the Consortium, which was a long-term strategic partnership. A typical Exploration and Production Sharing Agreement implies shared decision-making, coordination between the parties, and a unity in interest and purpose.

"We have of course a very high awareness and preparedness for what our situation in Sudan will demand. It is of course totally unacceptable for a Swedish company in general and Lundin Oil in particular, to get into a situation where any kind of violent act would be made in our name. Indirect or direct."

Magnus Nordin, Deputy Managing Director Lundin Oil AB, December 1999.<sup>347</sup>

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<sup>342</sup> Christian Aid (2001), p.6.

<sup>343</sup> Franco, Leonardo, "Situation of human rights in the Sudan", Commission on Human Rights, Fifty-sixth session, E/CN.4/2000/36, April 19, 2000, paragraph 21. <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/a24f12b8a7877a8ac125692d00397392?Opendocument> (accessed Oct. 2, 2009).

<sup>344</sup> "Lundin Oil in Sudan", 2001, p. 16.

<sup>345</sup> See: [http://www.lundinoil.com/eng/code\\_of\\_conduct.php](http://www.lundinoil.com/eng/code_of_conduct.php)

<sup>346</sup> Thorpenberg Paulsson, E., "Political unrest is his business idea", Göteborgs Posten, March 25, 2001, p. 37. (Org. Title and quote: "I grunden gör vi ett bra och konstruktivt arbete i Sudan...De påståenden om övergrepp som förekommit den senaste tiden stämmer inte med den bild som Lundin Oils personal i Sudan har. Vi tror inte att det har varit någon fördrivning av människor... Påståendena är dock så allvarliga att vi ska vända på varenda sten för att få klarhet och vi välkomnar även en undersökning av den svenska regeringen.")

<sup>347</sup> Eriksson, R.T. "Lundin Oil stays in Sudan" (translated), Finans Tidningen, December 2, 1999. (Org. title and quote: Lundin Oil stannar kvar i Sudan: "Vi har

ECOS is calling for an investigation into the relationship between the Lundin Consortium and its security providers. The reported hiring by the Consortium of Mr. Mohammed Mokhtar, see paragraph 6.2, raises questions about the Consortium's connections with the Special Security Council, which reportedly controlled all security agencies in the oil areas. Talisman, in an internal report filed in a US court, stated "The military strategy, driven it appears by the GNPOC security management, is to create a buffer zone, (...) inside which no local settlement or commerce is allowed."<sup>348</sup> Talisman's suggestion that the GNPOC security management, headed by Mr. Mohamed Mokhtar, was driving the Government's military strategy, raises the question whether the Consortium was aware of this at the time it hired him and whether it did so freely. ECOS also calls for an examination of the facts to determine whether the hiring of Mr. Mokhtar constituted close proximity of the Consortium to perpetrators of international crimes as understood in international law.

"The companies are giving power to the Government to drive us away. They are helping the Government with everything. They are making the roads, bringing the cars, making the airstrips where the bombers and helicopter gunships sleep."

Commander Peter Gatdet in 2002.<sup>349</sup>

## 6.5 The Lundin Consortium failed to act

ECOS believes that the members of the Consortium were at best blind to or at worst ignored the link between their activities and the war in Block 5A, and ignored the risk that their commercial activities could make them complicit in the crimes of others.

ECOS believes, based on the evidence it has reviewed in this report, that the members of the Consortium should have acted to prevent the risk of potential complicity in international crimes of others. ECOS' opinion is that they should not have signed the contract with the Government in 1997 without credible guarantees that the Government would respect its international legal obligations in Block 5A. Once confronted with the many credible reports that its operations were exacerbating the war and that the Government's security measures extended to the commission of international crimes, the Consortium should have suspended its operations in Block 5A.

### **The Consortium did not preclude likely complicity in international crimes**

In Lundin's opinion, the Government of Sudan had an obligation to ensure the security of citizens and foreigners, including oil operations.<sup>350</sup> The members of the Consortium should have foreseen that there was a real risk that the Government of Sudan would resort to committing international crimes in order to protect their interests, but from the information available, it seems that the Consortium did not take sufficient measures - apart from some limited questioning of the Government - to limit the risk of becoming complicit in these crimes. ECOS finds it especially objectionable that the Consortium continued to fund the construction of its road in September 2000, after it had become manifestly clear that oil was exacerbating the war.<sup>351</sup>

"During the years that we were attacked, I saw the oil company construction crews building an all-weather oil road from Rubkona toward Nhialdiu village. The oil company construction crews had a military escort. The troops would go ahead of the oil company construction crews to clear the area of all people and then the oil company construction crew would follow. A military garrison was built in the western part of Nhialdiu village along this road. (...) There were no SPLA soldiers in Nhialdu or any other areas where I witnessed Government attacks against unarmed civilians."

Testimony by Chief Gatluak Chiek Jang, Nairobi, 2006.<sup>352</sup>

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självklart en väldigt hög medvetenhet och beredskap för vad vår situation i Sudan kommer att kräva. Det är givetvis fullständigt oacceptabelt för ett svenskt bolag i allmänhet och Lundin Oil i synnerhet att hamna i en situation där någon form av våldshandling skulle ske i vårt namn. Indirekt eller direkt.")

