



Modernized Sanctions for Sudan

Unfinished Business for the Obama Administration



SUDAN

By John Prendergast and
Brad Brooks-Rubin
April 2016



Cover image: Omar al-Bashir, the president of Sudan listens to a speech in Addis Ababa, Ethiopia, 2009. Photo: US Navy / Jesse B. Awalt

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Executive Summary

Peace efforts in Sudan have failed in the past, in large part because of insufficient international leverage over the Sudanese government, but now the Obama administration has an unprecedented opportunity in its final months in office to make a policy investment that could pay big dividends. The Obama administration can further build on new, emerging leverage with the Khartoum regime in support of an inclusive peace deal in Sudan leading to a transition to democracy. Sudan has become increasingly financially isolated during the last year, resulting largely from new types of sanctions measures and tightened enforcement measures that were principally focused on Iran. Sudan has been impacted because foreign banks moved to reduce their exposure to risky accounts and institutions in the wake of large fines paid for sanctions violations involving Iran and Sudan, as well as to protect against broader sanctions and money laundering risks. The spillover effect on the commercial activities, investments, and finances of leading military, security, and civilian officials associated with the Khartoum government has caused sanctions relief to replace debt relief as the regime's primary preoccupation.

To maximize this newfound leverage with the Sudanese regime, the Obama administration should adopt a strategy based in part on an approach that was effective over time in bringing Iran to the negotiating table. While the economic and political contexts of Iran and Sudan are quite different,¹ as are the underlying U.S. national security and foreign policy interests and exigencies, the fact is that both governments have become severely compromised due to isolation from the global financial system, largely as a result of banks de-risking in the wake of tighter global enforcement of sanctions. This financial isolation has created leverage with the government of Sudan—leverage that so far is not being utilized in a broader peace strategy—and opened a new opportunity to press for concessions on issues that have seemed intractable for decades. Iran, like Sudan, had been the target of comprehensive U.S. sanctions for more than two decades, but it took a series of innovative, intensified, and targeted measures, principally from 2009 to 2013, to finally turn off Tehran’s lifelines and push the Iranians to engage in serious negotiations. At the same time, Washington used a range of approaches to ease the burden of some of these pressures on the Iranian people. What followed was an intense, serious, and engaged multilateral diplomatic process that led to the signing of a landmark agreement on Iran’s nuclear program.² Today, Sudan more closely resembles the belligerent and uncooperative Iran of 2007 to 2010: deserving of and susceptible to modernized sanctions that can finally support an end to the Khartoum regime’s violent kleptocratic behavior.

U.S. leaders should adopt elements of the playbook used with Iran and other recent crises that are appropriate to the Sudanese political and economic context. Leaders should begin by immediately ratcheting up financial pressure and tightening sanctions enforcement on Sudan, deploying more focused, enhanced, and modernized sanctions that more sharply target the military and financial assets of those most responsible for continuing conflict, atrocities, and mass corruption in Sudan.³ At the same time, the Obama administration should quickly provide needed guidance to minimize the unintended consequences of the existing sanctions measures that have harmed the medical, humanitarian, people-to-people, and academic sectors in Sudan.

The United States should deploy this combination of tightened and eased sanctions measures to bring the Sudanese regime to a more inclusive, single, unified peace process that aims for a negotiated political transition in Sudan. The U.S. role would be to provide the leverage to catalyze such a unified peace process that leads to a truly inclusive peace deal in Sudan, the verified implementation of which would trigger the eventual removal of sanctions and bring debt relief and normalized relations with the United States.

Previous roadmap approaches to ending atrocities and pursuing peace in Sudan featuring incremental *quid pro quo* exchanges have failed, in part because of a lack of more effective pressures and meaningful incentives. Stove-piped, non-inclusive peace processes separating the parties and conflicts in Darfur, the Two Areas of South Kordofan and Blue Nile, and the political opposition have likewise failed. The current efforts by the African Union’s High-Level Implementation Panel (AUHIP) reinforce this conclusion.⁴ The regime in Khartoum has undermined every peace process aimed at addressing Sudan’s internal conflicts since the Comprehensive Peace Agreement, which ended the North-South war in 2005. The Sudanese government effectively uses these peace talks as a means to divide opposition and undermine progress toward an end to conflict, because leading regime figures have benefited financially from the state of insecurity and absence of rule of law which this hijacked government has cultivated. The regime has

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thus undermined any potentially promising political agreement, and the United States and other partners have not heretofore cultivated the leverage necessary to change the calculations in Khartoum from war to peace.

Suddenly, however, that leverage has emerged serendipitously as a result of the Iran sanctions push. To build on this opportunity, robust efforts on three simultaneous fronts are needed in a new strategy: enhanced, targeted financial pressures; measures to ameliorate the impact of sanctions on humanitarian efforts; and a much more robust and internationally supported peace strategy.

The Obama administration—backed by a bipartisan group of congressmen and congresswomen—can use enhanced financial leverage to press the Sudanese government to unify the three currently disaggregated and ineffective negotiations forums (Darfur, the Two Areas, and the National Dialogue) and ensure that the root causes of conflict are addressed inclusively and comprehensively.

Ideally, this enhanced and modernized sanctions regime could be implemented through a new presidential executive order and, potentially, legislation on Capitol Hill, where the Congressional Caucus on Sudan and South Sudan pursues congressional action to peace and human rights in the two countries. The United States should also deeply engage other countries with influence to pursue their own targeted pressures and incentives on the Sudanese government in order to buttress a wider international push for peace in Sudan.

Introduction

Atrocities in Darfur, which rage still today against a backdrop of brutal attacks in other parts of Sudan as well, put the country at the center of international news coverage and policy debates a decade ago. The George W. Bush administration called the crimes in Darfur genocide and said the Sudanese government and the paramilitary Janjaweed forces were responsible. The pressure for action by other U.S. leaders—including then-Senators Barack Obama, Joe Biden, Hillary Clinton, and John Kerry—quickly grew with the rise of a public movement in the United States, one of whose inspirations was then-professor Samantha Power. Genocide survivors, human rights advocates, students, faith-based groups, and celebrities advocated strongly together for the people of Darfur. And American lawmakers took action in response. Many who currently serve in the Obama administration and in Congress spearheaded U.S. responses to Darfur's agony. As numerous pieces of legislation passed in the mid-2000s,⁵ U.S. sanctions on the Sudanese government—which had first been levied in 1997—were also expanded in 2006.⁶ Today there is bipartisan interest and momentum on Capitol Hill to tighten these sanctions. Amid these measures against the Sudanese government, the U.S. government has remained the largest funder of humanitarian aid to Sudan and has provided billions of dollars⁷ in life-saving assistance to millions of Sudanese people who have been displaced from their homes and now live in camps because of the Sudanese government's policies.

For decades, the Sudanese regime has remained defiant in the face of U.S. sanctions and the designation by the United States since 1993 of Sudan as a state sponsor of terrorism. Sudan has appeared impervious to U.S. and multilateral pressures to end atrocities and bring peace. With the support of its

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neighbors, its regional and Persian Gulf allies and its oil money, for many years the regime in Khartoum has had the means to wage war relentlessly in multiple concurrent internal armed conflicts. It has used starvation as a weapon while siphoning off the natural resource wealth of the country for personal enrichment and the protection of the leadership and system the regime has constructed. The regime has robbed the Sudanese people to pay for the means to kill them, impoverish them, and enrich themselves as they consolidate a violent kleptocracy and brutally repress unarmed opposition and civil society elements.

These Sudanese leaders now seek relief from the economic consequences of their militarism and atrocities from the same U.S. leaders who most strongly condemned the regime's crimes, championed action on Darfur, and supported heavier sanctions to target the regime's activities a decade ago. The regime's vulnerabilities and the threat it continues to pose to its own people can now be leveraged and targeted even more effectively by U.S. policymakers because of Sudan's financial isolation that is due to tightened sanctions enforcement, principally targeted at Iran.

Over many years, the United States and other countries pressured banks to stop dealing with Iran—based on evidence of the Tehran regime's participation in criminal activities, and of the efforts by Iranian entities to deceive banks and circumvent sanctions. The United States and others then tightened sanctions enforcement to create leverage for nuclear negotiations with Iran. Major international banks that tried to circumvent these financial measures and other sanctions paid huge fines, including the record \$8.9 billion paid in 2015 by BNP Paribas.⁸ These largely Iran-related enforcement actions have made banks fearful of sanctions violations and have had the potentially unintended consequence of limiting Sudan's access to international financial institutions. To avoid enforcement penalties for sanctions violations and to avoid possible designation for providing support to sanctioned individuals and entities, many financial institutions strengthened their due diligence practices—enhancing compliance programs, strengthening internal controls, improving internal audits, and training employees. In some cases, they accelerated efforts to “de-risk,” or end engagement with accounts and clients for which the sanctions compliance risk was deemed to outweigh the returns of doing business and prohibit new business in any currency with sanctioned entities. Sudanese accounts have been subject to de-risking in part because of the existence of sanctions but also because of the extremely risky nature of the business environment. This shift by banks has isolated Sudan's ruling elites, who are completely dependent on the international financial system to monetize their massive ill-gotten gains from the violent kleptocracy they have constructed, and who use those gains for self-enrichment and the funding of attacks against people in the country's periphery. The leaders of this regime are now desperate to bring an end to the sanctions, especially before the remainder of their correspondent banking network is shut off.

