

UW SYSTEM TRUST FUNDS SUDAN DIVESTMENT INFORMATIONAL REPORT

EXECUTIVE SUMMARY

BACKGROUND

A campaign encouraging universities and pension funds to divest of companies doing business with Sudan has gained momentum in recent months. “Divestment activists are invoking the days of widespread divestment in companies doing business in South Africa, hoping to pressure a regime that has allowed, and probably been complicit in, the deaths of some 200,000 civilians and the displacement of over a million more.” [Voorhes 2006] And although U.S. sanctions currently prohibit U.S.-based companies from importing or exporting goods and technology to Sudan, or financially supporting Sudanese government projects, non-U.S. companies are not subject to these restrictions.

REQUESTED ACTION

This item is informational only.

DISCUSSION

Ten states have passed laws or resolutions related to Sudan investments, and legislatures in eight more states are considering mandatory divestment bills. In addition, University endowments across the country are facing pressure to sell their holdings in companies doing business in Sudan. Included among those universities which have already divested at least some of their assets are the following: the University of California system, the University of Maryland, the University of Pennsylvania, the University of Vermont, the University of Washington, Amherst, Boston University, Brandeis, Brown, Columbia, Harvard, Princeton, Smith, Stanford, Swarthmore, Williams College, and Yale. Divestment campaigns are also under way at several other universities including Indiana University and the University of Virginia.

Although Institutional Shareholder Services (the UW Trust Funds proxy and social issue research provider) has identified 20 holdings in the Trust Funds portfolio with possible ties to Sudan, only four of these have been commonly targeted for divestment by other universities. These holdings are valued at approximately \$1.2 million, representing 0.40% of the UW Long Term Fund. The attached report discusses public policy developments, divestment/screening activities by other institutions, and UW’s Sudan-related investments.

RELATED REGENT POLICIES

Regent Policy 97-1: Investment and Social Responsibility

Regent Policy 78-1: Investment of Trust Funds

Regent Policy 78-2: Interpretation of Policy 78-1 Relating to Divestiture

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Background

A campaign encouraging universities and pension funds to divest of any companies doing business in Sudan has gained momentum in recent months. “Divestment activists are invoking the days of widespread divestment in companies doing business in South Africa, hoping to pressure a regime that has allowed, and probably been complicit in, the deaths of some 200,000 civilians and the displacement of over a million more.” [Voorhes 2006]

In Darfur, a province on Sudan’s western edge and bordering Chad, militias believed to be acting with the cooperation of the Khartoum government are killing, raping and displacing members of the Fur, Masalit and Zaghawa indigenous tribes. Some members of these tribes have rebelled against the Khartoum government, but the attacks are not limited to people known to be involved in the rebellion, and the violence seems to be rooted in a desire by the militias to take over the tribes’ land. Like much of the recent violence in Sudan, the Darfur conflict pits light-skinned, Arab-speaking people affiliated with the Khartoum government against dark-skinned people who speak African languages. Unlike the Khartoum government’s long-running wars with Christian rebel movements in the south, the Darfur conflict involves violence by Muslims against other Muslims. [Voorhes]

Public Policy Developments

Because of its harboring of Osama bin Laden in the 1990s and suspected sponsorship of various terrorist groups, Sudan is on the U.S. State Department’s list of state sponsors of terrorism and is subject to sanctions administered by the Treasury Department. In 1997, former President Bill Clinton approved a series of sanctions including a ban against importing or exporting goods and technology to/from Sudan (with the exception of humanitarian goods and certain agricultural products) and against the provision of financial support to Sudanese government projects by U.S. entities; these sanctions also imposed a total freeze of all assets of the government of Sudan. Therefore, no U.S. companies should be active (legally) in Sudan, with the exception of a handful of companies that have sold humanitarian goods there with the permission of the Office of Foreign Assets Control. It should be noted, though, that these sanctions were put in place before the Darfur situation fully developed and were occasioned primarily by Sudan’s classification as a state sponsor of terrorism. The Sudanese government has reportedly taken some action since to try to reform this image, as the sanctions have apparently been felt.