348 Talisman Energy Sudan, "Post Visit Report", by Mark Dingley, appendix of a fax sent to Dave Clement on July 21, 1999, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), TE0398636.

349 Gatdet in 2002, quoted from interview on film, present in ECOS archive.

350 "Lundin Oil in Sudan", 2001, p. 16.

351 "The evidence we gathered (...) directs us to conclude that oil is exacerbating conflict in Sudan", in: Harker (2000), p. 64. Leonardo Franco, UN Special Rapporteur for Human Rights in Sudan, concluded the same in 1999, see: "Special Report on the situation of human rights in the Sudan", Commission on Human Rights, 54th session, A/54/467, October 14, 1999, paragraphs 66 and 75, available at: <http://daccess-ods.un.org/TMP/7206707.html> (accessed Oct. 2, 2009).

352 Testimony by Chief Gatluak Chiek Jang, Nairobi 2006, US District Court for the Southern District of New York, File 01 CV 9882 (AGS), 2<sup>nd</sup> page.

In March 2001, in response to adverse publicity, Lundin finally looked into the allegations of its involvement in international crimes. Lundin completed an internal investigation of its operations.<sup>353</sup> After a short visit, Ian Lundin, president of Lundin Oil, found that the war was not really as bad as had been reported and that the company was not to be blamed of anything.<sup>354</sup> In May 2001 Lundin produced a report, 'Lundin Oil in Sudan' that was meant to refute Christian Aid's allegations. It is ECOS's opinion that the report was deeply biased in the Consortium's favour and a self-serving document: it had no solid basis in ground research, and it ignored many crucial issues like the non-traditional nature of the fighting among Nuer militias, the high degree of Government control over its allied militias, and the magnitude of the displacements.<sup>355</sup>

According to John Ryle and Georgette Gagnon, the activities of oil companies in Unity State were part of a counter-insurgency operation and there was no distinction between military operations against rebel forces and military operations designed to clear and secure the oil fields. They stated that oil facilities and infrastructure were de facto military facilities. Oil company property and personnel were viewed as military targets by rebel forces and indigenous rural communities were considered security threats by forces protecting oil company property.<sup>356</sup> Ignoring the repeated, consistent and credible reports that international crimes were being committed by Government forces and allied armed groups in Block 5A, and in the name of oil, the Lundin Consortium continued to exploit its oil concession.

"But of course the oil is, just as other natural resources and not least the water from the River Nile, a part of the conflict."

Carl Bildt, Board of Directors of Lundin Petroleum, July 2001.<sup>357</sup>

In January 2002, the joint SPLM/A-SPDF declared oil installations to be military targets and several convoys came under bloody attacks between January 13 and 25, 2002. The Government of Sudan reacted with aerial attacks on Tagil, Padeah, Koch and many other locations throughout January and February 2002, using both high altitude bombers and helicopter gunships. The Consortium, forced to suspend operations for a second time announced that its operations in Block 5A would be suspended "as a precautionary measure to ensure maximum security for its personnel and operation."<sup>358</sup> The suspension of operations was, on this occasion, influenced by the Consortium's own security considerations. ECOS found no reference to any concern on the part of the consortium for the security or safety of the civilians in Block 5A.

"There is a lot of activity on both the war and the peace front. So we thought it would be best for now to take it easy and let the situation calm down a bit. The SPLA has always said that the oil companies are military targets, and if we are not there maybe there are less reasons for them to be on the offensive."

Ian Lundin, President and CEO Lundin Petroleum AB, January 2002.<sup>359</sup>

"Without the army and the Government-loyal militia SSIM, Lundin Oil would not be able to operate in the area", the expat security consultant for the Lundin Consortium, Richard Ramsey, explained to Swedish journalist Anna Koblanck in April 2001; "The army guarantees the company's security along the road, and SSIM [renamed SSDF] is in charge of security in the whole concession area."<sup>360</sup> Richard Ramsey noted that the Consortium did not have any control over how its military partners conducted their operations. According to the security officer, oil companies were "not allowed to talk to SSIM, for some reason I

<sup>353</sup> Lundin Oil, "Sudan: Lundin Oil refutes the allegations", press release, April 3, 2001. Shortly after the publication of Christian Aid's Scorched Earth report mid-March 2001, the UN Special Rapporteur on Human Rights in Sudan, after his visit to Khartoum and Nairobi from March 9-17, reported that, amongst other things, all villages on the road to Pultutni near Ryer/Thar Jath, had been razed. Within two weeks' time, Ian Lundin had made the investigatory trip that concluded that Lundin Oil carried no blame.

<sup>354</sup> Lundin Oil, "Sudan: Lundin Oil refutes the allegations", press release, April 3, 2001.

<sup>355</sup> For a critique of Lundin's investigation, see HRW (2003), p. 591-596.

<sup>356</sup> Gagnon & Ryle (2001), p. 30.

