

December 15, 2008

Mr. Georg Kell  
Executive Director of the Global Compact  
Office of the Secretary General  
United Nations  
New York, NY 10017

Dear Mr. Kell,

On May 12, 2008, a coalition of over 80 civil society organizations wrote to you requesting that the United Nations Global Compact (UNGC) use its leverage and the privilege and prestige of membership to engage with PetroChina Co Ltd. (PetroChina), a UNGC participant, on behalf of the people of Sudan. At that time, you forwarded our letter to PetroChina. On August 11, members of the coalition met with various representatives of the Global Compact and agreed to delay the formalization of our complaint to allow the Global Compact adequate time to plan and host a related conference in Sudan which was to include PetroChina. That conference took place on December 1, 2008, and was attended by China National Petroleum Corporation, PetroChina's closely related parent.

Now, seven months after our initial letter with still no response from PetroChina, we are writing to make formal "Allegations of Systematic or Egregious Abuses" against PetroChina under the UN Global Compact Integrity Measures. Unless you find our allegations to be prima facie frivolous, we request that you follow all the procedures under your policy regarding such allegations. If after three months, there is no satisfactory resolution of the issues raised, we request that you consider PetroChina's participation in the Global Compact to be detrimental to the reputation and integrity of the Global Compact and remove the company from the list of participants and so indicate on the Global Compact website.

Our allegation of egregious abuse is based on the intimate, opaque, and symbiotic relationship between PetroChina and the China National Petroleum Corporation (CNPC), their violation of UNGC principles and failure to respect human rights, lack of due diligence in avoiding human rights violations, the widespread recognition of PetroChina as a major contributor to the conflict in Darfur, and PetroChina's continuing refusal to correct the abuses. The allegation is described in more detail in the following sections.

#### PetroChina and CNPC Relationship

Although PetroChina has claimed independence from CNPC, the two companies are inseparable. Management at CNPC and PetroChina almost completely overlap and the same individual, Jiang Jiemin, is president of both companies. Frequent asset transfers between the two entities, which often take place at subsidized rates, have made CNPC completely reliant on PetroChina for its financial health. In a May 2007 report on the relationship between PetroChina and CNPC, KLD Research & Analytics, an independent research firm, concluded that "investors should treat CNPC and PetroChina as if they were a single entity."<sup>1</sup> Comprehensive research by the Genocide Intervention Network on the intimate, opaque, and symbiotic relationship among PetroChina, CNPC, and CNPC's extensive and problematic operations in Sudan, reaches the same conclusion.<sup>2</sup> The relationship between the companies is so interwoven that PetroChina has recently

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<sup>1</sup> KLD Research & Analytics, "Public Companies Operating in Sudan: The Relationship of PetroChina Company Ltd. to China National Petroleum Corporation," 9 May 2007, [http://www.kld.com/newsletter/archive/press/pdf/KLD\\_Analysis\\_of\\_PetroChina\\_Company.pdf](http://www.kld.com/newsletter/archive/press/pdf/KLD_Analysis_of_PetroChina_Company.pdf), accessed 3 May 2008

<sup>2</sup> Genocide Intervention Network's Sudan Divestment Task Force (SDTF), "PetroChina, CNPC, and Sudan: Perpetuating Genocide," 15 April 2007 (Updated 3 January 2008), [http://sudandivestment.org/docs/PetroChina\\_CNPC\\_Sudan.pdf](http://sudandivestment.org/docs/PetroChina_CNPC_Sudan.pdf).

relinquished profits in order to make expensive payments to CNPC.<sup>3</sup> In a September 2008 article in China's *Economic Observer*, a PetroChina employee described the fluid asset transfers between the two companies by stating, "They have the same boss... It's like moving money from one pocket to another." In the same article, a CNPC manager, in describing the company, stated that, "Every year, CNPC's listed subsidiaries would sit down with the unlisted ones. Ultimately, the listed firms would give in."<sup>4</sup>

### Violation of Principles One and Two

The UNGC's Ten Principles state the requirements for participating companies. Principle One states that "businesses should support and respect the protection of internationally proclaimed human rights" and Principle Two states that "businesses should make sure they are not complicit in human rights abuses".<sup>5</sup> PetroChina violates these principles through its support for the Government of Sudan (GoS) and through its failure to actively and publicly engage with the government.

