

**SWEDISH PROSECUTION AUTHORITY'S CASE AGAINST LUNDIN ENERGY AB (publ):  
COMPANY POSITION**

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- **Fully legitimate and responsible business operations were carried out in Sudan**
- **No evidence or valid grounds for allegations of complicity by any Company representatives**
- **The Prosecutor's statement of the criminal act is extremely vague and inexplicit**
- **NGO reports referred to by the Prosecutor cannot be relied upon as evidence in court**
- **Plaintiff interviews from the pre-investigation contain extensive inaccuracies**
- **No basis for corporate fine or forfeiture against the Company**

***Introduction***

On November 11, 2021 the Swedish Prosecutor announced criminal charges against the Chairman of the Company, Ian H. Lundin, and Director, Alex Schneider, in relation to the Company's past operations in Sudan from 1999 to 2003. The charges also include claims against the Company for a corporate fine and forfeiture of alleged economic benefits, which are only considered at the conclusion of any trial. The charges are for alleged complicity in crimes against international humanitarian law, gross crime, allegedly committed by the Government of Sudan and associated militias while the Company, through its then subsidiary Sudan Ltd., operated as part of a consortium exploring for oil in a small area of southern Sudan (Block 5A).

The alleged primary crimes have never been examined by any court, investigated or considered by any recognised authority. The only independent inspection that took place at the time was by a delegation of EU ambassadors, which did not find anything to support the allegations. Our own assessment is that based on a thorough review of all of the documents and reports produced during, and pertaining to, the period in question it is clear that there were no violations of human rights or breaches of international law, as a result of any of the activities on the ground.

The charges have been brought after 11 years of pre-investigation and 18 years after the interest in Block 5A was divested without any oil having been produced. Both the Company and the individuals have always strongly rejected all allegations made against them and any other representatives, while cooperating continuously and proactively with the investigation.

This briefing summarizes the relevant legal context to the case and the substantive position of the Company on the investigation from a corporate perspective.

***Legal context***

Under Swedish law, a company cannot itself be named a suspect or be indicted. Only individual representatives of a company can be named as suspects and then be subjected to prosecution. However, where a court finally establishes that representatives of a company have committed a criminal offence, a company may be subject to (1) a corporate fine and/or (2) forfeiture of economic benefits deriving from the crime. Under relevant rules applicable to the case, the corporate fine can amount to 3,000,000 SEK (about US\$340,000). In general terms, to establish a criminal offence, the Prosecutor must show that all objective factors constituting the criminal offence in question are fulfilled and also that there is intent on the side of the alleged perpetrators. In addition, since the allegation is complicity, in this case the Prosecutor must also prove that one or more alleged, specific primary crimes occurred, and that one or more of the Company's representatives committed acts

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which, in accordance with applicable rules, intentionally aided and abetted the primary perpetrators' criminal acts. It is the Prosecutor who has the burden of proof to establish all of this beyond any reasonable doubt.

***What is the substantive position of the Company?***

***Fully legitimate and responsible business operations were carried out in Sudan:*** Fully legitimate and responsible business operations in Block 5A were carried out through a separate entity, Sudan Ltd, being part of a consortium formed with the Malaysian company Petronas, the Austrian company OMV and the Sudanese company Sudapet. Sudan Ltd's activities were regulated by an Exploration and Production Sharing Agreement and Joint Operating Agreement designed in accordance with international contractual practice consistent with UN General Assembly statements and national law in Sudan. Sudan Ltd also operated within a framework of constructive engagement in Sudan, as recognized by the UN, EU and Sweden, to encourage peace and development.

There is simply no link between the activities of Sudan Ltd and the alleged primary crimes in this case. No evidence has emerged that Sudan Ltd, let alone Ian Lundin and Alexandre Schneider contributed or were even aware that any breaches of applicable international law had taken place or were planned by any perpetrator in Block 5A.

There was no reason for the Sudanese government to show any particular interest in Sudan Ltd's activities, which were negligible compared to the significantly more extensive activities conducted by other foreign oil companies. Out of 235 exploration, appraisal and development wells drilled in southern Sudan, Sudan Ltd drilled just four in Block 5A, accounting for only 1.85% of the total number of wells drilled in the Muglad Basin and it never produced any oil commercially. A major part of the activities carried out in Block 5A by Sudan Ltd took place in uninhabited areas that were regularly flooded following seasonal changes.

When allegations of complicity in international crimes by oil companies in Sudan were first made by the NGO Christian Aid (in the "*Scorched Earth: Oil and War in Sudan*" report), they immediately led to investigations and/or inspections not only by the Company but also by the EU and the media. After conducting its own investigation, the Company published a comprehensive response which carefully refuted the allegations made. Independent journalists, as well as the EU Ambassadors who visited Sudan, did not find anything to support these allegations. They were found to be without any merit and based primarily on hearsay and propaganda. In addition, the Company repeatedly invited Swedish authorities, NGO and UN representatives to visit the Block to conduct their own assessment of the situation. During 1997–2003, UN staff and European politicians and diplomats, including staff from the Swedish Ministry of Foreign Affairs, visited the area to investigate whether there was any truth behind the allegations. Neither the UN nor any of the European States decided on any sanctions against Sudan, or indeed the international oil companies operating in Sudan at that time. In 2010, the same discredited allegations were recycled by the NGO the European Coalition on Oil in Sudan (ECOS) in a report named "*Unpaid Debt, The Legacy of Lundin, Petronas and OMV in Block 5A, Sudan 1997-2003*". This is the report to which the Prosecutor referred when initially announcing the investigation eleven years ago.

***No evidence or valid grounds for allegations of complicity by any Company representatives:*** The Company's position, as it has consistently and strongly maintained to the Prosecutor, is totally clear: there are absolutely no grounds for any allegations of wrongdoing against the Company or any of its representatives related to the historic operations in Sudan.