<sup>357</sup> Tidningarnas Telegrambyrå, "Bildt: efforts in Sudan must be coordinated", (translated), July 24, 2001. (Org. title and quote: BILDT: FREDARBETET I SUDAN MÅSTE SAMORDNAS: "Men självfallet är oljan, liksom andra naturtillgångar och då inte minst Nilens vatten, en del av konflikten.")

<sup>358</sup> Lundin Petroleum, "Lundin Petroleum Announces a Temporary Suspension of Activities in Block 5A Sudan", press release, January 22, 2002.

<sup>359</sup> Koblanck, Anna, "Oil drillings in Sudan interrupted", (translated), Dagens Nyheter, January 23, 2002. (Org title and quote: Oljeborringar i Sudan avbryts: "Det är mycket rörelse på både krigsfronten och fredsfronten. Så vi tänkte det var bäst att för nuvarande ta det lugnt och låta situationen lugna ner sig lite..." "SPLA har alltid sagt att oljebolagen är en militär måltavla, och om vi inte är där kanske det finns mindre anledning för dem att gå på offensiven.")

<sup>360</sup> Koblanck, Anna, "Lundin Oil's road. Dagens Nyheter in Sudan: On flight from the war over oil, the road is bordered with misery and military," Dagens Nyheter, April 28, 2001.

don't know. As a result we cannot know exactly when they are going to attack somewhere, and most often we don't find out the reasons until afterwards.”<sup>361</sup> The statement suggests that the Lundin Consortium was aware that its security providers undertook offensive, rather than only defensive action.

ECOS believes the Lundin Consortium's failure to act despite reports of human rights violations and international crimes against civilians by numerous, credible international organisations may make it complicit in those crimes as a matter of international law. It is ECOS' position that by unconditionally continuing its commercial operations, when it should have been aware that the forces that guaranteed the security of its activities and infrastructure had been accused of human rights violations and international crimes against civilians, the Consortium was effectively condoning the crimes of those it worked with in or around its concession area in Sudan during 1997 - 2003.

The Swedish, Austrian and Malaysian Governments also failed to act when informed of the allegations that companies based in their territories were, through their activities, enabling the commission of international crimes. In April 2001, Swedish Foreign Minister Anna Lindh concluded that the allegations concerning Lundin's complicity in human rights violations were serious and she proposed that the Swedish Government investigate Lundin's activities in Sudan. This investigation was welcomed by Lundin but it has yet to take place.<sup>362</sup>

“Lundin Oil activities are negative for Sweden. (...) We expect Swedish companies to respect an ethical code in line with human rights and the environment in which they operate abroad.”

Swedish Minister for Foreign Affairs, Anna Lindh, April 2001.<sup>363</sup>

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<sup>361</sup> Ibid.

<sup>362</sup> Lundin Oil, “Lundin Oil Welcomes Government Enquiry”, press release, Geneva, March 21, 2001.

<sup>363</sup> Anna Lindh quoted in HRW (2003), p. 589.

## ANNEX 1: GLOSSARY

AEC	Assessment and Evaluation Commission
CNPC	China National Petroleum Corporation
CPA	Comprehensive Peace Agreement
CPMT	Civilian Protection Monitoring Team
ECOS	European Coalition on Oil in Sudan
EPSA	Exploration and Production Sharing Agreement
FAO	UN Food and Agriculture Organisation
FEWS	Famine Early Warnings System Networks
GNPOC	Greater Nile Petroleum Operating Company
GONU	Government of National Unity
GOS	Government of Sudan
GOSS	Government of Southern Sudan
HPSIC/HCC	Higleig Petroleum Services and Investment Company/ Heglig Construction Company
HRW	Human Rights Watch
ICJ	International Commission of Jurists
ICSS	Interim Constitution of Southern Sudan
IDP	Internally Displaced Person
IHL/ICL	International Humanitarian and Criminal Law
IMF	International Monetary Fund
INC	Interim National Constitution
IPC	International Petroleum Corporation (later: Lundin Oil; later Lundin Petroleum)
MEM	Ministry of Energy and Mining
MSF	Médecins Sans Frontières
NIF	National Islamic Front
OLS	Operation Lifeline Sudan
OMV	Austrian oil and gas group (OMV AG)
ONGC	Oil and Natural Gas Corporation; national oil company of India
ORCD	Organization for Relief and Community Development
OVL	ONGC Videsh Limited; wholly owned subsidiary of ONGC, the national oil company of India
SAF	Sudan Armed Forces
SPLM/A	Sudan People's Liberation Movement/Army
SPDF	Sudan People's Defence Forces/Democratic Front
SSDF/UDSF	South Sudan Defence Forces/United Democratic Salvation Front
SSIM/A	South Sudan Independence Movement/Army
SSUM/A	South Sudan Unity Movement/Army
UNMIS	United Nations Mission in Sudan
UN OCHA	United Nations Office for the Coordination of Humanitarian Affairs
UMCC	Upper Nile Military Command Council
WFP	World Food Programme
WNPOC	White Nile Petroleum Operating Company

## ANNEX 2: WARRING FORCES

The information in this section has been sourced from the reports of a number of international agencies and experts including Human Rights Watch (2003), Douglas H. Johnson (2003) and John Harker (2001).