PetroChina and CNPC are largely owned by the government of China and as such are not small entities, simply "paying taxes" in Sudan. China is Sudan's largest foreign investor and most significant international supporter. Over the past ten years, the government of China has courted the favor of GoS leaders in order to secure access to petroleum and other primary resource supplies needed to feed China's booming economy. As the US and Europe have either imposed or considered imposing sanctions on Sudan, China invested an estimated \$15 billion into Sudan. CNPC operates the majority of Sudan's oil industry and has invested at least \$5 billion in the country. Sudan is highly reliant on foreign direct investment not only to pay its debts and subsidize government expenditures, but also to fund its military and finance the conflict in Darfur. In fact, a former Sudanese finance minister estimated that 70% of the government's share of oil profits is spent on the military.<sup>6</sup>

At a minimum, this substantial financial support by PetroChina / CNPC makes it complicit in the human rights abuses of the Government of Sudan. That complicity is so significant that it may well constitute "aiding and abetting" according to the definitions of international law cited recently by John Ruggie, UN Secretary-General Ban Ki-moon's Special Representative for business and human rights. According to his paper, "The assistance need not cause, or be a necessary contribution to, the commission of the crime. In other words, it does not have to be shown that the crime would not have happened without the contribution. Furthermore, the assistance may occur before, during, or after the principal crime has been committed, and it need not occur within geographic proximity to the crime. The International Law Commission Code indicates that an accomplice must provide the kind of assistance that contributes "directly and substantially" to the commission of the crime."<sup>7</sup> Since the Government of Sudan could not carry on the widespread, long-term and broadly recognized human rights abuses without the revenue provided by CNPC, their support clearly meets the definition of complicity and constitutes an active violation of the UNGC's Ten Principles.

The International Criminal Court (ICC) has filed 10 charges of war crimes against Sudan's president, Omar al-Bashir, for allegedly leading a campaign of murder, rape and mass deportation in Darfur. Bashir faces three counts of genocide, five of crimes against humanity, and two of murder. It would not have been possible for

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<sup>3</sup> Pang Lijing, The Price of Kinship in an Oil Empire, 10 September 2008, <http://www.eeo.com.cn/ens/Industry/2008/09/10/113219.html> (accessed 12 October 2008)

<sup>4</sup> *Ibid*

<sup>5</sup> United Nations Global Compact (UNGC), "The Ten Principles," <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>, accessed 3 May 2008.

<sup>6</sup> Genocide Intervention Network's Sudan Divestment Task Force (SDTF), "PetroChina, CNPC, and Sudan: Perpetuating Genocide"

<sup>7</sup> UN Human Rights Council, Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, John Ruggie, "Clarifying the Concepts of "Sphere of influence" and "Complicity"", 15 May 2008, <http://www.unhcr.org/refworld/docid/484d1fe12.html> (accessed December 14, 2008)

Bashir and his government to carry out these massive human rights violations without the support provided by China, in part through CNPC.

The Genocide Intervention Network report referenced above highlights numerous specific negative actions that CNPC has taken in the Sudan. However, even if the company were to immediately repudiate and promise to cease these actions, the most serious of its offenses would remain. This is the company's unwillingness to use its extensive leverage with the GoS to ameliorate its actions. The GoS has a well-documented history of susceptibility to economic pressure yet PetroChina / CNPC has not used its influence to achieve results on behalf of the desperately suffering people of Darfur.