Concerns with the Negative Impact of Sanctions

Sanctions relief has replaced debt relief as the primary preoccupation of the ruling elites in Sudan. Blaming Sudan's economic woes and poor healthcare access on U.S. sanctions, the Sudanese regime has organized a significant international campaign to have U.S. sanctions lifted. This campaign has played out in the domestic and international press, through multiple diplomatic channels and in multiple

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international forums at the United Nations, the African Union, and the Arab League, and by individual governments that support the Sudanese government.⁹

While a number of Sudanese analysts and advocates in recent years have questioned the Sudanese regime's stance on U.S. sanctions,¹⁰ a number of U.N. and non-governmental humanitarian organizations operating in Sudan have legitimately pointed to the negative impact of U.S. sanctions. To transfer money and materials for their operations in Sudan, these service providers must obtain specific authorization from the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) and, in some cases, also from the U.S. Commerce Department's Bureau of Industry and Security. Service providers say these specific licenses can be difficult to obtain and must be renewed periodically in a process that can be slow and cumbersome, leaving some to choose not to go through the process at all. At times, the process may not be sufficient to achieve what is needed or expected: funds and medical devices like surgical sutures and cancer screening equipment sometimes are simply not approved by all necessary official parties for transfer to Sudan, resulting in losses to the Sudanese people who need them.¹¹ Even with an OFAC license, many service providers, banks, or other parties necessary to make a shipment happen—especially smaller banks that cannot afford the risk of possible heavy fines for what can be technical violations and may not have the resources to do due diligence on all of the payments—may refuse all transactions with Sudan, even those that are specifically approved in a license or otherwise not subject to sanctions.¹² The challenges with respect to Sudan are reflective of a problem that these organizations face globally, and U.S. policymakers must take steps where possible, some of which are described below, to address this problem.¹³

Some Sudanese businessmen—who may have ties with the regime but who also help build semi-private, economically productive sectors of the economy in agriculture, manufacturing, and import-export of food products—also say that U.S. sanctions are harming their enterprises. They have advocated further easing of U.S. sanctions on specific products or sectors, including financial transfers for these products or sectors. Business leaders have also described difficulties and lengthy delays with securing U.S. licenses for approved activities and transactions with entities covered by exemptions or general licenses.¹⁴ Sudanese business leaders, however, also acknowledge that the Sudanese regime's corruption and mismanagement of the national economy is greatly aggravating the economic situation and the overall investment climate. Many investors and banks do not wish to do business in Sudan because they see little reward for great risk. The country has seen capital flight in its own businesses, a process that has dramatically accelerated over the last few years due to desperation of national investors in the face of wrong-headed policies and pervasive corruption. Reflecting this trend, Sudanese private sector entrepreneurs have consistently ranked among the top five largest investors in the thriving national economy of neighboring Ethiopia.¹⁵ Sudan has suffered decades of underdevelopment. Most of the working, professional and middle classes have departed or been devastated—driven into poverty due to the regime's economic policies and actions.¹⁶ Recent decreases in global oil prices, which, even if they reach greater price stability, are unlikely to rise sharply in the medium term, also may play a role in undermining the economic basis of Sudan's patronage system.

The U.S. government can and must do more to alleviate the negative impact of sanctions on the humanitarian, social, and economic service providers that support the Sudanese public, and we describe specific measures to this end below. However, the Sudanese government's tactic of elevating the role of

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U.S. sanctions in the hardships experienced by Sudanese people and minimizing the role played by the regime in diverting the public's money from development—and mismanaging the money or using it to fund war against the citizens—should be challenged. Sudan's foreign exchange shortage,¹⁷ high external debt (\$45.1 billion with 85 percent in arrears),¹⁸ and leakage of funds from mass corruption¹⁹ have collectively created acute economic vulnerabilities for the regime. The regime spends less than four percent of its annual official budget on public health and education combined,²⁰ while committing more than 60 percent of its budget to the military and security sector.²¹ However, as the regime also runs a covert budget for its military, security, and police forces—one that is not subject to the oversight of the Ministry of Finance or the scrutiny of the country's National Audit Chamber—the budget of the security sector is likely even higher than what the government of Sudan is willing to acknowledge in official documentation, in spite of public rhetoric. In December 2015, President Omar al-Bashir was quoted by Sudan Tribune as saying "if 100% of the state's budget was allocated to the army to secure the country then that is still not enough" in remarks made at the Sudan Air Force headquarters.²²

The regime's own economic vulnerabilities—and not its concern for the welfare of the Sudanese people—drive this concerted multi-front campaign to lift U.S. sanctions. The United States should not succumb to diversionary tactics and a manipulation of the humanitarian imperative—tantamount to blackmail—from a government that continues to terrorize and persecute its own people.

Sanctions Modernization: Pressures and Impacts

To build on the newfound leverage it now has with the Sudanese government, the Obama administration should enhance that leverage by deploying a new wave of modernized sanctions tools that can more effectively target top regime officials and their commercial interests. These tools may include:

- Sanctions on foreign financial institutions that facilitate the al-Bashir regime's most egregious activities;
- Focused anti-money laundering measures;
- Efforts directed at elements of the weapons and mining sectors, the latter specifically for projects in conflict areas;
- Anti-corruption sanctions against individuals and entities facilitating public corruption; and
- Increased designation and enforcement of targeted sanctions on specific companies owned by Sudan's National Intelligence and Security Service (NISS), the Sudan Armed Forces (SAF), and companies owned by other senior government officials—areas where sanctions enforcement has been weak.

At the same time, as discussed above and outlined in detail below, a range of measures should be taken to ease some of the negative impacts of sanctions on humanitarian, medical, agricultural, academic, and people-to-people activities in Sudan. These steps can reassure the Sudanese population that sanctions are not the cause of their economic woes and that the United States stands with them in countering the humanitarian crisis. In addition, expanding these measures may foster greater international support for the pressures described above, and perhaps help secure useful cooperation from key countries. As such,

this effort should be connected to a public diplomacy campaign by the United States that spells out how the sanctions are targeted and not aimed at obstructing the importation of medicine and other humanitarian goods.

Modernizing pressures

When assessing the need to “modernize” Sudan sanctions, it is critical to appreciate how different the U.S. financial pressure toolbox looked when the sanctions were originally imposed in 1997, compared to how the toolbox looks today. The types of measures used as of the mid-1990s were mostly comprehensive in nature; the concept of targeted designations was only beginning to be utilized around that time. The Patriot Act’s anti-money laundering provisions, which provide significant authority to the U.S. Treasury Department’s Financial Crimes Enforcement Network (FinCEN), did not come into place until after 9/11, and newer approaches developed with respect to Iran and Ukraine/Russia are less than six years old.

The U.S. sanctions regime for Sudan may appear to be a vestige, but it remains relevant and should be modernized to incorporate these new techniques.²³ So, which pressures should be employed in order to advance the strategy outlined above and focus on the available leverage and opportunity? Recognizing that time remaining in this administration is short, resources are limited, and that too many measures at once may confuse allies and dilute the U.S. message, we propose a limited number of priority actions below, adapted to Sudan’s context. Depending on how these actions are implemented, we may propose other options in future reports. The suggestions are not chosen randomly, but rather derive from an assessment—through Enough’s sustained conflict analysis of Sudan and the broader region and the financial investigations undertaken by our new initiative, The Sentry—of which measures can have the greatest and most immediate impact. The recommended actions described below focus on gathering and using tangible data on the principal vulnerabilities to which the Sudanese regime and its close allies are exposed, so that policy options are evaluated and selected in direct relation to available evidence.²⁴

1. Direct outreach to foreign banks, followed within two to four months by sanctions focused on the foreign banks facilitating the regime’s worst violations.

Despite nearly 20 years of sanctions and the increased enforcement in recent years, principally in relation to efforts on Iran, the al-Bashir regime has managed to establish a financial network around the world to elude the full impact that sanctions intend. Until that system is further disrupted to cut off the last lifelines, any new U.S. strategy will struggle to create the level of financial leverage necessary for the regime to rethink its policies.

The economic sanctions currently in place and described further in Annex 1 are “primary” sanctions, i.e. they apply to U.S. persons²⁵ and their conduct related to Sudan. Only U.S. persons can violate primary sanctions, and when they do, they can pay a fine or be prosecuted. The U.S. government also applies this definition to operations and activities taking place in the United States, such as use of the U.S. financial system; this was the basis for “primary” sanctions enforcement against BNP Paribas and other foreign banks. Extraterritorial or “secondary” sanctions are applicable to non-U.S. persons and seek to hold them accountable for transactions

over which the United States otherwise does not have jurisdiction. These measures were ultimately used to great effect against Iran starting in 2010,²⁶ but they began through the diplomatic outreach to foreign governments and banks by the U.S. Treasury Department, principally with Stuart Levey, the then-undersecretary for terrorism and financial intelligence.²⁷ There may be differences in the contexts of Iran and Sudan, but the impetus for pressure on foreign banks is similar.