### Rebel forces in Unity State, Southern Sudan (1983–2003)

- **Sudan People's Liberation Movement/Army (SPLM/A):** main armed opposition force to the Government, 1983–2005. Since 2005 a junior partner in the Government of National Unity and the dominating party within the Government of Southern Sudan. The SPLM/A is predominantly a Southern movement with a relatively strong representation of the Dinka people, but includes a rich variety of other marginalised peoples such as the Nuba, and Northern opposition groups. It was headed by Dr. John Garang (Dinka) until his death in 2005. Program: united, secular Sudan.

- **South Sudan Liberation Movement (SSLM):** a pro-independence southern political movement based in Akobo, Eastern Upper Nile, headed and formed by Dr. Michael Wal Duany in late 1999; it signed a peace charter with the Government of Sudan in July 2002.

### Rebel forces headed (directly or indirectly) by Dr. Riek Machar, 1991–2002:

- **SPLM/A-Nasir faction:** 1991–93, breakaway SPLA faction headed by Dr. Riek Machar (Dok Nuer), Cmdr. Gordon Kong (Eastern Jikany Nuer), and Dr. Lam Akol (Shilluk); although its program called for an independent south, it received aid from Khartoum. Headquartered in Nasir until 1995 and thereafter in Waat and Ayod, Upper Nile.

- **SPLM/A-United:** 1993–94: the above faction (mostly Nuer) joined by forces from other ethnic groups in southern Sudan, headed by Dr. Riek Machar, based in Nasir. Later this name was used by Lam Akol for his mostly Shilluk faction (see below).

- **South Sudan Independence Movement/Army (SSIM/A): 1994–97:** the above faction, reformed and renamed after the Nuer reconciliation meeting at Akobo in 1994, based variously in Waat and Ayod, Upper Nile.

- **South Sudan Defence Forces (SSDF):** 1997–2000, the army formed under the Khartoum Peace Agreement from ex-rebel forces including SSIM/A, based in Khartoum, Juba, and Malakal, and aligned with the political party United Democratic Salvation Front (UDSF). Both were headed by Dr. Riek Machar until January 2000, when he left the Government. On April 27, 2001 all southern forces allied with the Government were unified under this name, SSDF, including the pro-Government forces listed below.

- **Sudan People's Defence Forces/Democratic Front (SPDF):** January 2000–January 2002 or when the merger with the SPLM/A was complete, the rebel group formed from most SSDF forces, based in Upper Nile/Unity State.

### Pro-Government forces:

- **South Sudan Unity Movement/Army (SSUM/A):** formed in early 1998 by Maj. Gen. Paulino Matiep of the Sudan army, incorporating his formerly Anyanya II and SSDF Bul Nuer forces, supported by the Sudan Government, based in Mayom, Unity State. (Bul Nuer)

- **Cmdr. Gabriel Tanginya,** pro-Government Nuer forces based in Fangak, later Poum, Central Upper Nile (Lak Nuer).

- **Cmdr. Gordon Kong,** pro-Government Nuer forces based in Nasir, Eastern Upper Nile (eastern Jikany Nuer).

- **Cmdr. Simon Gatwich Dual,** pro-Government Nuer forces based in Waat, Central Upper Nile (Lou Nuer).

- **SPLM/A-United:** Dr. Lam Akol's Shilluk forces formed in 1994, which signed the Khartoum Peace Agreement in 1997. Dr. Lam Akol claimed the name after the forces of Dr. Riek Machar in 1994 took the name South Sudan Independence Movement/Army

(SSIM/A). Dr. Lam Akol had been part of the original SPLM/A-United. Based in Tonga, the Shilluk capital, in Upper Nile of southern Sudan.

- **Murahleen**, irregular units from Baggara tribes. The Baggara are cattle-owning Arabic-speaking pastoralists of the western Sudan, including the Misseriya and Humr ethnic groups of southern Kordofan and the Rizeigat of southern Darfur.
- **Popular Defence Forces**, Islamic militias, also known as mujahedeen, periodically recruited supplementary forces under SAF command.

**Government forces:**

- **Sudan Armed Forces (SAF)**, the country's regular army under Commander in Chief Lt. Gen. Omar Hassan Ahmed al-Bashir. Its 10th and 15th divisions were based in Bentiu/Rubkona. Its Air Force operated mainly from El Obeid and Heglig.
- **Petroleum Security** units were assigned for security provision for the oil industry.



### ANNEX 3: LIST OF REPORTED ATTACKS IN BLOCK 5A, 1997-2003

This list is based on reported attacks by HRW, MSF, Christian Aid and ECOS and is far from exhaustive.