The UNGC has a well developed "sphere of influence" model that says that "stakeholder expectations often extend to the belief that companies can and should make a positive contribution to the realization of human rights where they are in a position to do so."<sup>8</sup> The model notes that "opportunities may be greatest with respect to an organization's own operations and workers, the ability to act gradually declines as consideration moves outward to the supply chain, to local communities, and beyond."<sup>9</sup> However, the model explicitly references spheres of influence for companies such as PetroChina. It says that "Companies may also have direct and close connections with the companies' host or home Governments, or with armed groups that control the territory in which they operate. Through the advocacy and lobbying activities of sectoral, national or international business associations of which a company is a member, its sphere of influence may furthermore extend to governmental and inter-governmental policy-making bodies."<sup>10</sup> In this case, PetroChina's most significant opportunity lies in using its relationship with the GoS as a force for positive change, and the UNGC sphere of influence model recognizes PetroChina's responsibility to do so.

The Office of the High Commissioner for Human Rights has written that "A company is complicit in human rights abuses if it authorizes, tolerates, or knowingly ignores human rights abuses committed by an entity associated with it, or if the company knowingly provides practical assistance or encouragement that has a substantial effect on the perpetration of human rights abuse. The participation of the company need not actually cause the abuse. Rather the company's assistance or encouragement has to be to a degree that, without such participation, the abuses most probably would not have occurred to the same extent or in the same way."<sup>11</sup> This description precisely describes PetroChina's complicity and role in Darfur.

### Lack of Due Diligence

John Ruggie has detailed corporate responsibilities for respecting human rights. He defines this responsibility as "To respect rights essentially means not to infringe on the rights of others - put simply, to do no harm. ... To discharge the responsibility to respect requires due diligence."<sup>12</sup> He identifies responsibilities to define policies, perform impact assessments, integrate human rights policies throughout the company, and track performance. In his more recent report, he states "the corporate responsibility to respect human rights

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<sup>8</sup> United Nations Global Compact, The UN Secretary-General's Special Representative on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, 12 November 2008, [http://www.unglobalcompact.org/issues/human\\_rights/The\\_UN\\_SRSG\\_and\\_the\\_UN\\_Global\\_Compact.html](http://www.unglobalcompact.org/issues/human_rights/The_UN_SRSG_and_the_UN_Global_Compact.html) (accessed December 14, 2008)

<sup>9</sup> Ibid

<sup>10</sup> "Embedding Human Rights into Business Practice, a joint publication of the United Nations Global Compact and the Office of the High Commissioner for Human Rights", page 17, [http://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/Resources/embedding.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/embedding.pdf), (accessed December 14, 2008)

<sup>11</sup> "Embedding Human Rights into Business Practice, a joint publication of the United Nations Global Compact and the Office of the High Commissioner for Human Rights", page 19,

[http://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/Resources/embedding.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/embedding.pdf), accessed 16 November 2008

<sup>12</sup> Protect, Respect and Remedy: a Framework for Business and Human Rights, 7 April 2008, <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>, accessed 11 October 2008

includes avoiding complicity”.<sup>13</sup> This report then goes on to define Principle 2 in terms of direct, beneficial, and silent complicity. While some may question whether PetroChina has been guilty of direct and beneficial complicity it is hard to argue that they have not been responsible for silent complicity: “the way human rights advocates see the failure by a company to raise the question of systematic or continuous human rights violations in its interactions with the appropriate authorities”.<sup>14</sup>

The report specifically addresses the financial support to the Government of Sudan that is at the heart of this complaint. It says “the Global Compact also suggests that businesses establish clear safeguards to ensure that if financial or material support is provided to security forces it is not used to violate human rights”.<sup>15</sup>

The report identifies “the key tools companies use to determine their human rights impacts for the purpose of fulfilling the responsibility to respect, whether human rights policies, impact assessments, integration policies and/or practices for tracking performance, should focus not only on the company’s own business activities, but also on the relationships associated with those activities, to ensure that the company is not complicit, or otherwise implicated in human rights harms caused by others.”<sup>16</sup>

We recognize that there are many components to due diligence and that failure to perform a particular action is not necessarily an egregious abuse. However, PetroChina has done none of the due diligence necessary to avoid complicity with respect to Darfur. Instead the company has continuously denied its connection to CPNC and its operations in Sudan<sup>17</sup>. The Business Leaders Initiative on Human Rights (BLIHR) identifies essential, expected, and desirable actions.<sup>18</sup> Clearly, by continuing to provide financial and other forms of support to the GoS, PetroChina fails to take even the most essential actions.

