

# A Report on the Lundin Case

## Executive Summary

SUDAN

SOUTH SUDAN  
(After 2011)

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BEDFORD ROW INTERNATIONAL

# Executive Summary: A Report on the Lundin Case

## I. INTRODUCTION

Lundin Oil,<sup>1</sup> its former CEO and Chairman of the Board are suspected of complicity in alleged war crimes committed in Block 5A in southern Sudan 1999-2003. From the outset, the Company has always maintained that none of its representatives committed or were complicit in any international crimes in Sudan. The allegations and basis for this investigation are seriously flawed as set out in outline in this report.

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

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

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

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

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

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

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

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

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

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

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

## II. THE HISTORICAL SETTING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## V. THE COMPANY'S CONTRIBUTION TO PEACE

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

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

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

The Company's consultations in relation to peace were held with an array of stakeholders, from the Sudanese government, local government, local Nuer communities, the Swedish government, the humanitarian community, the UN Commission on Human Rights, NGOs, think tanks, the media, negotiators, including representatives of southern Sudan, and the local government of Unity State. The Company also maintained a dialogue with the Swedish Authorities as to their operations in Sudan and continued that dialogue when criticism of their presence entered into the media in 2001. At no stage

did the Swedish Government advise, direct or otherwise intervene to halt the Company's exploration and appraisal activities. Neither the UN nor the Swedish Government in the spring of 2001 made any requests or demands that the Company cease its activities in Sudan.

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

## VI. FALSE NGO ALLEGATIONS

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

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

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

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

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

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

Many of the NGO reports contain only generalised statements about the movement of people and fail to provide substantive facts or information to establish the causes and exact timing of the alleged

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

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

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

## VII. RESPONSE TO ALLEGATIONS OF COMPLICITY

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

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

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

## VIII. POLITICAL WRANGLING AGAINST CARL BILDT AND LUNDIN

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

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

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

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

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

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

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

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

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

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

## IX. UNFAIRNESS OF THE INVESTIGATION

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

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

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

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

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

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

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

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

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

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

The report "A Report on the Lundin Case" was commissioned by the Board of Directors of Lundin Energy AB to assist it and the Company's stakeholders in understanding the full context in which the Company found itself operating at the time and the Swedish Prosecutor's decision to open an investigation in 2010 into allegations of complicity in international crimes in Sudan. It has been prepared by Steven Kay QC, Gillian Higgins, and John Traversi of 9 Bedford Row Chambers, London and Rupert Boswall, a Senior Partner of RPC, London, independent international lawyers with specialist expertise in international criminal prosecutions, human rights, corporate conduct, and the Rule of Law. Whereas the Report has been commissioned by the Company's Board of Directors, its content, analysis and conclusions are solely those of the authors and not of the Company or any other concerned parties.

## End Notes

<sup>1</sup> Formerly IPC, later Lundin Petroleum, later Lundin Energy referred to in this report as “the Company”.

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