Date	Location of the attack	Description	Perpetrator	Reference
Sept. 1997	Nhialdiu	Nhialdiu clinic and surrounding villages attacked, looted and burnt (for the 1 <sup>st</sup> time).	Forces of Matiep	MSF 2002:29; HRW 2003:179
1998	Ryer/Thar Jath	People living in the area of Ryer/Thar Jath told to leave after Chinese subcontractor had installed a large compound in 1998. When the villagers had fled the village all houses but two were burnt.	Forces of Matiep	HRW 2003:191
25-Feb 1998	Nhialdiu	Nhialdiu and two other villages attacked and looted.	Forces of Matiep	HRW 2003:192
March 1998	Duar	Duar clinic and village attacked and destroyed. MSF nurse (David Diapp) killed while fleeing Duar.	SSIM forces under the command of Tito Biel	MSF 2002: 29
April 1998	Nhialdiu	Six villages in Nhialdiu area looted and burnt.	Forces of Matiep	HRW 2003:192
27 June 1998	Duar	Village attacked and burnt, including compound of MSF, the building housing the local authority, and the school (assisted by UNICEF).	Forces of Matiep	HRW 2003:193
June 1998	Koch	Koch village attacked and burnt, as well as surrounding villages, including 50 small chapels, 4 clinics, 5 schools, and 6 local Government posts. The forces attacked the area three times in 1998.	Forces of Matiep	HRW 2003:193-4
June 1998	Ler	Village attacked and burnt, including Ler hospital, MSF feeding centres. MSF nurse (William Diu) was killed while fleeing Ler.	Peter Gatdet forces (then-allied to the SSUM).	MSF 2002:29; HRW 2003:198
first half 1998	Oil installations and convoys	One of the Lundin Consortium's trucks ambushed. Four Sudanese taken as prisoners, two escaped and two executed.	Forces of Matiep	HRW 2003:193
16 July 1998	Ler	Village of Ler attacked. WFP was distributing food and many residents had returned since the last attack on the village.	Forces of Matiep	HRW 2003:202
Aug. 1998	Ler	Village attacked again, for third time that year. Abductions and random killings of livestock were reported.	Forces of Matiep	HRW 2003:203
12 Oct. 1998	Nhialdiu	Village and the forces of Matiep attacked, many soldiers were killed.	SSDF	HRW 2003:204
(late) April 1999	Oil installations and convoys (2 hours south of Bentiu)	Convoy with Government troops ambushed. Supported by Government artillery the forces of Matiep broke through the ambush.	SSDF	HRW 2003:268
2 (or 3) May 1999	Oil installations and convoys	Attack at night on the camp where the oil workers sleep (Ryer/Thar Jath). Two Government employees executed and one seriously injured.	SSDF	HRW 2003:268
2 May 1999	Ler	Attack on army garrison at Payak and Ler.	SSDF	HRW 2003:271

(early) May 1999	Guk	Village attacked and occupied.	GOS and Mujahedeen	HRW 2003:272
(early) May 1999	Koch	Koch attacked while SSDF "retreated defending" because of lack of ammunition.	Forces of Matiep	HRW 2003:272
(early) May 1999	Ler	Village area attacked and occupied with reinforcement by GOS air force.	Matiep/GOS	HRW 2003:273
May/ June 1999	Nhialdiu	Village air-strip destroyed, thus denying SPLA air supplies "from foreign organizations".	GOS	HRW 2003:273
June 1999	Mayendit	Village attacked and destroyed, killing and displacing villagers and many refugees.	Forces of Matiep	HRW 2003:280
12 June 1999	Nhialdiu area	Village bombed, killing 24 civilians and soldiers as they crossed a river in the area.	GOS	HRW 2003:273-4
03 July 1999	Ler	Surprise attack on the Matiep's forces present in Ler, chasing the forces to the northern part of Block 5A.	SSDF	HRW 2003:261
(early) July 1999	Ler, Duar, Koch, Boaw and Nhialdiu	Rebel offensive re-taking the villages of Ler, Duar, Koch, Boaw and Nhialdiu	SSDF	HRW 2003:308-9
11-12 July 1999	Nhialdiu, Boaw, Duar and Koch	Government attack chased SSDF back further south by means of Antonovs and gunship. At least 11 civilians were killed, including 2 children, and many cattle.	GOS	HRW 2003:313
12 July 1999	Bentiu	Raid in Bentiu, many detained and killing of SSDF/UDSF civilians, among them state ministers.	Forces of Matiep	HRW 2003:261
Aug. 1999	Widespread areas (around Nhialdiu, Boaw, Duar and Koch)	Rebel offensive followed by their withdrawal when they ran out of ammunition.	SSDF	HRW 2003:314
Oct. 1999	Chotyel	The village of Chotyel attacked by helicopter gunships.	GOS (and Government allied troops, referring to Arabs)	Christian Aid 2001:8
(late) Sept. 1999	Bentiu	Village attacked in fighting. Feeding programs (for children) now running out of rations.	Forces of Gatdet	HWR 2003:318-9
28 Sept. 1999	Ler	Rebel offensive attacked Government forces at the Piliny bridge between Ler and Adok, captured two non-commissioned officers.	SSDF	HRW 2003:320
March 2000	Dhorbor	Village of Dhorbor attacked by Antonovs and helicopter gunship. More than 30 villagers killed.	GOS (and Government allied troops, referring to Arabs)	Christian Aid 2001:8
(Late) March 2000	Bentiu	Rebel offensive forced Government forces and troops of Matiep back to the town of Bentiu.	SPLA/SPDF	HRW 2003:341
(Late) March 2000	Bentiu	Attack on suspected SPLM/A/SPDF supporters in Bentiu. The killing and displacement of many civilians in Bentiu were reported.	GOS/Matiep	HRW 2003:341
15 April 2000	Oil installations and convoys	Ambush of military convoy from Bentiu to Ryer with material and personnel for the oilfield, including many unarmed Chinese.	SPLA/SPDF	HRW 2003:342