Sudanese banks have maintained correspondent relationships across G7 and G20 jurisdictions,²⁸ which is how they have managed to withstand comprehensive U.S. sanctions to date. The Obama administration should spend the next two to four months pressuring some of these banks holding correspondent accounts for Sudanese banks to cease any banking activities that allow the al-Bashir regime to procure weapons for use against the Sudanese people, provide safe haven to terrorists, or engage in grand corruption. This initial engagement by the U.S. government would allow banks to take their own steps prior to the imposition of sanctions.²⁹

Should banks not take the necessary measures, the Obama administration could pursue two types of sanctions, either type requiring a new presidential executive order. First, the executive order should provide designation criteria for persons providing “material support” or “financial assistance” to the government of Sudan for the al-Bashir regime’s most egregious activities, such as weapons-related transactions and laundering of the proceeds of corruption. The current sanctions only contain a “material support” provision pursuant to Executive Order 13400, meaning the scope is limited to support for the limited number of actors designated with respect to the conflict in Darfur. This new criterion would enable full asset blocking on a broader scale. Second, modeling provisions such as those set out in the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA)³⁰ and Section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA)³¹, the Obama administration should issue a new executive order to establish secondary sanctions on those foreign financial institutions outside Sudan that continue to facilitate these defined activities. As with CISADA and the NDAA, these secondary sanctions would not necessarily mean a fine or a blocking of the assets of any foreign bank engaged in such facilitation. Instead, the secondary sanctions would enable the Obama administration to impose such measures as limiting the bank’s access to the U.S. financial system through the cessation of correspondent accounts, limitation on the bank’s ability to deal in foreign exchange, and others.³² Once this type of action is taken, the Obama administration should follow the model used with respect to Iran and provide guidance to other institutions on the due diligence expectations with respect to the penalized banks.³³

2. Targeting the conflict gold and weapons sectors.

Gold is a key driver of conflict in parts of Sudan, as described in previous reports by the Enough Project.³⁴ The most recent U.N. Panel of Experts report on Darfur, which has, to date, reportedly been blocked from publication by Russia,³⁵ detailed this dynamic and nearly led to the U.N. Security Council inclusion of due diligence-related language in its latest resolution. In explaining the U.S. vote on the resolution that ultimately did not contain that language, Ambassador

Samantha Power spoke powerfully about the U.S. concerns that the Security Council could not begin to address the role of natural resources in fueling conflict in Darfur.³⁶

Ambassador Power could not have been more correct in her assessment of the Security Council. The United States should step into the void left by the Security Council and lead in developing more focused efforts to ensure that Sudanese gold is conflict-free. This set of efforts would have three elements (a fourth related to gold is discussed in #5 below), one of which would also target the weapons manufacturing sector, also a key economic sector for the regime:

2a. The U.S. government should engage in direct outreach to the gold industry, including miners, traders, refiners, and end users, and their associations (the World Gold Council, London Bullion Market Association, Responsible Jewellery Council, and many others) to ask them to focus their members on the need for enhanced due diligence with respect to Sudanese gold because of this gold's connection to conflict and money laundering, as discussed in #5 below. The United States should elevate concerns about Sudanese gold in relevant international forums, such as the Organization for Economic Cooperation and Development (OECD) and within the regional body focused most on this issue, the International Conference on the Great Lakes Region (ICGLR), which includes Sudan as a member. But for the creation of South Sudan in 2011, gold from Sudan would fall within the scope of the conflict minerals provision set out in section 1502 of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, so the United States should treat the issue with that level of concern. Outreach to the gold industry should come not only from the U.S. State Department but also from the U.S. Treasury Department's Financial Crimes Investigation Network (FinCEN), the principal U.S. agency targeting money laundering activities, including in the gold sector.

2b. The Obama administration should examine the potential for the application of the sectoral sanctions models used with respect to Russia and, more recently and in a different manner, North Korea³⁷ to limit further development of mining in conflict areas³⁸ and of the weapons industry. This sectoral approach could be used as the basis for further designations, but other options exist as well. For example, using the model of Directive 2 under Executive Order 13662,³⁹ which focused on the Russian energy sector, the Obama administration could seek to limit terms of financing to new development projects, specifically in the gold and arms manufacturing sectors, which are key economic lifelines for the regime.

Given the existence of comprehensive sanctions, it is unlikely that U.S. financial institutions are directly involved in any such financing in Sudan at this time, but owing to the prevalence of the U.S. dollar in mining development and manufacturing, a sectoral approach would, among other things, place pressure on the correspondent network and indirect investment vehicles being used for this purpose.⁴⁰ A sectoral sanctions approach would (i) enable Treasury to target these conflict-connected activities directly; (ii) ensure that they remain a specific point of leverage beyond the broad-based sanctions; (iii) require the issue to be specifically addressed in any wind-down of sanctions in the

future; and (iv) send a clear message to the private sector of the need to focus due diligence on these sectors. The Obama administration should also evaluate other pressures that can be applied within the context of the sectoral model.

2c. In addition to sectoral sanctions that target financing of mining in conflict areas, the Sudan Sanctions Regulations could be amended to include a new prohibition on transactions related to conflict-affected gold. A new prohibition could be implemented as an amendment to Title 31 of the U.S. Code of Federal Regulations, section 538.210, which currently only prohibits petroleum-related transactions. Although already covered by current prohibitions, as with sectoral sanctions, a focused measure on gold-related transactions would ensure that specific leverage remains in place on this critical sector in the context of any wind-down of other sanctions measures and also focus the attention of the private sector.

3. Increased enforcement of existing sanctions.

OFAC's Compliance and Enforcement Division is generally under-resourced and largely reliant on external lead sources.⁴¹ As a result, there are fewer enforcement penalty actions for sanctions programs with comparatively less public and political attention (when compared to Iran, Cuba, North Korea, counter-terrorism, etc.). As noted by OFAC in its January 2009 report to Congress on the effectiveness of sanctions, the agency collected only \$1.53 million in penalties from 1998 to 2008.⁴² Large penalties in the Sudan sanctions and export control contexts in more recent years have generally come as part of multifaceted cases rooted in violations of other sanctions programs, for example in the context of Iran sanctions penalty actions against the large financial institutions, oilfield services companies like Schlumberger⁴³ and Weatherford,⁴⁴ or insurance companies.⁴⁵ As such, existing sanctions on Sudan may not be robustly enforced, leading to the argument that they have outlived their utility or do not work at all.

OFAC's Compliance and Enforcement Division should be directed to focus attention on Sudan sanctions, including in areas such as insurance and reinsurance, and also seek to cooperate with agencies with relevant authorities in other sectors, such as the U.S. Commerce Department or the U.S. Department of Homeland Security.⁴⁶ A penalty recently issued by OFAC against Barclay's Bank⁴⁷ for violations related to sanctions on Zimbabwe shows the type of action necessary to combat sanctions evasion by the government of Sudan, which, like Zimbabwe, also uses dozens of front and shell companies that enable entities that should otherwise be considered blocked pursuant to Executive Orders 13067 and 13412 to continue to conduct business.⁴⁸

4. Introduce anti-corruption sanctions and increase designations of companies owned by NISS and key regime elites.

There remains a need to designate for targeted sanctions key regime actors, as well as their domestic and foreign facilitators and enablers. Although some of these actors may be eligible to be identified for sanctions under the government of Sudan-focused provisions of Executive

Order 13067 and 13412, the Obama administration should use a new executive order to expand on the designation criteria provided in Executive Order 13400. First and foremost, this new order should target those facilitating public corruption, given corruption's role in perpetuating conflict and human rights violations.⁴⁹ Even though those facilitating corruption may already be blocked, this criterion should be used to designate actors within the government of Sudan in order to ensure this issue specifically is addressed and remains a specific tool of leverage.

Additional criteria would apply to involvement in other violent conflicts within Sudan beyond Darfur—including the ones raging in Blue Nile and South Kordofan states. A new presidential executive order should be coupled with a robust annex, or an immediate follow-on series of designations, to demonstrate that these measures will be robustly implemented. The network of companies owned by the NISS and other elements of the Sudanese regime's security sector should be the principal targets.⁵⁰

5. Anti-money laundering advisory focused on gold and corruption.

FinCEN is the principal U.S. agency targeting money laundering activities, and it has devoted comparatively little attention to money laundering in sub-Saharan Africa, unless connected to narcotics or terrorism. FinCEN has a diverse array of authorities, some quite powerful. One underappreciated tool is an advisory, which can be issued publicly or privately to financial institutions, putting them on notice to guard against specific types of activities or "red flags" that reflect money laundering. Financial institutions have an incentive to screen for typologies identified in such advisories in order to demonstrate that they have satisfied their regulatory obligations to implement effective anti-money laundering programs that are appropriate for the risks that they face. Such advisories also encourage financial institutions to file suspicious activity reports (commonly referred to as "SARs") on the identified activity, which may provide authorities with additional information that is useful for identifying and targeting these activities and the bad actors involved, creating a virtuous cycle of increasingly useful advisories and prophylactic action by banks. Gold dealers are also covered by FinCEN's authorities.