It was not until July of 2004, that the U.S. Congress passed a resolution declaring that the violence in Darfur qualified as genocide. Then-U.S. Secretary of State Colin Powell publicly agreed with that designation. Then, in January 2006, a UN-released report stated that widespread crimes against humanity were occurring in Sudan, but stopped short of using the term genocide. The report did, however, say that individuals involved in the campaign acted with “genocidal intent.” The United Nations has also called for prosecution of Sudanese government officials in the International Criminal Court (ICC). However, the Bush administration, which opposes the ICC, has called instead for the establishment of an

“accountability tribunal” like the one formed to investigate the 1994 genocide in Rwanda. Because Sudan is not a party to the ICC, the court needs the approval of the UN Security Council before it can open an investigation into the Darfur atrocities. With the opposition of the United States, and possibly China, ICC prosecutions are unlikely.

Divestment Activity

On April 5th, Maine joined Illinois and New Jersey as the third U.S. state to mandate divestment of state pension funds from Sudan. Oregon has also passed such a law for its public investment funds, while Louisiana has approved legislation that permits, but does not require, its public funds to shed investments linked to Sudan. Overall, ten states have passed a law or resolution related to Sudan investments. In addition, state legislatures in eight more states (California, Georgia, Indiana, Iowa, Massachusetts, Minnesota, New York, and Rhode Island) are considering mandatory divestment bills, with some variation among the forms of Sudan investment covered by the bills. The Minnesota bill, for example, covers only companies with equity ties to Sudan. [Fetter-Degges 2006]

State legislatures in California, Ohio, and Vermont have each passed resolutions encouraging their states’ pension funds to study their ownership of companies doing business in Sudan and consider divestment. [Fried 2006] In May, the California Public Employees Retirement System (CalPERS) board announced that it would not permit its fund managers to buy shares in nine companies that do business in Sudan. The list of prohibited companies is identical to that released by the University of California Regents in March. These companies, a CalPERS position statement said, “were clearly shown to be providing monetary or military support to the Sudan government, while showing little or no interest in the violence in Darfur or in helping to improve the welfare of the Sudanese people.” The divestment decision is part of CalPERS’s continuing compliance with a resolution passed by the state legislature last year, asking CalPERS and the California State Teachers Retirement System (CalSTRS) to examine their holdings in companies doing business in Sudan in order to ensure that their investments are not furthering human rights abuses. In April, the CalSTRS board adopted a motion stating that the system would “move forward to divest its holdings from companies identified as doing business with the government of Sudan,” using “the same general criteria utilized by the UC Regents.” [Fetter-Degges 2006]

Although the State of Wisconsin has not yet passed any Sudan-related legislation or resolutions regarding the investment of State funds, the State of Wisconsin Investment Board (SWIB) has apparently been researching companies and other state laws for some time. SWIB, in fact, recently asked whether the Board of Regents had taken any action to date, requested a copy of the material that was provided at the June Board meeting, and offered to make their research and work available to the UW in turn.

Regarding other municipalities, last month Providence, Rhode Island became the first U.S. city to divest from investments in companies that do business in Sudan. [Rhode Island Legislative Press] And two weeks ago, New Haven, Connecticut, announced that it would strip municipal employees' pension funds of investments in companies doing business with the Sudanese government. [Rucker 2006]

University endowments across the country are also facing pressure to sell their holdings in companies doing business in Sudan. Included among those universities which have already divested at least some of their assets are the University of California system, the University of Maryland, the University of Pennsylvania, the University of Vermont, the University of Washington, Amherst, Boston University, Brandeis, Brown, Columbia, Harvard, Princeton, Smith, Stanford, Swarthmore, Williams College, and Yale. Divestment campaigns are under way at several other universities including Indiana University and the University of Virginia. A major campaign has been organized by a national student-led group, the Sudan Divestment Task Force, and is reminiscent of a campaign in the 1980's when student-led groups lobbied 55 universities to remove money from companies affiliated with the South African apartheid regime. [Rucker]

Stanford University's trustees voted, in the summer of 2005, to divest of PetroChina, Sinopec, ABB and Tatneft, all of which are involved in Sudan's oil industry. University President John Hennessy said that ongoing genocide in Sudan is "at least partly enabled by these four companies." Despite media reports to the contrary, the university has not announced a total divestment policy. In March, the University of California Board of Regents voted to divest from nine companies (detailed below along with Trust Funds holdings) doing business in Sudan, its first socially-based divestment since 1986, making California the first major public university system in the nation to take such action. "The University of California has taken a principled stand against the tragedy in Sudan by severing its financial connections from those nine companies who aid the genocide and by lending its voice to those calling for peace in the region," said Gerald L. Parsky, Chairman of the Board of Regents. [UC Regents press release 2006].