16 April 2000	Oil installations and convoys	Ambush of the convoy arriving the following day at Ryer/Thar Jath. This time the convoy was followed by the troops of Matiep, and the muraheleen.	SPLA/SPDF	HRW 2003:343
April 2000	Bow	The village of Bow attacked and MSFs kala azar center looted.	Unknown militiamen	MSF 2002:29
(11) May 2000	Guit	Village of Guit attacked and burnt.	GOS (and Government allied troops)	Christian Aid 2001:8
May 2000	Kuac	Village of Kuac attacked by troops arriving in lorries.	GOS (and Government allied troops)	Christian Aid 2001:8
(07) June 2000	Nimne	Village of Nimne and the location of SPDF attacked.	SPLA	HRW 2003:351-2
(15) July 2000	Nhialdiu	The village of Nhialdiu attacked and burnt.	GOS (referring to Government militias)	Christian Aid 2001:8
July-Aug 2000	Boaw and Koch	Villages attacked while Gatdet's forces were pushed west over the Jur River.	Paar/Matiep	HRW 2003:359
Sept. 2000	Koch	The village of Koch attacked. The killing of 2 MSF health workers (Paul Tap and Stephen Gatdet) and looting of medical supplies were reported.	SPLA	MSF 2002:29
February 2001	Kuac	The village of Thar near Kuac attacked and bombed ten times as of February 2001 in a Government effort to displace the population.	GOS	HRW 2003:387
05 March 2001	Nhialdiu	The village of Nhialdiu burnt in rebel attack.	SPDF	HRW 2003:388
09 Dec. 2001	Old Fangak (New Fangak)	Village attacked during the targeting pro-Government Nuer commander Gabriel Tanginya.	SPLA	HRW 2003:389
26 Dec. 2001	Oil installations and convoys	Rebel attack on garrison of Pultutni (for Ryer/Thar Jath), Kuok, and kilometre 40. The killing of enemy soldiers was reported.	SPLM/A	HRW 2003:390
(around) 30 Dec. 2001	Old Fangak	Brief recapturing of the village	Forces of Matiep	HRW 2003:389
07 Jan. 2002	Old Fangak	Village of Old Fangak attacked and recaptured.	SPLA	HRW 2003:389
13 Jan. 2002	Pultutni	Rebel attack on garrison of Pultutni.	SPLA	HRW 2003:390
13-25 Jan. 2002	Oil installations and convoys	The rebel armies of SPLA/SPDF declared oil installations military targets. Convoys set under bloody attacks.	SPLA/SPDF	ECOS 2002:18
14 Jan. 2002	Oil installations and convoys	Ambush on the road between the villages of Nhialdiu and Bentiu. The attack on a large convoy, of about 7,000 men including regular army soldiers, "tribal militias", two helicopter gunships and an Antonov bomber were reported.	SPLM/A	HRW 2003:390
23 Jan. 2002	Oil installations and convoys	Ambush of Government convoy between the Ryer/Thar Jath garrison at Pultutni and Mirmir. The killing of 63 soldiers, capturing of 2 soldiers and various amounts of weapons were reported.	SPDF	HRW 2003:391
24 Jan. 2002	Koch	Village of Koch attacked and bombed, using Antonovs.	GOS	HRW 2003:392
25 Jan. 2002	Oil installations and convoys	Ambush of Government convoy 40 km south of Bentiu. The killing of 102 enemy soldiers and capturing 4 was reported.	SPDF	HRW 2003:391