The spike in gold production and trade in recent years, particularly when extraordinary production totals are attributed to artisanal mining, makes this sector extremely vulnerable to money laundering⁵¹ in a country where corruption⁵² and the low levels of financial transparency have generally created concerns about the potential for money laundering activities.⁵³

Sudan's own anti-money laundering framework was only recently taken off the Financial Action Task Force list of high-risk and non-cooperative jurisdictions.⁵⁴ Although no longer on this list of failing systems, the system overall in Sudan remains weak, meaning the country's own authorities are likely in no position to take sufficient action. As such, the issuing of a FinCEN advisory would serve as a good first step toward demonstrative action against money laundering from Sudan and in assisting in the evaluation of possible targets of future FinCEN action, such as use of some of the special measures set forth in Section 311 of the Patriot Act.⁵⁵

6. Asset tracing and recovery.

As the Obama administration and other governments identify information related to tangible assets that are the proceeds of corruption, such as real property in jurisdictions in Europe and Asia, information should be directed to the FBI and divisions within the U.S. Justice Department that support the Kleptocracy Asset Recovery Initiative, which includes to a new team of investigators focused exclusively on kleptocracy in Africa. FinCEN should be directed to evaluate SAR data for possible identification of assets.

Addressing individual impacts

As sanctions pressures have become increasingly sophisticated, so too have the ways that the United States can ease the impact on ordinary people and build positive relationships between the American people and those suffering under the targeted regime. In the case of U.S. sanctions on Sudan, there are already a number of licenses in place to allow for the activities of humanitarian and religious organizations,⁵⁶ exports of food, medicine, or medical devices from the United States,⁵⁷ and provision of personal communications hardware, software, and services.⁵⁸ Although pressures are intended to impose costs, more can be done to expand use of these existing general licenses that exempt a number of specifically described transactions from the prohibitions and to develop others.

1. Specific messaging on bank de-risking in the wake of modernized pressures, including a potential “non-enforcement” approach (see also #5).

Modernized sanctions measures that can lead to direct sanctioning and the impact of substantially increased penalties have led many financial institutions to shed business deemed too risky. Sudan is already in this category for many foreign banks because of the risky business environment and the U.S. and more limited U.N. sanctions. When the U.S. pressures increase, as we argue should be done, so too will the likelihood of further de-risking. Although some de-risking will be inevitable, the Obama administration should, as suggested above, engage directly with banks and banking authorities—including state financial authorities.⁵⁹ If this outreach is proactive and clear as to what the targets of concern are—and are not—then banks may be more willing to continue to do business that is needed with the Sudanese individuals whose enterprises are demonstrably not linked to those of the regime and to ensure U.S. persons can take advantage of the additional licensing mentioned in the following paragraphs.

There have been no magic wands to balance de-risking with financial inclusion in any context; the issues are too complex and multi-layered for easy approaches.⁶⁰ One measure that can have a positive impact as a first step is clear messaging from the Obama administration as to what the focal areas of risk are, and where engagement would be encouraged.⁶¹ If this messaging is unsuccessful, the Obama administration should investigate the potential of a “non-enforcement” approach for banking services related to certain categories of transactions, such as those for international and non-governmental organizations. This would give comfort to banks that they would not face potentially substantial penalties for inadvertent violations made when supporting important services for the Sudanese people.⁶²

The bottom line, however, is that Sudan is a very risky jurisdiction for financial institutions, with limited reward in terms of scale of the market, which is a clear distinction with Iran. Even if all sanctions were removed overnight, this would still be the case: Sudan would still be a very risky jurisdiction with little reward for a financial institution implementing expected levels of due diligence. Countries on the continent and around the globe, like Ethiopia and Indonesia, not subject to sanctions are also facing de-risking.⁶³ Until Sudan is a safer and less corrupt place to do business, there is only so much that the United States can, or arguably should, do.

2. General licensing for some categories of exports to Sudan—but include public reporting modeled on Burma Responsible Investment Reporting Requirements.

One of the principal complaints of the regime and health professionals both allied and not allied with the regime is that the sanctions overwhelmingly burden healthcare in Sudan. The regime, of course, fails to admit to its own very low levels of spending on healthcare⁶⁴ and its outright devastation of the sector, or that U.S. persons can obtain specific licenses from OFAC for medicine and medical devices, as required under the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA).⁶⁵

2a. Although TSRA enables these exports already, more can be done to increase the interest in exporting to Sudan. For example, OFAC can model the general licenses implemented in the Iran sanctions context for medicine, medical devices, and spare parts. In 2012, as new pressures were being deployed regularly against Tehran, OFAC changed the specific licensing requirement for export of medicine and medical devices to Iran under TSRA to a general license, meaning that no individual license application and processing was necessary.⁶⁶ This step was never taken for Sudan, so potential exporters must still obtain licenses on a case-by-case basis.

Similarly, in 2011, OFAC finalized a general license under TSRA for the export of food to both Iran and Sudan. But in 2014, when OFAC expanded the general license to allow for export of agricultural commodities and spare parts for medical devices, it only did so for Iran.⁶⁷

These omissions should be rectified, and both steps to expand the availability and scope of TSRA general licenses should be taken for Sudan. At the same time these two steps are taken, OFAC should be tasked to ensure that all steps pursued in recent years to ease any exporting under TSRA are also extended to Sudan.⁶⁸ These steps will not only demonstrate good faith to the Sudanese people but also reassure banks that are considering whether to provide financing for these transactions.

2b. When expanding the TSRA general licenses, the Obama administration should also adapt the model of the Burma Responsible Investment Reporting Requirements⁶⁹ and establish that use of any general license's provisions above a certain amount (e.g., \$100,000 in gross sales) should be accompanied by a public report that outlines who the

company dealt with in the country, how it conducted due diligence, whether the transactions involved any engagement with the NISS or military, and what impact the transactions had on human rights. The Burma requirements have been lauded as a constructive and important step⁷⁰ for U.S. businesses working in a complex environment. General Electric, a potentially important actor in the Sudanese healthcare context, recently chose to file a report because of its “commitment to transparency,” even though it believed it was not required to do so.⁷¹ Given the impending release of the U.S. National Action Plan on Responsible Business Conduct,⁷² including a version of these requirements for Sudan and ensuring that most or all of the report content is made public will increase transparency and allow for more effective study of possible future licensing. This reporting can also help to stem de-risking by providing banks with another avenue for information and insight into the business climate in Sudan.⁷³

3. Provide general licenses and/or “expedited consideration” for specific licenses to enable academic and people-to-people exchanges with Sudan.

The U.S. government has expanded the scope of general licenses available for engagement with Sudan in recent years, in areas such as personal communications⁷⁴ and some professional and academic exchanges.⁷⁵ The United States can and should, however, do much more to promote direct U.S. engagement with the Sudanese people, which would not only demonstrate good faith but offer additional opportunities for financial institutions to engage in clean activities in Sudan. Models for each of the following can be found in the Iran and Cuba sanctions programs and should be expanded to incorporate Sudan or ensure that the full range of general licensing has been extended to Sudan: participating in professional meetings or public conferences; exhibitions, and performances;⁷⁶ establishing exchange agreements with Sudanese institutions;⁷⁷ conducting professional research;⁷⁸ offering programs on independent media training, environmental issues, and human rights;⁷⁹ and hosting or participating in amateur sports activities.⁸⁰

To the extent that general licenses are determined to not be possible to issue for some or all of these situations, the Obama administration could develop a model for “expedited consideration” of specific license requests. Section 413 of the Iran Threat Reduction and Syria Human Rights Act of 2012 provides for such consideration in cases where a license application is submitted in conjunction with a project that includes U.S. government assistance.⁸¹ Implementation of this provision resulted in a procedure where, except in limited cases, the U.S. State Department has 30 days to provide foreign policy guidance on an application, and OFAC must process the application within 90 days.⁸² The U.S. departments of Treasury and State should evaluate the potential to replicate this model for Sudan and possibly extend it to other types of specific licensing cases.

While appropriate and rigorous vetting procedures will need to accompany these processes, the importance of establishing better people-to-people ties between the United States and Sudan cannot be overstated. The range of academics and ordinary citizens who have experience with the United States is shrinking, and young people have little direct exposure to the United States.

Efforts that focus on youth in particular can have important long-term impact on U.S.-Sudan relations.

4. Resolve the specific licensing jurisdiction duplication between the departments of Treasury and Commerce.

Sudan is one of a small number of sanctions programs where, in some cases, companies still need to get a license from both OFAC (in the U.S. Treasury Department) and the U.S. Commerce Department to conduct an export.⁸³ This makes obtaining a license for Sudan more bureaucratically complicated than for Iran or Cuba, where the agencies formally divided responsibilities. Thus, an exporter of goods to Sudan generally needs two licenses for an export, while an exporter to Iran would only need one.