At Harvard, the nation's largest endowment, valued last year at \$25.9 billion, activists have urged the university's president "to publicly state that Harvard will not invest in any corporation that conducts business with the Sudanese government for as long as Sudan is in violation of international norms of human rights." Students focused particular attention on the university's stock in PetroChina, which has extensive operations in Sudan. The university has sold its estimated \$4.4 million stake in PetroChina as well as its holdings in Sinopec.

At Yale, the nation's second-largest endowment, valued at \$15.2 billion, the university's governing body ordered endowment managers in February to remove their holdings in seven oil companies doing business in Sudan and ban future investments in Sudanese government bonds. The move followed months of student pressure. [Rucker]

Opposition to Divestment

The National Foreign Trade Council (NFTC), an industry association of companies participating in foreign trade whose lawsuit led to the 2000 Supreme Court decision that overturned a Massachusetts law restricting state purchases from companies operating in Burma, has said that it will challenge the constitutionality of Sudan divestment legislation in U.S. courts. NFTC, in cooperation with its partner organization USA*Engage, plans to challenge the Illinois mandatory Sudan divestment law in court, using the 2000 ruling as a precedent. While many state

legislators and Sudan activists believe that divestment policies are legal, NFTC says imposing these restrictions is unconstitutional since the federal government already enforces sanctions against Sudan. A recent NFTC newsletter article noted that “federal sanctions on Sudan are in place and the administration is actively pursuing diplomacy” and said that state divestment laws “will impede federal policies toward Sudan.” State-level efforts “to legislate U.S. foreign policy—however well-intentioned—are misguided.” NFTC’s lawsuit could be filed as early as June. [Pichardo 2006]

Opposition to divestment is also growing as some pension funds worry about the impact it will have on their private equity prospects. The \$11 billion Chicago Public School Teachers’ Pension Retirement Fund worries that private equity managers, a group already concerned about transparency issues associated with public funds, will close their doors to the fund’s money if forced to adhere to the Sudan ban, says Kevin Huber, executive director. The Chicago fund, along with four other local funds, wrote a letter to state legislators that the law be tweaked to take account of investments in private equity. As a result of the new law, the letter states, state systems will be excluded from most private equity funds, have limited access to Illinois private equity opportunities and be forced into contractual defaults on current holdings. [Pichardo]

Identifying Firms Doing Business in Sudan

Several of the recently passed state bills include recommendations for determining which companies are doing business in Sudan—a question that has become a concern for pension fund administrators even in states where no divestment bills have been considered. Information on companies identified by the U.S. Treasury’s Office of Foreign Assets Control (OFAC) is available for free, but excludes companies that are not subject to U.S. law. New Jersey’s divestment law, like that of Illinois, mentions that a list of companies doing business in Sudan can be provided by “an independent research firm that specializes in global security risk for portfolio determination,” but some state administrators have expressed mistrust of privately-produced lists stating that “fee-based lists provided by private organizations can have a high degree of subjectivity.”

Among the firms currently providing fee-based research lists are Institutional Shareholder Services (ISS), KLD Research & Analytics, and the Conflict Securities Advisory Group. ISS currently has 162 companies on its Sudan list, including 20 U.S. businesses, whereas KLD has 124 companies on its list with 8 U.S. firms. Some companies that appear on these lists declare that they do no business in Sudan, and for at least one, 3M, the involvement was described by the company as aiding the United Nations. [Fried 2006]

Criteria for Divestment

Determining what companies have any business relationships in or with Sudan is one thing, but determining what relationships are or are not aiding and abetting the Darfur oppression and genocide is another matter. Whereas the South Africa divestiture during apartheid was generally a “blanket” application against any and all companies doing business in or with that country, the policy and human rights violations being protested were not perpetrated by the government alone. Rather, the human rights violations occurring in apartheid South Africa were ingrained,

legalized, and institutionalized throughout South African society. The situation in Sudan is different; here, it appears that the Sudanese government and its military are the prime, if not sole, perpetrators and facilitators of the oppression and genocide in Darfur. Some, including the Sudan Divestment Task Force, seem to believe that this distinction may warrant a more “targeted” approach to divestment in Sudan.