25 Jan. 2002	Oil installations and convoys	Convoy with two hundred conscripts ambushed. The Sudanese army sent for reinforcements for the Pultutni garrison and to protect Lundin Consortium's rig at Ryer/Thar Jath. The killing of 198 Government soldiers was reported.	SPLA	HRW 2003:391-2
26 Jan. 2002	Ler	Government soldiers ambushed on their return to the Ler barracks from Payak airstrip. The killing of 15 Government soldiers and 2 from the rebel army SPDF was reported.	SPDF	HRW 2003:392
(late) Jan. 2002	Pultutni	The village of Pultutni attacked by gunship or Antonovs. Thereafter looted and burnt. The abduction of children and young men was reported.	GOS	ECOS 2002:10; HRW 2003; 393
(early)2002	Buoth	The village of Buoth and other surrounding villages attacked by artillery placed in the Government garrison town of Wangkai. The attack was coupled with ground troops, displacing the people in the area.	GOS	HRW 2003:392-3
(early) Feb. 2002	Ryer	Ryer attacked by GOS air force, including Antonovs, a helicopter gunship and rocket attacks. Horsemen were then sent in to raid the village.	GOS	ECOS 2002:10; HRW 2003:393
(early) Feb. 2002	Nimne	The village of Nimne attacked.	GOS	HRW 2003:396-7
Feb. 2002	Nimne	The village of Nimne bombed, killing a MSF health worker (James Koang).	GOS	MSF 2002:29
Feb. 2002	Nhialdiu	The village of Nhialdiu attacked by air force. The killing of two civilians reported.	GOS	ECOS 2002:10
(mid) Feb. 2002	Nhialdiu	Fighting between Government forces and rebel troops (SPLA) near Nhialdiu. Government forces came out with a helicopter gunship, tanks and troops in an attempt to capture Nhialdiu. The Government forces and SPLA clashed in a rebel ambush. The following days the villages around Nhialdiu were heavily bombarded by Government air force. On the 20th of February Government then captured Nhialdiu. Most civilians fled to the west.	GOS and SSUM	MSF 2002:14; ECOS 2002:18; HRW 2003:397-8, 399-400
(Mid to late) Feb. 2002	Locations of Buoth to Nimne	Civilians terrorized during GOSS push on Nhialdiu.	GOS	ECOS 2002:13
(20) Feb. 2002	Bieh	The village of Bieh attacked by helicopters while food aid was distributed. A large number of IDPs were in place, searching for food after being forcibly removed. The killing of at least 24 people and the wounding of many was reported.	GOS	ECOS 2002:15; MSF 2002:29
29 Feb. 2002	Nhialdiu	The village of Nhialdiu attacked and reoccupied for one day.	SPLA	HRW 2003:400-401; ECOS 2002:18

## **ANNEX 4: ECOS BUSINESS PRINCIPLES**

ECOS has designed business principles for oil companies in Sudan that apply to all sectors, all regions and all companies, hoping they will contribute to mobilize the potential of the entire private sector to shape a prosperous and peaceful Sudan.

- Within the company's sphere of activity and influence, promote, respect and protect human rights and fundamental freedoms, including social, economic and cultural rights, land rights, and the rights and interests of indigenous peoples, minorities, and other vulnerable groups.
- All business activities are assured to be conducive to peace and equitable development, and to the realisation of the provisions and purpose of Sudan's Comprehensive Peace Agreement.
- No discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, while actively promoting that the local population sees itself equitably represented, at all levels, in the local work-force.
- Combat bribery, extortion and all other forms of corruption.
- Within the company's sphere of activity and influence, promotion of transparent and accountable public financial management.

The full text is available at [www.ecosonline.org](http://www.ecosonline.org)

## ANNEX 5: EXPLANATION OF THE SATELLITE IMAGES

From: Erik Prins, "Satellite mapping of land cover and use in relation to oil exploitation in concession Block 5A in Southern Sudan, 1987–2006", PRINS Engineering, Copenhagen, 2009. Full report available at [www.ecosonline.org](http://www.ecosonline.org)

Anthropogenic activity in semi arid regions of Africa can be identified by the use of space born sensors that can detect land use caused by man and livestock. During the dry season man's activity by cropping and grazing of livestock will break the soil crust, leaving a surface with high reflectance (albedo) which can be traced relatively easily by standardized methods for the analysis of satellite images.

All pictures used were taken during the dry season, starting in November, when pasture in the dry season grazing areas (*toic*) begins to form. The Nuer people graze their animals on this rich and succulent vegetation along streams and rivers. The whole area is watered by numerous streams along which villages are built on elevated ground that does not flood during the rainy season. Images from the end of the cropping season/start of the dry season show clear anthropogenic activities, in terms of cropping areas and intensive presence of human and livestock, which leave a clear bright soil signature. Also, images from January until March have been used to determine anthropogenic patterns that may falsify or confirm reports of displacement taken place in 2002.

In order to minimize errors in interpretation, due to artifacts, and to confirm changes in farming patterns, two sets of images were analyzed for each annual scenario<sup>364</sup> at the beginning to the middle of the dry season. The scenario of the 1994/5 situation<sup>365</sup> was used to indicate where farming activity would have been during the first part of the dry season. Further scenarios from 1999/2000 and 2002/3 were analyzed to trace subsequent land use changes during the period of oil exploitation activities

### FINDINGS

#### 1994/5 Scenario

Compared with the available 1987 image, the amount of land under cultivation in the Block 5A area has increased, probably because of the relative peace that governed the area at that time. The two images represent a stable situation of farming activity in the early dry season that is in line with farming patterns as visible on the map from the 1980s, with the north-western part of Block 5A, being the main area for growing crops and permanent settlements along the sand banks of streams, another concentration around and north of Leer, and finally two small corridors of agricultural activity, one from Bentiu to Nimne and one from Bentiu to Leer.

#### 1999/2000 Scenario

The two images show a comparable pattern as in 1994-1995, however, with less anthropogenic activity south of Pam, Kuac and Touc - which may partially be linked with a bush fire scar - and much less activity around Koch. A larger area of activity now lies outside Block 5A, north of Buoth, on the northern banks of the Bahr el Ghazal river (which appears white in the images).

