



Conflict Risk Network Briefing Paper: Southern Sudan's Independence and Potential Implications for U.S. Investors

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About this briefing paper

Following the eruption in 2003 of conflict – which the U.S. government deemed genocide – in Sudan's Darfur region, numerous states, municipalities and other entities in the United States implemented restrictions on their investments linked to Sudan. Many institutions and the majority of states (at least 20) that implemented Sudan-related policies did so via legislation or resolutions based on what is known as the "targeted Sudan divestment model" (discussed further below). With Sudan's southern region set to secede officially from the north on July 9th, many institutions implementing these policies are asking whether this momentous event will affect their Sudan-related investment policies. This briefer addresses this question with regard to policies based on the targeted Sudan divestment model. To the extent this briefer discusses U.S. sanctions, it is primarily as they relate to or affect this question.

South Sudan's upcoming independence

Sudan's Comprehensive Peace Agreement (CPA), a 2005 accord which brought an end to 22 years of civil war between Sudan's north and south that cost two million lives, called for a January 2011 referendum on self-determination for southern Sudan. Between January 9th and 15th, the people of southern Sudan voted overwhelmingly to create a new state.¹ Accordingly, under the terms of the CPA, the new state of South Sudan will officially come into being on July 9, 2011.

After southern secession, are concerns about Sudan over?

In addition to inquiring about the legal implications southern secession may have for targeted model divestment policies, many institutional investors have asked whether the region's independence represents an end to major concerns about the Darfur conflict (the original impetus for U.S.-based divestment legislation) and the region more generally.

The short answer is no. While the 2005 CPA ended the long running civil war between Sudan's north and south, conflict in Darfur is ongoing. In 2003, as the Government of Sudan was negotiating an end to the 22 year civil war between Sudan's north and south, attacks in Darfur were beginning. Between 2003 and 2005, an estimated 300,000 people lost their lives due to the Darfur conflict, which is separate and distinct from the issue of southern secession. About 2.5 million remain displaced by the conflict and face a dire humanitarian situation. Renewed aerial attacks and fighting between government troops and rebel groups in Darfur have displaced at least 115,000 Darfuris since December 2010, and violence increased this spring.² Sudan Armed Forces conducted multiple airstrikes on villages in Darfur as recently as mid-May.³

While violence is ongoing in Darfur – the region whose conflict inspired most Sudan-related investment policies in the United States – southern Sudan's secession raises its own concerns. A number of contentious post-referendum issues have raised the specter of renewed conflict between the north and south. Questions regarding the sharing of oil revenue and debt, border demarcation, and ownership of the contested Abyei region remain unresolved despite the intention that they be agreed upon before secession on July 9th.

The resolution of questions regarding oil revenue is particularly urgent. Oil revenue provides the Government of Sudan and the regional Government of South Sudan with 63% and 98% of their revenue, respectively.⁴ With an estimated 85% of the country's oil is located in southern Sudan, the north stands to lose around 45% of its revenue without some sort of wealth sharing agreement.⁵ In May, South Sudan agreed to pay transit fees to the north for the use of northern pipelines and the facilities at Port Sudan on the Red Sea to transport southern oil, but the two sides have not agreed on the price. Currently, South Sudan has no alternative to using northern infrastructure for exporting its oil.

In addition to the tensions and threats raised by these outstanding questions, violence between the north and south has been on the rise. Though the January referendum itself was relatively peaceful, the lead-up to independence has seen increasing outbreaks of violence (between government troops, militias and other groups, sometimes along ethnic lines) in the still-contested border regions where many oil concessions are located.⁶ In May, more than 113,000 people were displaced when the Sudanese army occupied the contested border town of Abyei.⁷ Located near the oil-rich Heglig region, Abyei is claimed by both sides, and the move heightened fears of a reignited war between the north and south.⁸ On June 20, the Government of Sudan agreed to withdraw its troops and to let Ethiopian peacekeepers patrol the area as a sort of buffer.

With the targeting of civilians in Darfur continuing, the concerns that led to the passage of most Sudan-related investment policies are ongoing. Though a momentous event, southern Sudan's secession is not expected to change conditions in Darfur. Rather, it raises its own set of concerns. As Conflict Risk Network has outlined in its research and publications, both of these situations create special challenges for corporate actors. Areas affected by genocide, mass atrocities or other conflict differ significantly from stable operating environments. They exhibit instability, unpredictable conditions, and contexts in which rights violations are ongoing, presenting companies with greater challenges in ensuring they do not infringe on human rights. Not only is it more difficult for companies to do no harm in such settings, but the failure to adhere to standard corporate responsibility practices carries the potential for heightened impacts on communities and on companies themselves.