More specifically, the Sudan Divestment Task Force, suggests targeting for divestment only those companies/entities that:

1. Provide revenues to the Sudanese government through business with the government, government-owned companies, or government-controlled consortiums.
2. Offer little substantive benefit to those outside of the Sudanese government or its affiliated supporters in Khartoum, Northern Sudan and the Nile River Valley; this “outside” population specifically includes the country’s disaffected Eastern, Southern, and Western regions.
3. Have either demonstrated complicity in the Darfur genocide or have not taken any substantial action to halt the genocide. Substantial action shall include but is not limited to curtailment of operations or public pressure on the Sudanese government. Simple company statements shall not constitute evidence of substantial action.

The Sudan Divestment Task Force also suggests that targeted companies first be notified of the intended divestment and given a short period to take reformative steps before actual divestment is initiated. This form of initial engagement and then “targeted” divestment has most recently been adopted by the University of California Board of Regents, and is reflected in a divestment bill which was recently passed by the California Assembly (AB 2941) and is now before the California State Senate. The Sudan Divestment Task Force apparently worked with these California institutions in crafting these initiatives. Jason Miller, National Policy Director of the Task Force, stated the following in a letter to the editor of “Pensions & Investments:” “It was our hope and intent to make AB 2941 a compromise between the need for substantive action and the equally important desire to avoid unintended harms to both innocent Sudanese citizens and to portfolio returns. This bill was developed over many months and in close consultation with numerous parties, including foreign policy experts, asset managers, and CalPERS/CalSTRS [the California Public Employees’ and State Teachers’ Retirement Systems] officials.”

UW Trust Funds Sudan-Related Investments

UW Trust Funds subscribes to ISS for social issues research and has access to ISS’s Sudan list for an additional fee (\$2,500 for global firms, \$1,000 for U.S. firms). ISS provided a broad evaluation of UW Trust Funds for Sudan-related holdings and made the following findings:

- 20 companies in the Trust Funds portfolio have ties to Sudan.
- U.S. companies: 4
 - with equity ties: 1
 - with non-equity ties: 2
 - with other affiliations: 1

- Non-U.S. companies: 16
 - with equity ties: 7
 - with non-equity ties: 4
 - with other affiliations: 5

“Equity-ties” indicate that a firm has employees and/or facilities in Sudan, while “non-equity ties” and “other affiliations” indicate business transactional relationships of some kind.

The nine companies divested by the University of California Board of Regents include the following: Bharat Heavy Electricals Ltd., China Petroleum and Chemical Corp. (Sinopec), Nam Fatt Co. Bhd., Oil & Natural Gas Co. Ltd., PECD Bhd., PetroChina Company Ltd., Sudan Telecom Co. Ltd. (Sudatel), Tatneft OAO, and Videocon Industries Ltd. UW Trust Funds currently holds three of those nine companies as well as one other Sudan-related firm as shown in the chart below. These four companies are the only identifiable Sudan-related investments held by UW Trust Funds based on current information. Staff is researching other possible Sudan-related holdings.

Company	Country	Security Type	Market Value	Separate Account
PetroChina	China	Equity	\$ 668,738	No
China Petroleum & Chemical	China	Equity	\$ 368,901	No
Siemens AG	Germany	Equity	\$ 132,793	No
Bharat Electricals Ltd	India	Equity	\$ <u>41,620</u>	No
Total			<u>\$ 1,212,052</u>	

It should be noted that all of the above holdings are held within commingled or institutional mutual funds. These holdings could therefore not be divested, nor future screenings implemented, unless UW Trust Funds divested its entire positions in these funds (in this case, the UBS International Equity Relationship Fund and the GMO Emerging Markets Fund III). These mutual fund positions now total \$63.5 million, or 20.9% percent of the UW Long Term Fund. The Sudan-related holdings cited above represent 0.40 percent of the Long Term Fund’s assets.

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