#### 2002/2003 Scenario

The new road to Nhialdiu is visible. Up to 80% of the traditional farming areas cannot be observed to be in use anymore, most notably in the south-west and north-east of Block 5A and down to the Ler area. Only sporadic farming activity can be observed in the areas between Rubnyagai and Nhialdiu down to Ngop, and around Kuey and Bow. This corresponds with field reports of heavy and prolonged fighting in Nhialdiu and surrounding areas, down to Ngop. Some sandy banks along the streams show high reflectance, but this is not necessarily linked to contemporary farming, as these areas that have been used for many years and its natural flora can take several seasons to recover, as confirmed by the very high resolution QuickBird image north east of Kuac. Some new farming areas have sprang up south of Touc, confirming ground reports (HRW 2003) of an influx of displaced people who claim to originate from areas of oil activity. Furthermore, an increase in farming activity is observed between Bentiu

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364 Only the area south and east of the Bahr el Ghazal river has been analyzed in the mapped images.

365 1994/5 images were used as they are the closest cloud-free images that are available prior to 1999 for the study period. Much farming activity was observed in the area between Bentiu and Nimne and some population regrouping was observed in the area north of Leer.

and Nimne - this confirms ground reports of a temporary refugee camp here for people who have fled from surrounding villages (MSF 2002). Ibidem in the area north-east of Leer. Furthermore, some traditional *toic* areas close to the White Nile appear to be populated, which confirm reports of displaced people seeking refuge (HRW 2003). Meanwhile, a considerable increase in oil infrastructure can be observed in the eastern part of the image.

### **Farming Activity 1999–2003**

Given the scale of the observed changes in late 2002 and the beginning of 2003, a closer examination of the general changes in land use patterns was carried out for the period between 1999 and 2003. This was made possible, as extraordinarily many satellite images are now publicly available from the United States Geological Survey for the study area within the desired time slot.

#### **8th March 2002**

Two images from the 8th and 24th March 2002 are available for the late dry season when bushfire frequency is high, and these images show an identical land use pattern. Compared to the situation in March 2000, the farming activity is considerably reduced in the wider area and nearly no farming activity could be observed in the areas between Rubnyagai and Nhialdiu down to Ngop, and around Kuey and Bow – This can be explained by people fled from this area in Feb. 2002 (i.e. HRW 2003). Furthermore, no activity could be observed along the new oil industry road south east of Bentiu and Kuac. Furthermore, a considerable increase in oil infrastructure can be observed.

#### **3rd November 2002**

Past the wet season and into the beginning of the new dry season an image was available for the 3rd of November 2002. The farming pattern here is similar to the March 2002 image, although the farming areas now stretch further south of Touc. There is also a decrease in farming activity on the northern part of the newly established all-weather road between Bentiu and Kuac (near the village area of Guit). High reflectance or indication of farming can be observed in the areas between Bentiu and Nimne, and there are some *toic* grazed areas in the east close to the White Nile river. Furthermore, an increase in high reflectance areas can be found on the sandy banks in the Nhialdiu area where also a new road can be observed – this road is connected to the other new road that now extends beyond Thar Jath to Leer. There is uncertainty over how much of the high reflectance from the sandy banks is related to farming or is an artifact due to the recent rainy season where the very sandy areas around traditionally populated areas have been ‘cleaned’ by the rain. The latter interpretation is supported by the 0.6 m resolution QuickBird image from the 3rd of March 2003 in the Kuac area. Similar patterns have been observed by Prins (2008) in Darfur, where older burnt villages may turn from lower to higher albedo than the surroundings after a rainy season, despite not being re-occupied.

#### **21st December 2002**

In the Landsat image of the 21st of December 2002, farming activity can only be observed around and to the south of Touc. No farming activity can be observed in the triangle between Buoth, Thar Jath, and Bentiu. Little if any farming can be observed outside the bushfire scars, suggesting extremely low levels of farming activity in the area.

#### **23rd January 2003**

The Landsat image of the 23rd January 2003 contains widespread bushfire scars, however, it shows a very similar pattern to the 21st December 2002 image, which again confirms ground reports (HRW 2003) of people presence in Block 5A at that time, by refugee camps established in the Touc, Pam and Chotchara area and further south. A number of clouds were present in the image and have been masked out but did not have any influence on the observed general pattern.

### **Verification of land use change against ground reports of attacks and displacement**

Several reports have described attacks on villages and subsequent displacement of people, most summarized in HRW 2003. 41 village attacks (1999-2002) were geo-located and plotted against the most severe changes in land use between March 2000 and December 2002 – which can reflect the result of emptying the area around and south of Nhialdiu in late February 2002 (HRW 2003). The satellite study confirms the displacement of people in Block 5A - only 4 (less than 10%) of the 1998-9 attacks could not immediately be linked with substantial decrease in land use area (2000-2). A close examination of the maps [Figures 8, 18-21 in the Prins report], gives a more complete description of the development of land use over the different years. Moreover, the refugee areas described in literature correspond with the 2002-3 satellite observations of the remaining major anthropogenic activity in Block 5A.

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