A review of existing U.S. policies relating to Sudan and investment

The United States has maintained sanctions against Sudan since 1997. While these sanctions prohibit business activities between U.S. companies and Sudan (with exceptions for some non-petroleum-related activities in the south), they do not prohibit investments in non-U.S. companies doing business there.⁹ Filling this gap are divestment policies and legislation passed at federal, state and local levels.

In 2007, Congress passed the [Sudan Accountability and Divestment Act](#) (SADA), which authorizes state and local governments to adopt a targeted model of Sudan divestment legislation, which focuses its restrictions on investments in companies with oil, power production, mineral extraction and weapons-related activities.¹⁰ SADA also requires that companies seeking contracts with the U.S. government certify that they do not have certain business activities in these same sectors. As authorized by SADA, 20 U.S. states have passed targeted Sudan divestment legislation (note that other entities have adopted non-targeted model legislation or policies, which this memorandum does not address).

Will state and local-level policies based on the targeted divestment model continue following southern secession?

It seems most likely that targeted model divestment policies will remain in effect with regard to northern Sudan but that they will not apply with regard to the new southern state. This would not represent real change for investors implementing these policies. Already, SADA and the targeted model's restrictions apply only to companies involved in certain business activities and projects (to generalize, those related to oil, mineral extraction, power production and weapons) connected to the northern Government of Sudan, which is defined as "the government in Khartoum."¹¹ Specifically, companies subject to the targeted model's divestment measures are those with "Business Operations that involve contracts with and/or provision of supplies or services" to

- (a) the Government of Sudan,
- (b) Companies in which the Government of Sudan has any direct or indirect equity share,
- (c) Government of Sudan-commissioned consortiums or projects, or
- (d) Companies involved in Government of Sudan-commissioned consortiums or projects.¹²

SADA and the targeted model already explicitly exempt the "regional government of southern Sudan." Presumably, the government of the new state would be considered exempt as well.

Even after the south secedes, one of several things would have to take place for policies based on the targeted model to no longer apply with regard to Sudan's *north*. The model contains a sunset clause which provides for its expiration should the following occur:

- (a) The Congress or President of the United States declares that the Darfur genocide has been halted for at least 12 months; or
- (b) The United States revokes all sanctions imposed against the Government of Sudan; or
- (c) The Congress or President of the United States declares that the Government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for

deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons; or
(d) The Congress or President of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this Act interferes with the conduct of United States foreign policy.”¹³

Relevant to clause “b,” there has been some talk of removing U.S. sanctions against the Sudanese government. President Obama renewed sanctions against the government in November 2010, but his administration offered a number of sanctions-related incentives to the Government of Sudan in an effort to ensure a smooth referendum process in January. The United States relaxed sanctions on the provision of farm equipment, as well as equipment necessary to facilitate the referendum, such as computers.¹⁴

In December 2010, U.S. Secretary of State Hillary Clinton stated publicly that the United States was prepared to lift its sanctions if the Government of Sudan committed to the referendum, to a peaceful resolution of the conflict in Darfur, and if it ends its links to international terrorist organizations.¹⁵ This was followed on February 7 by an announcement that the United States was initiating a process of removing the country from its state sponsors of terrorism list (SSTL); however, in early March, U.S. lawmakers introduced legislation that would keep Sudan on the SSTL until the White House certifies Khartoum is no longer providing any support to the Uganda-based Lord’s Resistance Army.¹⁶ Following the north’s seizure of Abyei on May 21, U.S. Special Envoy for Sudan Princeton Lyman said it would “be hard” to remove Sudan from the SSTL if Khartoum continues to occupy the contested region.¹⁷

It is important to note that while taking Sudan off the SSTL would lift *some* sanctions, it would not remove all of them. Only if the Government of Sudan takes every step outlined by Secretary Clinton would the United States lift all current sanctions triggering the sunset provisions for state and local-level divestment policies based on the targeted model. Until or unless that occurs, the targeted Sudan divestment model would seem to be unaffected by the secession of the southern region of the country.

CRN met this spring with Obama administration officials responsible for administering U.S. sanctions. Representatives there explained that President Obama would have to officially recognize a new southern state as such before current sanctions¹⁸ against it would be considered not to apply. President Obama can recognize the new state anytime after July 9th, 2011.