This is a burden that can be reduced without significant harm to the sanctions program and can ensure that the Sudanese beneficiaries receive authorized items with minimal bureaucratic delays. This can be resolved through a delegation of authorities, which would need to be facilitated by the White House.

5. Expand the list of entities owned or controlled by the government of Sudan.

Although this sounds at first blush like an additional pressure, the effort to make public more names of entities that are owned or controlled by the government of Sudan would help to counteract private sector de-risking that can affect the willingness of Western banks and entities to undertake even business that is allowed. That is, as described above, even in cases when there is a license in place, banks may be reluctant to provide services for fear that there is a government of Sudan entity or other latent compliance issue in the picture. By significantly expanding the Specially Designated Nationals (SDN) list, which includes 157 government of Sudan owned-or-controlled entities at present (11 of which are domestic banks), the U.S. Treasury Department would provide banks with a clearer picture and increase the comfort level for engaging in authorized transactions.

Deploying the Enhanced Leverage for Peace

The goal of these modernized measures is to deploy them in the service of bringing the Sudanese regime to a more inclusive, single, unified peace process that aims for a negotiated transition to democracy. The U.S. role would be to provide the leverage to propel a process that leads to a truly inclusive peace deal in Sudan, the verified implementation of which would trigger the eventual removal of sanctions along with debt relief and normalized relations with the United States.

Khartoum has effectively utilized a divide-and-rule approach to negotiations, ensuring each constituency—including but not limited to those from war zones in Darfur, South Kordofan, and Blue Nile as well as the political opposition—must look out for its own interests rather than collaborate with others for a more comprehensive solution. All of the peace deals signed to date have been partial and

largely unimplemented, with the significant exception of the part of the 2005 agreement that led to the South Sudan referendum. Ongoing efforts by the Sudanese opposition to present a more unified approach have not yet fulfilled their promise, in part because of the regime's tactics.

Current efforts spearheaded by the African Union's High-Level Implementation Panel (AUHIP) for the Two Areas, the Doha-led process aimed at bringing stability to Darfur, and the Sudanese government-sponsored National Dialogue have all exhibited very little chance for success and are largely devoid of new ideas for how to break the deadly *status quo*. The main agreement that led to South Sudan's independence, the 2005 Comprehensive Peace Agreement (CPA), has not seen the implementation of the crucial provisions dealing with institutional reform in Sudan itself, autonomy for war-torn areas, and democratization. Khartoum's approach to the conflicts in its periphery are unleashing centrifugal forces that will make Sudan ungovernable in the long term and could threaten Sudan's ability to maintain its integrity as a nation-state—an outcome which should be prevented if at all possible.

The easing of U.S. financial pressure on the Sudanese regime would come with verifiable progress at key junctures in the regime's implementation of a new, truly inclusive national peace process that leads to a political transition. This approach would replace previous "roadmap" models that front-loaded many detailed trade-offs related to humanitarian, human rights, counter-terrorism, and peace process concerns. What we are suggesting backloads the major quid pro quos: implement a credible deal and then sanctions relief and normalization follow. A new, unified peace process and agreement would by definition be comprehensive only if it involved the government, opposition parties that have boycotted the government's controlled dialogue, armed opposition, populations directly affected by the conflict, and independent civil society organizations.

In order to enhance U.S. diplomatic efforts in support of the success of a new strategy, additional personnel must be deployed. The United States has one envoy, Ambassador Donald Booth, and one staff for two major crises: those in Sudan and South Sudan. South Sudan has received the bulk of the attention from the United States. To rectify that situation and enhance the diplomacy necessary to make progress in Sudan, the United States should appoint either a separate envoy for South Sudan or a senior deputy envoy to lead efforts on Sudan while the current envoy focuses on South Sudan. Further, once a singular peace process is initiated, a U.S. ambassador to Sudan should be appointed as well, one who could focus his or her efforts on the promotion of human rights and political transition in the country. The U.S. State Department should add additional political and economic officer positions, graded to require sufficient levels of experience and seniority, and with requisite language skills, to the U.S. embassy in Khartoum to complement this agenda. A robust contingent of U.S. diplomats, who concertedly engage in Arabic and other local languages with a broad range of Sudanese civil society actors who are not directly associated with the regime, would enhance the effectiveness of the overall strategy.

The appointment of a U.S. ambassador should be made only with verifiable progress toward an inclusive peace process in Sudan, as it would otherwise be misread, be rendered absolutely ineffective in the absence of a modernized financial pressure regime, and be exploited by Khartoum. Public U.S. diplomacy will be key in all of this, as the Sudanese people and broader international community need to understand that an enhanced U.S. effort is focused in support of peace and democracy, and the U.S.

government will make every effort to ensure that its financial pressures do not unduly harm civilian populations in Sudan, but target the Sudanese leaders, who have enriched themselves at the expense of the people

Conclusion

Despite all evidence to the contrary, the government of Sudan insists that U.S. sanctions are the sole reason for the country's collapsing economy and unending humanitarian crises. Over the last year, the regime has embarked on an extensive and creative campaign of manipulation and deceit to cajole policymakers into ending U.S. sanctions. With support from Washington, D.C. law firms and lobbyists, Khartoum has engaged in a sometimes surreal charm offensive to press for the end of sanctions as the cure for all of the country's woes.⁸⁴

On the contrary, the government of Sudan is ultimately at fault for the hardships that the Sudanese people face. U.S. sanctions do not bomb Sudanese civilians, use starvation as a weapon, allocate a large percentage of the country's budget to the bloated military and security sectors,⁸⁵ or engage in human rights abuses and international humanitarian law violations so egregious as to result in charges of genocide at the International Criminal Court. The policies and actions of the al-Bashir regime justify enhanced and modernized U.S. sanctions. The government of Sudan does not deserve sanctions relief or debt relief so long as it undermines inclusive peace in Sudan and diverts public financial and military resources to attacking the Sudanese people and enriching itself.

The Obama administration is populated at the highest levels by people who have spent considerable time at certain points during their careers defending the people of Sudan. An opportunity exists near the end of this administration to invest in a new approach that builds leverage and uses that influence in support of a fresh diplomatic initiative that has a chance to move this long-tormented country closer to peace. There very likely may not be a better chance to achieve peace in Sudan for many years to come.

Annex 1: Sudan Sanctions Primer

In 1997, President Clinton used his authorities under the International Emergencies Economic Powers Act (IEEPA) and National Emergencies Act (NEA) to issue Executive Order 13067 and impose comprehensive economic sanctions against Sudan. The national emergency declared with respect to Sudan in this order focused on the country's "continued support for international terrorism; ongoing efforts to destabilize neighboring governments; and the prevalence of human rights violations, including slavery and the denial of religious freedom." The specific sanctions measures imposed included an

import/export ban, prohibition on new investment, performance of contracts, or facilitation, and the “blocking” of the government of Sudan, using the justifications referenced above.

The “blocking” provision means that any property interest of the government of Sudan, defined to include all of its agencies and instrumentalities and any entity owned or controlled at a 50 percent or higher level, must be blocked, or frozen, when in the possession of a U.S. person, often, but not exclusively, a financial institution. U.S. persons are additionally prohibited from engaging in transactions with all such sanctioned persons. This technically applies to any such entity meeting the 50 percent threshold, even if not formally identified on the Specially Designated Nationals (SDN) list. Sanctions are enforced by OFAC on a *per se* basis, meaning that no demonstration of intent is necessary to commit a violation, even when the violation involves an entity not formally identified on the SDN list.

The structure of this program was altered somewhat in 2006 through Executive Order 13412 to, among other things, exclude its application to pre-independence South Sudan, implementing changes required by the 2006 Darfur Peace and Accountability Act.

Also in 2006, President George W. Bush issued separate and additional sanctions under Executive Order 13400, expanding the original national emergency to include Sudan’s policies and actions in Darfur, specifically the “persistence of violence in Sudan’s Darfur region, particularly against civilians and including sexual violence against women and girls, and by the deterioration of the security situation and its negative impact on humanitarian assistance efforts.” This order, which itself is designed to implement U.N. Security Council resolution 1591, required U.S. individuals and entities to block the assets and to not transact with persons identified by the United States as meeting the criteria in the order. Only seven individuals and one entity have been named under this presidential executive order since 2006.

In addition to these economic sanctions imposed by presidential executive order and implemented principally by the Treasury Department, the Commerce Department’s Bureau of Industry and Security maintains jurisdiction over the export of controlled goods, technology, and services to Sudan.⁸⁶ Sudan also remains on the State Sponsors of Terrorism List (SSTL), overseen by the State Department, which brings additional restrictions related to economic and foreign assistance, export controls, international financial institution voting, and direct financial transactions by U.S. persons.⁸⁷

Annex 2: Abuse and Neglect in Sudan: The Regime’s Legacy

Sudan remains beset by conflict and instability, while the regime’s misguided economic policies have led to a deteriorated economy and worsening humanitarian situation. If a presidential executive order were to be issued today—as we argued above that one should—the language describing the national emergency would be quite similar to that referenced in Annex 1.