#### International Recognition of the Complicity of PetroChina in Darfur

As a result of PetroChina’s role in Darfur, extensive divestment actions have been taken against the company. These actions confirm the international consensus on PetroChina’s highly negative role in the Sudan. In the United States, 27 states (as of 7/11/2008) and 61 colleges and universities (as of 4/25/2008) have divested from companies helping to fund the genocide in Sudan.<sup>19</sup>

PGGM, one of the largest public pension funds in Europe, decided to divest holdings in PetroChina due to parent company China National Petroleum Corporation’s connection to “human rights violations in Sudan.” The fund, which at the time managed approximately 88 billion euros in assets, made the decision to sell its shares in PetroChina after extensive efforts to engage the company over Sudan failed.<sup>20</sup> Likewise, when Members of the European Parliament’s (MEP) pension fund divested from PetroChina, MEP Glenys Kinnock, stated, “The sale of the stockholdings in PetroChina sends a very clear signal that the European Parliament abhors that company’s links with a regime which does little to end the violent conflict in Darfur.”<sup>21</sup>

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<sup>13</sup> See ‘Clarifying the Concepts of “Sphere of influence” and “Complicity”’ above

<sup>14</sup> Ibid

<sup>15</sup> Ibid

<sup>16</sup> Ibid

<sup>17</sup> See, for example, the company’s assertion to the SEC that “information about CNPC ... is not relevant to an investment in PetroChina” in its September 27, 2007 letter to the SEC (<http://www.sec.gov/Archives/edgar/data/1108329/000114554907001654/filename1.txt>).

<sup>18</sup> A Guide for Integrating Human Rights into Business Management, <http://blihr.org/Reports/GIHRBM.pdf> (accessed on October 12, 2008)

<sup>19</sup> <http://sudandivestment.org/statistics.asp>

<sup>20</sup> <http://delsus.com/news.html>

<sup>21</sup> The Independent, “EU boycotts China oil firm over funding of Darfur regime,” March 17, 2008, accessed May 28, 2008.

The international community has taken strong stands against all the companies operating in the region. This has led, for example, Rolls Royce PLC (UK) and Concordia Maritime (Sweden) to confirm that they no longer have operations in or relating to Sudan.<sup>22</sup>

The extensive international recognition and condemnation of PetroChina's role in the conflict ensures that the charges cannot be viewed as politically motivated or a result of singling out Chinese companies. Rather, the international community must require that PetroChina take responsibility for its actions as a part of operating in the global economy. Failure to do so, discourages other current actors and future companies from taking the international community and the principles of the UNGC seriously. We have focused here on PetroChina because it is the most extreme example of a UNGC participant that fails to respect its principles. We expect to file similar complaints for other participants such as Oil and Natural Gas Corp. Ltd (India) and China Petrochemical Corporation (aka Sinopec Group) in the future.