Potential minor changes to the targeted model Sudan screen

Though southern secession in itself will not invalidate or remove targeted model divestment policies, it could mean that some companies currently implicated under it would no longer be targeted. Most of Sudan’s oil is in the south, as are numerous consortia involving companies such as France’s Total SA. While most of these companies have activities in areas both above and below the north-south border, a couple, like Total SA, fall only in the south. Total’s oil-related activities currently implicate it under the targeted model because its contract involves the northern government. However, its concession area falls in the south, and South Sudan officials have suggested that its contract will be renegotiated and ultimately be with a new government not covered by the model.¹⁹ Total’s consortium would still include Sudan state-owned oil company Sudapet, and it is unclear what implications its presence would have for the model.

Other implications relating to U.S. sanctions

It appears that certain activities – in particular those related to oil – even if conducted wholly within a new state, would continue to trigger application of federal sanctions. Current U.S. sanctions prohibit all U.S. actors from engaging in any transactions or activities related to the petroleum or petrochemical industries in Sudan. Currently, oil extracted in the south must travel through northern pipelines and other infrastructure in order to be exported. President Bashir recently threatened to shut down pipelines unless the south agrees to share oil revenue and pay pipeline transit fees. While earlier this spring some southern officials suggested that there would be no revenue sharing following independence, President of South Sudan, Salva Kiir stepped back from that position in June.²⁰ Since a revenue sharing or transit fee agreement is still being discussed and the new state will still have to export its oil through northern Sudan, oil-related activities conducted by U.S. actors, even if wholly within a new state, would seem to continue to trigger U.S. sanctions. In a meeting with CRN, U.S. government officials indicated this is their understanding as well.

Related CRN engagement

Last fall Conflict Risk Network conducted engagement efforts with a number of major oil and gas companies regarding conflict risks associated with the referendum on southern Sudan. CRN also recently engaged in talks with Total SA regarding the implications of secession for its operations in South Sudan. For information on the results of this effort please contact **Maureen O'Brien**, CRN's Head of Engagement, at Obrien@conflictrisknetwork.org or 202.556.2120.

About Conflict Risk Network

Conflict Risk Network (CRN) is a network of institutional investors, financial service providers and related stakeholders calling on corporate actors to fulfill their responsibility to respect human rights and to take steps that support peace and stability in areas affected by genocide and mass atrocities. Our goal is to increase such behavior by corporate actors, and thereby reduce conflict risk.

CRN is a project of Genocide Intervention Network / Save Darfur Coalition (GI-NET/SDC), a non-profit organization that seeks to empower individuals, communities and other actors with the tools to prevent and stop genocide and mass atrocities. In support of GI-NET/SDC's overall mission, CRN acts as an intermediary between the business and investment communities, engaging companies operating in GI-NET/SDC's Areas of Concern, including Sudan. By coordinating and conducting our engagement on behalf of a network of institutional investors, we harness the collective weight of trillions in assets when encouraging corporate behavior that reduces conflict risk.

¹ Magdi Mofadal, "Sudan: Referendum Results is a New Dawn," Nairobi Star, March 7, 2011, at <http://allafrica.com/stories/201103080193.html>.

² "Sudan jets bomb Darfur village, says UN," BBC News Africa, May 18, 2011, at <http://www.bbc.co.uk/news/world-africa-13446911>; "Briefings and Statements: 24 Dec 10 – Update on security situation," UNAMID website, December 24, 2010, at <http://unamid.unmissions.org/Default.aspx?tabid=900&ctl=Details&mid=1073&ItemID=11751>; "Sudan Weekly Humanitarian Bulletin 11-17 March 2011," United Nations Office for the Coordination of Humanitarian Affairs, March 17, 2011, at [http://www.reliefweb.int/rw/RWFiles2011.nsf/FilesByRWDocUnidFilename/MUMA-8F72NM-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2011.nsf/FilesByRWDocUnidFilename/MUMA-8F72NM-full_report.pdf/$File/full_report.pdf); and "Sudan Weekly Humanitarian Bulletin 24 -30 June 2011," United Nations Office for the Coordination of Humanitarian Affairs, June 30, 2011, at <http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Sudan%20Weekly%20Humanitarian%20Bulletin%2024%20-%2030%20June%202011%20%281%29.pdf>.

³ "Sudan jets bomb Darfur village, says UN," BBC News Africa, May 18, 2011, at <http://www.bbc.co.uk/news/world-africa-13446911>.

⁴ "Sudan-Macroeconomic Policy," African Economic Outlook, August 3, 2010, at http://www.africaneconomicoutlook.org/en/countries/east-africa/sudan/#macro_economic_policy; Paul J. Sullivan and Natalie Nasrallah, "Improving Natural Resource Management in Sudan," p. 3, United States Institute of Peace, June 2010, at <http://www.usip.org/resources/improving-natural-resource-management-in-sudan>.