In South Kordofan and Blue Nile, the Sudanese regime combines indiscriminate aerial bombardments with the denial of humanitarian assistance, effectively attacking and then blockading these communities from sorely needed medicine, food, and supplies. These policies have had an especially devastating

effect on the people living in these conflict-affected areas. Now entering the fifth year of this conflict, the people behind armed opposition lines in South Kordofan and Blue Nile states face growing food insecurity as agricultural conditions worsen and emergency food relief grows increasingly difficult to deliver.

In Darfur, the regime engages in a similar bombing campaign, particularly near Jebel Marra, where recent indiscriminate attacks on an armed opposition stronghold had led to the forcible displacement of 105,000 people since the beginning of the year according to the United Nations.⁸⁸ In all conflict areas, but particularly in Darfur, the regime relies in its counterinsurgency efforts on locally recruited militias. The Sudanese government-backed Rapid Support Forces (RSF), the most recent of these militias, effectively operate as a better coordinated Janjaweed and use strikingly similar tactics to terrorize local communities.⁸⁹ At least 2.6 million people remain displaced in Darfur and killings, rape, and plunder occur daily. At the same time, the regime has done everything in its power to impede and end UNAMID, the hybrid AU-U.N. joint peacekeeping operation, even as violence and displacement continue, and conflict over control over Darfur's artisanal gold mining intensifies.

In 2011, South Sudan voted to secede, taking around 70 percent of what was Sudan's oil wealth with it. Despite six years to plan for this very likely outcome, the Sudanese government did virtually nothing to prepare for the ensuing economic shock and the immense socioeconomic costs. Since South Sudan's secession, Sudan's economy has continued to decline, as the regime struggles to replace the easy money and foreign economic support that oil provided. President al-Bashir has responded by tightening his inner circle, which now consists almost entirely of trusted family members and high-ranking military and security officials. As al-Bashir has turned the regime further inward, the National Intelligence and Security Services (NISS) along with other parastatal entities, such as the Rapid Support Forces have risen in importance, making Sudan an even more authoritarian and oppressive state.

As the regime continues to massively under-invest in the country's people and institutions, it also continues to wage war against opposition groups and the civilian populations in Darfur, South Kordofan, and Blue Nile, as described above. While armed conflict is limited to the rural areas, the regime's repression of civil society and subversion of the democratic process extends throughout the country. Dissent is scarcely tolerated, and Sudan remains one of the most corrupt and least transparent countries in the world. The farcical National Dialogue exemplifies the regime's unwillingness to make meaningful reforms or share power. Although years in the making, every important opposition group boycotted this process noting the regime's disingenuousness and stating that this dialogue is just another tactic to misrepresent Sudan's political situation and indefinitely delay reform.

Endnotes

¹ One important distinction, for example, lies in the political and economic power of the middle class and in the regime's concern for middle-class interests. Sudan's middle class is struggling and disempowered, with limited leverage over the regime in Khartoum. The Iranian regime wanted to placate the middle class and was concerned about instability generated from their interests being consistently subverted by the sanctions. Personal communication with international lawyer specialized in economic sanctions enforcement and obligations associated with U.S. sanctions on Iran, Washington, D.C., March 2016.

² January 16, 2016 was a milestone for the Iran nuclear deal. On that day, the International Atomic Energy Agency (IAEA) verified that Iran had completed the required steps under the Joint Comprehensive Plan of Action (JCPOA), a framework deal adopted on October 18, 2015 by the P5+1 (China, France, Germany, Russia, the United Kingdom, and the United States), the European Union, and the government of Iran to ensure that Iran's nuclear program would be exclusively peaceful. Many sanctions measures related directly to Iran's nuclear activity that had been imposed by the United Nations, the European Union, and the United States were immediately lifted. With respect to U.S. sanctions, however, those that were lifted were almost exclusively extraterritorial or "secondary" sanctions that mainly affect non-U.S. persons. With some exceptions, U.S. persons may not be involved in most business with Iranian persons or entities; U.S. correspondent banks are still barred from clearing non-licensed U.S. dollar transactions involving Iran and are obliged to block any funds in which a Specially Designated National (SDN) has an interest; and U.S. export controls remain largely unchanged, aside from some activities that require specific licenses. Significantly, a new general license issued by OFAC permits most transactions with Iran by non-U.S. subsidiaries owned or controlled by a U.S. parent, albeit with many restrictions. The United States also de-listed more than 400 names from the SDN list for Iran, but a large number of individuals and entities remain designated and are subject to sanctions for reasons related to terrorism, human rights abuses, affiliation with Iran's Revolutionary Guards, and proliferation of weapons of mass destruction. Secondary sanctions still apply to these SDNs, and non-U.S. persons can be punished for extending material support to them. It bears noting that less than 24 hours after the United States extended sanctions relief with Iran, the U.S. government imposed new, limited sanctions on certain Iranian individuals and entities that had defied U.N. resolutions prohibiting ballistic missiles tests. Finally, the JCPOA contains a provision for immediately resuming EU and U.S. sanctions—without a U.N. Security Council vote—if Iran is found to have failed in its commitments to reduce its nuclear arms under the deal. As a totality, this demonstrates that many sanctions with respect to Iran remain in place, as what is essential for broad-based sanctions relief is verified implementation over a period of time, rather than verbal commitments.

³ We recognize that what is presented here is a somewhat simplified version of the "playbook" used in Iran and elsewhere, but this is necessary for two reasons. First, every situation is inherently nuanced and complex in a way that cannot be fully represented in a brief report. Second, and more importantly, the time remaining for the Obama administration to act is short, so we extract here those analogies and elements of most relevance and that can be deployed with the greatest effect and with the most efficient use of resources.

⁴ On March 21, 2016, despite the widespread opposition of several key Sudanese stakeholders, the AUHIP chair, Thabo Mbeki, and the government of Sudan signed a roadmap agreement on addressing conflict in Darfur, South Kordofan, and Blue Nile. Opponents and non-signatories to this roadmap agreement included the influential unarmed political opposition group National Umma Party and some of the most powerful armed opposition groups in Darfur, South Kordofan, and Blue Nile: the Sudan People's Liberation Movement-North (SPLM-N), Justice and Equality Movement (JEM), and the Sudan Liberation Movement group led by Minni Minawi (SLM-MM). These parties objected to the hastiness of the conclusion of the agreement and to the pressure to recognize and endorse the inclusiveness of a national dialogue, a process that they do not consider inclusive. The AUHIP's signing of a

roadmap agreement to resolve a conflict that did not have sufficient support from key parties to the conflict has been criticized for partiality. It is considered to reflect the Sudanese government's lack of political will to reach truly comprehensive solutions on Sudan's conflicts—particularly as the signing of the agreement coincided with fresh coordinated attacks by Sudanese government forces on several key positions in South Kordofan held by the SPLM-N. The African Union and the U.S. government are encouraging the non-signatories to join the roadmap agreement. Sudan Tribune, "Sudanese army retakes strategic positions in S. Kordofan: official," March 29, 2016, available at <http://www.sudantribune.com/spip.php?article58458>; Radio Tamazuj, "Govt and rebels clash in Sudan's Nuba Mountains," March 29, 2016, available at <https://radiotamazuj.org/en/article/govt-and-rebels-clash-sudans-nuba-mountains>; Dabanga, "El Mahdi: AUHIP mediator Mbeki 'rushed to sign Sudan roadmap,'" March 25, 2016, available at <https://www.dabangasudan.org/en/all-news/article/el-mahdi-auhip-mediator-mbeki-rushed-to-sign-sudan-roadmap>; Dabanga, "Sudan rebels, Umma reject 'fake participation in National Dialogue,'" March 24, 2016, available at <https://www.dabangasudan.org/en/all-news/article/sudan-rebels-umma-reject-fake-participation-in-national-dialogue>; Sudan Tribune, "Washington putting pressure on Sudanese to sign peace roadmap: sources," March 24, 2016, available at <http://www.sudantribune.com/spip.php?article58401>; Hafiz Mohamed, "Is Sudan's roadmap a failure for AUHIP," *Sudan Tribune*, March 24, 2016, available at <http://www.sudantribune.com/spip.php?article58408>; Chairperson of the Commission of the African Union, "The African Union Welcomes the Signing of a Roadmap Agreement by the Sudanese Government for Inclusive National Dialogue in Sudan," Press release, March 23, 2016, available at <http://www.peaceau.org/uploads/auc.press.release.sudan.23.03.2016.pdf>; Sudan Democracy First Group, "A Continuation of Failure: The AUHIP Sign a Unilateral Road Map Agreement with the NCP," March 22, 2016, available at <http://www.democracyfirstgroup.org/a-continuation-of-failure-the-auhip-sign-a-unilateral-road-map-agreement-with-the-ncpf>; Sudan Tribune, "Sudan, AUHIP sign Roadmap Agreement, but opposition declines," March 22, 2016, available at <http://www.sudantribune.com/spip.php?article58385>; Dabanga, "Sudan opposition refuse to sign AUHIP roadmap," March 22, 2016, available at <https://www.dabangasudan.org/en/all-news/article/sudan-opposition-refuse-to-sign-auhip-roadmap>. See also Omer Ismail, "Sudan's national 'monologue,'" *Sudan Tribune*, October 24, 2016, available at <http://www.sudantribune.com/spip.php?article56827>.