### Failure to Engage the GoS

PetroChina has been contacted regarding Sudan for at least five years by numerous activists, individual and institutional investors, public and private pension funds, mutual funds, and asset managers. Despite these ongoing efforts, the company has failed to take the most basic steps to change its behavior. Many civil society representatives, notably the groups and people that signed the initial letter to the GC about PetroChina, believe that PetroChina in partnership with its parent company, CPNC, must :

- Engage the GoS, either independently or collectively with other foreign oil companies operating in Sudan, and request that the GoS (1) fully and promptly implement all provisions of United Nations Security Council Resolution 1769 (UNSCR 1769) which authorizes the deployment of a robust international peacekeeping force in Darfur, (2) ensure free and unfettered access for humanitarian aid workers to the people of Darfur, (3) provide full and unrestricted land access for peacekeeping troops (including land for UN bases), (4) cease support for the Janjaweed militia without delay, and (5) genuinely engage in the Darfur peace process.
- Make all possible efforts to contribute to the success of Sudan's Comprehensive Peace Agreement (CPA), including utilizing leverage on its business affiliates, on the GoS, and on the Government of South Sudan to ensure that the CPA is implemented without further delay.

Some may argue that PetroChina / CNPC will be more effective engaging in collaboration with other companies in the region than on its own. We support coordinated action. However, we also recognize that PetroChina / CNPC, through its enormous economic ties to Sudan and the Chinese government is in a unique and critical position to influence the government and be protected against retaliation by the government. In accordance with the responsibilities expected of a signatory to the Global Compact, PetroChina can and should act without delay, whether on its own or in collaboration with others.

### Recent Events

The UNGC launched the UN Global Compact Network in Sudan on December 1, 2008, in Khartoum, Sudan. According to the agenda, Mr. Qin Anjiang, Chief Representative of CNPC Sudan attended the meeting.<sup>23</sup>

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<sup>22</sup> Sudan Divestment Task Force, "Sudan Company Rankings", updated November 30, 2008, available by request from [info@sudandivestment.org](mailto:info@sudandivestment.org).

<sup>23</sup> UN Global Compact Network in Sudan Agenda, Press Release 1 December 2008, [http://www.unglobalcompact.org/docs/news\\_events/9.1\\_news\\_archives/2008\\_12\\_01/Sudan\\_GC\\_Network\\_Agenda.pdf](http://www.unglobalcompact.org/docs/news_events/9.1_news_archives/2008_12_01/Sudan_GC_Network_Agenda.pdf) (accessed 14 December 2008)

This may be a positive step on the part of the company in beginning to recognize its responsibilities. We applaud the UNGC for convening the meeting and hope that it will encourage coordinated and constructive action on the part of all attendees. However, since PetroChina / CNPC has consistently denied responsibility and failed to take action during the last many years, attending this single meeting cannot be considered a remedy for its extensive track record of abuse.

### Conclusion

The UN Global Compact should move ahead with our complaint against PetroChina under the UNGC's Integrity Measure 4, "Allegations of Systematic or Egregious Abuses." In doing so, the UNGC will be taking a strong stand against abuse of its founding principles. By acting on the complaint, the UNGC will be supporting the significance and primacy of those principles, emphasizing that due diligence is both expected and required of signatories to avoid complicity in human rights abuses, and that mere lip-service is not acceptable. It will encourage PetroChina to take strong action, encourage others in the region that want to avoid becoming future targets, and establish a precedent for future crises. The UNGC, having created the Integrity Measures, must now apply them, given the grave human rights abuses and the seriousness of this complaint. Acting otherwise would substantially weaken the moral influence of the UNGC.

We recognize that the UNGC works toward implementation of its principles through learning, dialogue, projects, process improvements, and other such measures and so is hesitant to take action against its members. However, by PetroChina continuing to claim ignorance of any responsibility in Sudan and failing to take substantive action in the light of one of most egregious human rights violations on the planet, PetroChina clearly invites forceful action to uphold the reputation and integrity of the Global Compact.

We believe there is a clear and strong case that systemic and egregious abuses are occurring. Our complaint is substantive and serious that PetroChina is in violation of UNGC principles for its failure to respect human rights, lack of due diligence in avoiding human rights violations, widespread recognition as a major contributor to the conflict in Darfur, and continuing refusal to correct the abuses.

We ask you to use your good offices to establish a dialogue between PetroChina and us, and to act quickly to resolve this complaint.

Sincerely,



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