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- ⁵ Maram Mazen, "Sudan Braces for Protests, Violence as Oil-Rich South Secedes," Bloomberg News, July 7, 2011, at <http://www.bloomberg.com/news/2011-07-07/sudan-braces-for-protests-violence-as-oil-rich-south-secedes.html>.
- ⁶ "Abyei a 'flashpoint'," United Press International, March 18, 2011, at http://www.upi.com/Top_News/Special/2011/03/18/Abyei-a-flashpoint-in-Sudan/UPI-82031300458548/.
- ⁷ "Sudan Abyei Crisis Situation Report No. 13," United Nations Office for the Coordination of Humanitarian Affairs, June 16, 2011, at <http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Situation%20Report%20%2313%20on%20Abyei%20Crisis%2016%20June%2011.pdf>.
- ⁸ "Q+A-North Sudan army takes control of Abyei region," Reuters Africa, May 24, 2011, at <http://af.reuters.com/article/sudanNews/idAFLDE74NORR20110524?pageNumber=1&virtualBrandChannel=0>.
- ⁹ "What you need to know about U.S. sanctions," U.S. Department of the Treasury, Office of Foreign Assets Control, at <http://www.treasury.gov/resource-center/sanctions/Documents/sudan.pdf>.
- ¹⁰ Sudan Accountability and Divestment Act of 2007. Pub. L. 110-174. S.2271. 31 December 2007, at <http://www.govtrack.us/congress/billtext.xpd?bill=s110-2271>.
- ¹¹ Targeted Sudan Divestment: Model Legislation, Section 2(f), at http://www.responsible-investor.com/images/uploads/resources/research/11209664691task_force_targeted_divestment_model.pdf; and Sudan Accountability and Divestment Act, Section 2(4), at <http://www.govtrack.us/congress/billtext.xpd?bill=s110-2271>.
- ¹² "Targeted Sudan Divestment: Model Legislation," Section 2(o), at http://www.responsible-investor.com/images/uploads/resources/research/11209664691task_force_targeted_divestment_model.pdf.
- ¹³ *Id.* Section 6. The sunset provisions of the Targeted Sudan Divestment Model Legislation are similar to the criteria for removal of sanctions set out in the Darfur Peace and Accountability Act passed by Congress in 2006.
- ¹⁴ "Obama lifts Sudan sanctions to allow computers for vote," Agence France-Presse, November 20, 2010, at http://news.yahoo.com/s/afp/20101120/wl_africa_afp/sudanreferendumunsanctions.
- ¹⁵ "US Offers to Lift Sanctions, Remove Sudan From Terrorism Blacklist On Condition," RTT News, November 17, 2010, at <http://www.rttnews.com/Content/Policy.aspx?id=1483053&SM=1>.
- ¹⁶ "US lawmakers: Sudan must cut off Uganda rebels," Agence France-Presse, March 4, 2011, at <http://www.google.com/hostednews/afp/article/ALeqM5g6Y3wcuUnDQ6Wd-fbrMgOMnIJJTw?docId=CNG.5eda08e8eb1b42b79c577796fd7c8cba.af1>.
- ¹⁷ "US: hard to drop Sudan from terror list given Abyei," Reuters, May 23, 2011, at <http://www.reuters.com/article/2011/05/23/sudan-abyei-usa-idUSWAT01512820110523>.
- ¹⁸ In October 2006, President Bush issued Executive Order 13412, which excluded the regional Government of Southern Sudan from the country-wide blocking imposed by a previous order. Order 13412 did, however, continue the prohibition on all transactions by U.S. persons relating to Sudan's petroleum or petrochemical industries within Sudan, including in the south. See "What you need to know about U.S. sanctions," U.S. Department of the Treasury, Office of Foreign Assets Control, at <http://www.treasury.gov/resource-center/sanctions/Documents/sudan.pdf>.
- ¹⁹ Nima Elbagir, "Southern Sudan to review oil contracts, minister says," CNN, July 3, 2011, at <http://edition.cnn.com/2011/BUSINESS/07/03/south.sudan.oil/>.
- ²⁰ Maggie Fick, "South Sudan looks at new oil pipeline bypassing North," The National, March 4, 2011, at <http://www.thenational.ae/news/worldwide/africa/south-sudan-looks-at-new-oil-pipeline-bypassing-north>; "Kiir says South Sudan will share some oil with North," Sudan Tribune, June 25, 2011, <http://www.sudantribune.com/Kiir-says-South-Sudan-will-share,39336>.