⁵ See lists of Darfur-related U.S. legislation passed between 2004 and 2013, available from the Save Darfur website at <http://savedarfur.org/take-action/legislation/> (last accessed March 2016).

⁶ U.S. President (William J. Clinton), Executive Order 13067, "Blocking Sudanese Government Property and Prohibiting Transactions With Sudan," sec. 2(b), November 5, 1997, available at <https://www.treasury.gov/resource-center/sanctions/Documents/13067.pdf>; U.S. President (George W. Bush), Executive Order 13400, "Blocking Property of Persons in Connection With the Conflict in Sudan's Darfur Region," April 26, 2006, available at <https://www.treasury.gov/resource-center/sanctions/Documents/13400.pdf>; U.S. President (George W. Bush), Executive Order 13412, "Blocking Property and Prohibiting Transactions With the Government of Sudan," sec. 4(b), October 17, 2006, available at <https://www.treasury.gov/resource-center/sanctions/Documents/13412.pdf>.⁷ The United States has provided more than \$7 billion to the people of Sudan in humanitarian, transition and reconstruction assistance, and peacekeeping support. U.S. State Department Bureau of African Affairs, "U.S. Relations With Sudan," Fact sheet, November 3, 2015, available at <http://www.state.gov/r/pa/ei/bgn/5424.htm>.

⁸ BNP also had to suspend certain banking transactions, terminate a number of executives, and take on additional compliance measures. The case involved a wide range of U.S. and French regulatory and law enforcement agencies. For a summary see the U.S. Justice Department Office of Public Affairs, "BNP Paribas Agrees to Plead Guilty and to Pay \$8.9 Billion for Illegally Processing Financial Transactions for Countries Subject to U.S. Economic Sanctions," Press release, June 30, 2014, available at <https://www.justice.gov/opa/pr/bnp-paribas-agrees-plead>.

guilty-and-pay-89-billion-illegally-processing-financial. The final measures were taken in 2015. Nate Raymond, “BNP Paribas sentenced in \$8.9 billion accord over sanctions violations,” Reuters, May 1, 2015, available at <http://www.reuters.com/article/us-bnp-paribas-settlement-sentencing-idUSKBNONM41K20150501>.

⁹ For a selection of sources and statements see Sudan Tribune, “Arab League renews calls for lift of sanctions on Sudan,” March 12, 2016, available at <http://www.sudantribune.com/spip.php?article58284>; Hamdan Wadi Dldoom, “How US sanctions hurt ordinary Sudanese families,” *The Herald* [Zimbabwe], March 7, 2016, available at <http://www.herald.co.zw/how-us-sanctions-hurt-ordinary-sudanese-families/>; Sudan Vision, via BBC Monitoring, “Sudanese editorial views US stance on ‘increased’ violence in Darfur region,” March 1, 2016; Teresa Walsh, “Stuck on Washington’s Blacklist: Sudan says its designation as a sponsor of terrorism is all politics,” *U.S. News & World Report*, February 23, 2016, available at <http://www.usnews.com/news/the-report/articles/2016-02-23/obama-softens-on-iran-and-cuba-what-about-sudan>; *Akhir Lahzah* newspaper, via BBC Monitoring, “Committee formed to urge USA to lift economic sanctions on Sudan,” February 23, 2016; Philip Giraldi, “Killing by Sanctions,” *The Unz Review*, February 23, 2016, available at <http://www.sudanembassy.org/index.php/news-events/1239-killing-by-sanctions>; Pan African News Agency, “Saudi Arabia leads campaign against US economic sanctions on Sudan,” February 23, 2016; Sudan News Agency, “Finance Minister calls IMF to remedy economic sanctions’ repercussions,” February 22, 2016, available at <http://suna-sd.net/suna/showNews/285520/en>; Sudan News Agency, “Russian Ambassador Appreciates Stances of Sudan in Support of Russia,” February 22, 2016; Sudan News Agency, “Zambia Affirms Its Support to Sudan Efforts to Lift U.S. Sanctions,” February 22, 2016; Sudan Tribune, “Sudan reiterates rejection of U.S. conditions for sanctions lift, hits to stop anti terror cooperation,” February 17, 2016, available at <http://www.sudantribune.com/spip.php?article58036>; Sudan News Agency, via BBC Monitoring, “Sudan invites US Congressmen to visit country in April – official,” February 16, 2016; Sudan Vision, “International Circles Obstruct Development March in Sudan: Parliament Speaker,” February 15, 2016, available at <http://news.sudanvisiondaily.com/details.html?rsnpid=260517>; Mubarak M. Musa, Embassy of the Republic of the Sudan, “Africa Is Not Neutral Towards Sudanese Plight In The Face Of Lifting US Collective Sanctions,” PR Newswire, February 11, 2016, available at <http://www.prnewswire.com/news-releases/africa-is-not-neutral-towards-sudanese-plight-in-the-face-of-lifting-us-collective-sanctions-300219265.html>; Sudan Tribune, “African Union summit to formally demand Washington to lift Sudan sanctions,” January 24, 2016, available at <http://www.sudantribune.com/spip.php?article57788>; African Union Commission Directorate of Information and Communication, “The Commissioner for Political Affairs met with the Sudanese Women’s Organizations of the National Group for Human Rights,” Press release, January 19, 2016, available at http://www.au.int/en/sites/default/files/pr_005_-_swg-19_january_2016.pdf; Sudan Tribune, “UN rapporteur calls for setting timeframe to lift US sanctions on Sudan,” December 1, 2015, available at <http://www.sudantribune.com/spip.php?article57213>; Embassy of the Republic of the Sudan, “Renewal of U.S. National Emergency against Sudan,” PR Newswire, October 31, 2015, available at <http://www.prnewswire.com/news-releases/renewal-of-us-national-emergency-against-sudan-300169879.html>; Embassy of the Republic of the Sudan, “Embassy of the Republic of the Sudan: Renewal of U.S. Sanctions against Sudan is Unjustified Routine,” PR Newswire, October 25, 2015, available at <http://www.prnewswire.com/news-releases/embassy-of-the-republic-of-the-sudan--renewal-of-us-sanctions-against-sudan-is-unjustified-routine-456494133.html>; U.N. General Assembly, “As Sixth Committee Begins Session, Speakers Stress Measures to Combat Terrorism Must Not Diverge from International Law,” Seventieth Session, 1st & 2nd Meetings (AM & PM), GA/L/3496, Press release, October 12, 2015, available at <http://www.un.org/press/en/2015/gal3496.doc.htm>; U.N. Human Rights Council, “Council holds interactive dialogue with Independent Expert on situation of human rights in the Central African Republic,” Press release, September 30, 2015, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16537&LangID=E>.

¹⁰ Faisal Babacar, “National Congress and peg siege,” *Sudanile*, February 11, 2016, available at

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http://www.sudanile.com/index.php?option=com_content&view=article&id=90508:2016-02-11-09-16-09&catid=939&Itemid=55; Haydar Ahmed Khairallah, "Lift and keep the sanctions: national sovereignty crisis," *Al Jazeera*, via Sudanile, February 8, 2016, available at http://www.sudanile.com/index.php?option=com_content&view=article&id=90452:2016-02-08-10-27-51&catid=1008&Itemid=64; Anwar Shambal, "Renewal of economic sanctions," *Hurriyat*, March 18, 2012, available at <http://www.hurriyatsudan.com/?p=57485>; Dalia Haj-Omar, "Khartoum Might Lose Its Grip," *The New York Times*, March 1, 2012, available at <http://www.nytimes.com/roomfordebate/2012/02/29/how-to-prevent-another-darfur/khartoum-might-lose-its-grip>; *Hurriyat*, "Rights groups Sudanese US: lifting of sanctions on the government poses a direct threat to thousands of civilians," August 20, 2011, available at <http://www.hurriyatsudan.com/?p=32991>.

¹¹ Amy Maxmen, "Sudan Sanctions Deprive 'Whole Nation' of Health Care," *FP*, January 14, 2016, available at <http://foreignpolicy.com/2016/01/14/sudan-sanctions-deprive-whole-nation-of-health-care/2/>.

¹² Email exchange with U.S.-based democracy and governance nonprofit program officer, March 2016.

¹³ A broad-based group of 58 nongovernmental organizations recently wrote to the Secretaries of State and Treasury to outline their concerns in detail and request a public statement from the Obama administration, as well as a public dialogue on these challenges. Letter to Jacob L. Lew and John F. Kerry, February 25, 2016, available at http://www.charityandsecurity.org/system/files/Sign%20on%20Ltr%20Fin%20Access_1.pdf. See also, Charity and Security Network, "More than 50 Organizations Ask U.S. Treasury, State for Help with Access to Banking Services," February 24, 2016, available at http://www.charityandsecurity.org/50_Nonprofits_Ask_Treasury.

