

Testimony of Jerry Fowler
President, Save Darfur Coalition

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United States House of Representatives

Negative Implications of the President's Signing Statement
on the Sudan Accountability and Divestment Act
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Chairman Frank, Ranking Member Bachus, distinguished members of the committee, thank you for this opportunity to address the crucial new law which emerged from the Financial Services Committee, and went on to pass the House and Senate unanimously as the Sudan Accountability and Divestment Act, or SADA. Put simply, SADA must be fully and swiftly implemented if we are serious about trying to change the calculations of a regime in Khartoum that has called the international community's bluff even as it continues to terrorize its own citizens in Darfur and destabilize neighboring Chad.

I have the honor of serving as the president of the Save Darfur Coalition, an alliance of more than 180 faith-based, advocacy, and human rights organizations representing over 130 million people of all ages, races, religions, and political affiliations united together to help the people of Darfur. I would like to ground our discussion here today in the realities of the crisis in Darfur which this law was designed to help change.

In May 2004, as the director of the Committee on Conscience at the United States Holocaust Memorial Museum, I went to Chad and traveled along the Chad-Sudan border, meeting refugees, listening to their stories, seeing the incredibly harsh desert into which they had been driven. The daily temperatures at that time of year rose to 115 to 120 degrees. On many days there were sandstorms, cutting visibility to a hundred yards or so and making an already tough existence nearly impossible for the thousands of refugees who at the time lacked even tents to protect them from the harsh conditions.

One day near the end of that trip, I met a woman named Hawa. I interviewed her in the small makeshift hut she had constructed out of sticks and some plastic sheeting that the UN had given her. We were inside this hut along with her four children, an elderly woman, and my translator. Outside it was well over 100 degrees, and inside the atmosphere was oppressive.

She told me about the day her village was attacked. She told me that her father was killed, her brother was killed, a cousin was killed. Thirty people in her village were killed, and her mother disappeared.

I have to admit that I suddenly felt overwhelmed by her suffering, by all the suffering I had been witnessing in those days and felt compelled to get out of that hut. I thanked her for sharing her story and started to crawl out, when she started talking in a low voice. I looked over at her, and tears were streaming down her cheeks. She was asking, "What about my mother? What about my mother? I don't know if she is alive or if she's dead?"

I felt as though was asking me for an answer, which I could not possibly give her. All I could think to do was to ask her her mother's name and promise to bring her name back to Americans. Her mother's name is Khadiya Ahmed – actually a common woman's name in Darfur. So I'm telling you that name, and telling you that as vast as this catastrophe is, as many people as it has affected, it also is about one woman who didn't know where her mother was and probably won't until there is peace and security in Darfur.

In Chad, I encountered more stories like this than I could count, and I returned with them overwhelming my heart and my conscience.

Upon my return, I worked with the American Jewish World Service and others to convene an emergency summit on Darfur, which resulted in the creation of the Save Darfur Coalition. First at the Museum and now at the Save Darfur Coalition, I have worked with an extraordinarily strong and diverse combination of faith leaders, human rights organizations, unions, prestigious civil society organizations of seemingly every background, and a tireless army of students and activists. I have also witnessed the coming together of an ever-growing number of like-minded organizations from overseas – in Europe, Africa, the Middle East, and beyond – as they have linked up to coordinate their efforts with our own. Together, we all became part of an unprecedented movement – a constituency of conscience – demanding action to help end the suffering of our brothers and sisters in the far-away region of Darfur.

Nearly four years after my first visit to Chad, I do not know what has become of Hawa or if she found out what happened to her mother. Almost certainly, she has not been able to return to her home in Darfur in peace. Nearly five years into the conflict, 2.3 million Darfurians remain displaced within their own country. Over two hundred thousand are huddled in refugee camps across the border in Chad. The violence they hoped to leave behind in Darfur has now followed them to Chad, where they face added dangers as a result of the attempted revolt of the Sudanese-government backed rebels.

The security situation in Darfur remains perilous as well. Violence continues, including reported aerial bombardment of villages in west Darfur, resulting in numerous civilian deaths from violence, and additional deaths from privation as the insecurity limits humanitarian services. Health conditions are deteriorating, and malnutrition rates in Darfur are climbing. Humanitarian organizations and U.N. agencies continue to respond valiantly to these emergencies, but they are too often hampered by the insecurity in the region resulting in an inability to deliver aid to many parts of Darfur.

In the short term, the best chance for security for Darfurians and the humanitarian groups who serve them is the full and effective deployment of the 26,000-strong United Nations - African Union Mission in Darfur (UNAMID) as authorized by UN Security Council Resolution 1769. Yet more than six months after the Security Council's unanimous adoption of Resolution 1769, Darfur has seen only the initial elements of UNAMID deploy. Only one-third of the promised UNAMID force is on the ground in Darfur, with full deployment unlikely to finish before the end of 2008 – seventeen months after the force was approved.

The most fundamental cause of this delay is the obstruction and intransigence of the Sudanese government, which continues to demonstrate its utter contempt for the international community. The regime is successfully impeding the force's deployment by stalling on basic technical issues. It has failed to designate acceptable land for peacekeeping bases. It refuses to grant the force permission to conduct flights at night, without which the force will be unable to protect itself, let alone Darfuri civilians, from night attacks by government forces and allied militias. Last month, the Sudanese army brazenly went a step further and ambushed a clearly marked UNAMID convoy, critically wounding a civilian Sudanese driver who was shot seven times. It then had the temerity to blame UNAMID for driving at night without permission.