***The Prosecutor's statement of the criminal act is extremely vague and inexplicit:*** After more than eleven years of investigation, the Prosecutor's suspicion sheet still does not meet basic requirements

under Swedish law. Since the very first 'notice of suspicion', the Prosecutor has largely abandoned earlier presented hypotheses and substantially amended the statement of the criminal act (which *should* describe the allegations in detail) several times, most recently in October 2021. Now the Prosecutor has limited the allegations to the period 1999-2003, but these still remain extremely vague and inexplicit. The statement of the criminal act is sweeping and there is no relevant causal link between the alleged accessory offences (complicity) and the alleged primary crimes. The alleged criminal acts are unclear, insufficiently individualised and specified and do not meet basic legal requirements. What the Prosecutor actually claims to be criminal acts, and what the suspects are actually charged with, is shrouded in obscurity.

***NGO reports referred to by the Prosecutor cannot be relied upon as evidence in court:*** NGO reports are primarily intended to be used for opinion formation and activism. It follows from international case law that the NGO reports referred to by the Prosecutor cannot therefore be relied upon as evidence in court due to insufficient credibility, accuracy and reliability. For natural reasons, details in these reports are commonly uncritically based on hearsay, news articles, inaccurate or unverified information in other NGO reports and unidentified sources. Furthermore, as regards interviews in these reports, there is substantial uncertainty regarding the objectivity of the interviewing methods used, the identities of the interviewees, the circumstances in which the interviews took place and the reliability of the statements and the verification of translations.

***Plaintiff interviews with extensive inaccuracies in the pre-investigation:*** The oral evidence obtained from the plaintiffs and presented by the Prosecutor during the pre-investigation also has serious weaknesses and shortcomings as regards its credibility, reliability and selection. In addition, there are extensive discrepancies between translations and transcripts with inaccurate and incomplete information. There are also major credibility and integrity issues in relation to plaintiffs and the manner in which they were identified by either the Prosecutor or intermediaries in the course of the investigation.

***No basis for corporate fine or forfeiture against the Company:*** Lundin Energy denies that any forfeiture is payable, not only as the Company representatives are innocent of the charges, but also because the calculation of the forfeiture claim presented is not supported by law and facts. There are a number of objections to the forfeiture claim including the following:

Firstly, there are no grounds for any claim regarding forfeiture as no offence was ever committed in the pursuit of the Company's business activities. Even according to the statement of the criminal act, the alleged offences would have been committed by representatives of Sudan Ltd, a subsidiary, within the framework of Sudan Ltd's ordinary business activities. Sudan Ltd was a separate legal entity independent from its group relationship.

Secondly, the calculations are based on the assumption that the profit from the sale of Block 5A in its entirety constituted an "initial economic advantage" which has arisen through criminal activities. Even on the basis of the Prosecutor's last statement of the criminal act, it is obvious that the whole profit from the sale of Sudan Ltd's activities in Block 5A did not emanate from alleged war crimes and would have arisen without these alleged offences. In fact, no part emanated from any criminal actions, but from legitimate business activities and factors completely unrelated to the Prosecutor's claims of criminality.

Thirdly, no regard has been given to the fact that the preliminary investigation has been ongoing since 2010 and that a possible trial, realistically considered, could only be achieved 20 years after the alleged "initial economic advantage" has arisen. The Prosecutor's investigational shortcomings and late processing cannot be attributed to the Company and most certainly may not result in multiplying or overstating the alleged "initial economic advantage". For this reason alone, no indexation should

be made of the alleged “initial economic advantage”. The exceptional delay together with the Prosecutor’s gravely incorrect return on capital formula lead to a totally unreasonable forfeiture claim.

Fourthly, as shown in an expert report issued by Deloitte, the calculation method applied by the Prosecutor is flawed from a fundamental perspective and cannot be used for the purpose of calculating a return. The formula used by the Prosecutor has obvious shortcomings as such of which the Prosecutor is fully aware, e.g.:

- The profit from the sale of Block 5A is incorrectly calculated as it does not consider the costs
- for the unsuccessful exploration in Delta Tokar which were crucial in order to be given the opportunity to invest in Block 5A;
- To base the indexation on Return on Capital leads to a gross overestimation;
- The calculation incorrectly assumes that positive realized returns are assumed to be known in advance;
- The return is calculated on the book value which are irrelevant for the calculation;
- The historical Return on Capital used as an input in valuation cannot be used; and
- Cash flows which have been spent on investments are not considered.

**Conclusion:** The Company has co-operated with, and contributed to, the Prosecutor’s investigation in the firm belief that the conclusion would be that the accusations were found to be without any merit, given the lack of evidence regarding any primary crimes and even less so of any causality between the alleged crimes and the operations. The Company questions the legal basis of a more than decade-long investigation, into events that took place over 20 years ago, that has resulted in an indictment. On a comprehensive review of all of the pre-investigation materials, it is impossible and grossly inaccurate to conclude that Ian Lundin and Alexandre Schneiter would have, either directly or indirectly, encouraged anyone to commit crimes against international law; let alone that any perpetrator as a result of such encouragement would have committed any such crimes. The Prosecutor has to prove his case on an objective assessment of the evidence available and, given the lack of causality and evidence supporting these allegations, he cannot expect a conviction in an indictment against the Company representatives. He could therefore be accused of pursuing an unjustified indictment. As, developed above, there are also no grounds for any corporate fine or forfeiture.

***Where can further information be found?***

For more information about Lundin’s position on the case, past company statements and a detailed account of the activities in Sudan from 1997-2003, please see <https://www.lundinsudanlegalcase.com/>

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