President al-Bashir and his regime clearly believe they can get away with genocide in Darfur and perhaps forestall indefinitely any meaningful international civilian protection force. The world has not yet proven them wrong. Two weeks ago, al-Bashir appointed Musa Hilal, a militia leader who recruited and mobilized the *janjaweed* militias responsible for the carnage in Darfur, to be a special advisor to the president on ethnic affairs. The current violence in Chad also suggests al-Bashir's belief that he can act as he wishes without consequences.

The Sudanese government will only change its behavior when the political and economic cost of continuing their campaign of destruction and displacement in Darfur becomes greater than the cost of stopping it. Lives will continue to be lost if the United States and international community

do not act more vigorously to impose swift and strong consequences on Sudan. While the U.S. has led international efforts to impose sanctions on the Sudanese regime, existing sanctions are not enough, as they have clearly not brought about the necessary change in the regime's behavior.

The Sudan Accountability and Divestment Act was carefully crafted as another tool to generate concerted economic pressure on the Government of Sudan. One of the most important provisions of the bill authorizes and protects state and local divestment from foreign companies whose business relationship with Sudan helps to fund the genocide. The bill also prohibits federal contracts with foreign companies funding the genocide, and authorizes states to do the same. The bill ensures that States and municipal entities move forward with divestment in a unified and targeted fashion that is consistent with and complimentary to Federal foreign policy. It helps to ensure that all State and local divestment policies expire under the same conditions, benchmarked to Federal actions and statements. And it protects the economic interests of South Sudan and of the humanitarian, agricultural, and medical sectors and exempts companies authorized by the Treasury Department to operate in Sudan.

SADA was the product of a vibrant partnership between House and Senate leaders. I am truly grateful to members of this committee for the bipartisan alliance of support you forged for this bill -- an alliance that guided the bill through both chambers. In addition, the broad constituency of conscience I mentioned earlier played a critical role in the bill's progress. That constituency brings together a diverse group of civil society organizations, religious groups of all creeds, and grassroots activists around the country. Each time a challenge to the bill appeared, that challenge was overcome by overwhelming popular support, including letters to the editor in Nebraska, phone calls in South Carolina, religious communities speaking out in Kentucky, and petitions, letters and emails from every state flooding Senate offices. When SADA was signed into law on December 31, 2007, it was a day of victory for all those who had supported the legislation, a day of progress for the movement of concerned individuals throughout the country and across the world, and a day of hope for the people of Darfur.

For us, the fact that the president signed this bill has a more substantial legal and practical impact than the signing statement. As my colleague Adam Sterling of the Sudan Divestment Task Force has pointed out, the administration did not object to any of the state or municipal divestment bills that passed before SADA became law. Now that those states have explicit authorization from the federal government to divest, and guidance on how to divest in a way that is consistent with Federal policy, it is even less plausible to think that the administration would object to any future state divestment. Indeed, the intent and effect of SADA are in line with what the President has repeatedly stated is one of his most important foreign policy priorities -- ending the genocide in Darfur.

The real negative impact of the signing statement, so far, has been the message it sends Khartoum and the business interests that are contributing to the Government of Sudan's ability to carry out genocide in Darfur. The signing statement sends them an ambiguous message, which appears to conflict with the spirit of SADA, and the administration's stated policies toward Sudan. Instead of statements that may appease the regime, the Administration should join with Congress to issue statements -- and more important, adopt policies -- that increase pressure on Khartoum to comply with international law, and increase consequences for companies that choose to make profits while helping fund a campaign of genocide.

At this time, the administration does not need to take any additional action for the state protection provision of SADA to be enacted; merely by signing the bill, President Bush has enacted the extra legal protection offered to states that decide that their tax dollars shall no longer be invested in companies that help fund the genocide in Darfur. To ensure maximum effectiveness of the bill, the Administration now must also ensure that the Federal Acquisition Regulations include strict guidelines on implementation of the contract ban provision of SADA by the April deadline, and issue the report on sanctions required by Section 10 of SADA.

We have to recognize, of course, that even full implementation of SADA will not, by itself, create sufficient pressure on Sudan to end the genocide. Therefore we call on the Administration to renew its commitment to hastening the end of the genocide by aggressively enforcing the economic sanctions currently on the books, adding new targeted sanctions, working with allies around the world for carefully crafted targeted bilateral and multilateral sanctions, and deploying an effective and well resourced diplomatic team dedicated to ending the violence in Darfur and bringing stability to the whole of Sudan and the region.

Congress has an important role too. In addition to providing oversight for the implementation of the contract ban and reporting requirements of SADA, we ask you to continue to put all the pressure you can on the government of Sudan – working with the administration to strengthen the ability of the Treasury Department to apply existing sanctions, and adding additional targeted sanctions on Sudan and the companies that help fund the genocide. We also ask you to continue generous funding for the urgent peacekeeping and humanitarian efforts.

In the meantime, activists, religious leaders, and state legislators in 23 states are working to pass divestment laws – adding to the 22 that have already divested. SADA gives new energy to these campaigns, and I send a heart felt thank you to every member of the House and Senate for all you have done to craft, support, and pass this important legislation, and for your dedication to supporting the people of Darfur.

Any delays on the part of the President to fully implement this new law would delay critically needed pressure upon the government of Sudan. For the President to do less would not only breach his constitutional responsibilities, it would run counter to his stated goal of ending the genocide in Darfur. In short, any attempt to side-step full implementation of this law would be legally dubious, politically disingenuous, and morally questionable.

Each day of delay in imposing real economic and political consequences on Sudan is another day that refugees will suffer in camps in Chad, that girls and women will be exposed to rape while gathering firewood, and that Hawa, if she is still alive, will wait to find her mother and return home. We ask for your help in ensuring their days of suffering and waiting will be numbered.