¹⁴ Interview with Sudanese business leader, January 2016.

¹⁵ *The Reporter* (Addis Ababa), "Ethio-Sudan Growing Ties Paving a Way Towards Economic Integration," *AllAfrica.com*, July 11, 2015, available at <http://allafrica.com/stories/201507141010.html>; *The Economist Intelligence Unit*, "Sudan's economic ties with Ethiopia are deepening," July 18, 2014, available at <http://country.eiu.com/article.aspx?articleid=792035063&Country=Ethiopia&topic=Politics&subtopic=Forecast&subsubtopic=International+relations&u=1&pid=1864031970&oid=1864031970&uid=1>; *Sudan Tribune*, "Sudan becomes second largest investor in Ethiopia after China," July 16, 2014, available at <http://www.sudantribune.com/spip.php?article51698>; Al-Sammani Awadallah, "Sudanese Investments in Ethiopia Hit \$2.4 Billion," *Sudan Vision*, July 13, 2014, available at <http://news.sudanvisiondaily.com/details.html?rsnpid=238197>.

¹⁶ Suliman Baldo, "Exodus from Sudan: The flight of human capital and the growth of a parasitic economy," *Sudan Tribune*, November 21, 2015, available at <http://www.sudantribune.com/spip.php?article57123>; Suliman Baldo, "Beyond the Façades of Khartoum: The rise of Sudan's 'nouveau riche' and increased economic disparity," *Sudan Tribune*, November 22, 2015, available at <http://www.sudantribune.com/spip.php?article57132>.

¹⁷ Dabanga, "'No quick fix for Sudan's hard currency crisis': economist," January 20, 2016, available at <https://www.dabangasudan.org/en/all-news/article/no-quick-fix-for-sudan-s-hard-currency-crisis-economist>; Eric Reeves, "Kleptocracy in Khartoum: Self-Enrichment by the National Islamic Front/National Congress Party," pp. 2, 9 (Washington: Enough Forum, December 2015), available at <http://www.enoughproject.org/reports/enough-forum-kleptocracy-khartoum>.

¹⁸ The World Bank, "Sudan: Overview," available at <http://www.worldbank.org/en/country/sudan/overview> (last accessed March 2016).

¹⁹ *The Sentry*, "Sudan" country brief, July 2015, available at <https://thesentry.org/country-briefs/sudan/>. See also *Global Financial Integrity*, data for Sudan available at <http://www.gfintegrity.org/issues/data-by-country/> (last accessed March 2016); *Transparency International*, 2015 Corruption Perceptions Index data for Sudan available at <http://www.transparency.org/cpi2015#results-table> (last accessed March 2016).

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²⁰ The 2015 African Economic Outlook estimated the public spending on health and education in Sudan was 3.6 percent of the budget in 2014 and was expected to fall to 2.8 percent in 2015. Suwareh Darbo, “Sudan 2015,” pp. 4, 5, 12 (Paris: African Economic Outlook with the African Development Bank, Organization for Economic Cooperation and Development, U.N. Development Programme, 2015), available at http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2015/CN_data/CN_Long_EN/Sudan_GB_2015.pdf. World Bank data (available at <http://data.worldbank.org/indicator/SH.XPD.PUBL.GX.ZS>) indicates that 11.4 percent of government spending in Sudan goes to healthcare. The percentage of total government spending on education in Sudan is not given by the World Bank, but the data on this indicator for other countries is available at <http://data.worldbank.org/indicator/SE.XPD.TOTL.GB.ZS>. All sites were last accessed in March 2016.

²¹ There are few reliable sources estimating the rates of public spending on the military in Sudan. Dr. Siddig Umbadda provides one, noting in a 2014 report, “Expenditure on defense, security and police amounted to about 64% of chapter 1 and 2 (remunerations and procurement of commodities and services) in the 2014 budget, and 62% in 2012.” Siddig Umbadda, “Towards Institutional Reform and Economic Policies Supporting Stability (After Political Reconciliation),” p. 12 (Nairobi: Sudan Democracy First Group, September 2014), available at <http://www.democracyfirstgroup.org/News/Economic%20Policies%20ENGLISH%20FINAL.pdf>. The World Bank provides data on military spending as percentage of gross domestic product and as a percentage of public spending for many countries (available at <http://data.worldbank.org/indicator/MS.MIL.XPND.GD.ZS> and at <http://data.worldbank.org/indicator/MS.MIL.XPND.ZS>) but as of March 2016 these data fields are blank for Sudan. The Stockholm International Peace Research Institute (SIPRI) Military Expenditure Database, available at http://www.sipri.org/research/armaments/milex/milex_database also has no data since 2006 as of March 2016.

²² Sudan Tribune, “Bashir says more money be spent on security and defence,” December 14, 2015, available at <http://www.sudantribune.com/spip.php?article57367>.

²³ As stated by the U.S. Treasury Department in a 2009 report on the effectiveness of Sudan sanctions, “It should be remembered that a sanctions program is but one part of a larger foreign policy toolkit, and any assessment of the effectiveness of sanctions must consider the sanctions in their proper role as an instrument of foreign policy, not as the complete expression of that policy.” As we argue throughout, the Sudan sanctions regime is well-placed to become a critical instrument of an enhanced toolkit. U.S. Treasury Department Office of Foreign Assets Control, “Effectiveness of U.S. Sanctions with Respect to Sudan,” p. 1, report to Congress, January 2009, available at https://www.treasury.gov/resource-center/sanctions/Documents/sudan_report_030509.pdf.

²⁴ The mission statement for The Sentry notes that it “uses open source data collection, field research, and state-of-the-art network data analysis technology, and works in partnership with local and international civil society organizations, journalists, and governments.” The Sentry, “About,” available at <https://thesentry.org/about/> (last accessed March 2016).

²⁵ In general, OFAC defines a “U.S. person” to be U.S. citizens and permanent residents wherever they are located, any persons located within the United States, and entities incorporated or organized in the United States. Title 31 U.S. Code of Federal Regulations (C.F.R.) § 538.315 (2016), available at http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=ac33fb695e20ac08105a0e29efbfc0c3&mc=true&n=pt31.3.538&r=PART&ty=HTML#se31.3.538_1315.

²⁶ The first such measure was the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) of 2010, U.S. Public Law 111-195, available at <https://www.treasury.gov/resource-center/sanctions/Documents/hr2194.pdf>.

²⁷ A 2008 *New York Times* profile noted, “Levey’s pitch was simple: Banks were only as reputable as their clients’ practices. And the reputations of banks that did business with Iran were at risk as long as Iran financed extremists and pursued missile and nuclear technology. More basically, he argued, Iran had bad banking habits, with little

oversight to prevent money laundering.” Robin Wright, “Stuart Levey’s War,” *The New York Times Magazine*, MM 29, October 31, 2008, available at http://www.nytimes.com/2008/11/02/magazine/02IRAN-t.html?_r=1.

²⁸ See, for example, Farmer’s Commercial Bank, “Correspondents Network,” available at <http://www.fcbsudan.com/%D8%A7%D9%84%D9%85%D8%B1%D8%A7%D8%B3%D9%84%D9%88%D9%86.html>; Animal Resources Bank, “Correspondents,” available at <http://ar-bank.sd/ar/cores.html> (last accessed March 2016); Industrial Development Bank, “Annual report 2013,” p. 13, available at <http://idb.sd/wp-content/uploads/2014/07/English-web-.pdf>.

²⁹ The timeframe of two to four months is narrow but reflects the limited window for the Obama administration.

³⁰ Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) of 2010.

³¹ National Defense Authorization Act for Fiscal Year 2012, U.S. Public Law 112-81, available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ndaa_publaw.pdf.

³² For example, CISADA required the Administration to choose from the menu of measures set forth in Section 12 of the Iran Sanctions Act of 1996, U.S. Public Law 104-172, available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/isa_1996.pdf.

³³ For example, the U.S. Treasury Department issued guidance to this effect in the CISADA context. See U.S. Treasury Department, “Treasury Sanctions Kunlun Bank in China and Elaf Bank in Iraq for Business with Designated Iranian Banks,” Press release, July 31, 2012, available at <https://www.treasury.gov/press-center/press-releases/Pages/tg1661.aspx>.

³⁴ Akshaya Kumar, “Fool’s Gold: The Case for Scrutinizing Sudan’s Conflict Gold Trade” (Washington: The Enough Project, March 2015), available at <http://www.enoughproject.org/reports/fools-gold-case-scrutinizing-sudans-conflict-gold-trade>; Omer Ismail and Akshaya Kumar, “Darfur’s Gold Rush: State-Sponsored Atrocities 10 Years After the Genocide” (Washington: The Enough Project, May 2013), available at <http://www.enoughproject.org/reports/darfurs-gold-rush-state-sponsored-atrocities-10-years-after-genocide>.

³⁵ The Enough Project, “Russia Blocks Security Council Sanctions on Darfur Gold,” Press release, February 10, 2016, available at <http://www.enoughproject.org/news/russia-blocks-security-council-sanctions-darfur-gold>.

³⁶ Ambassador Samantha Power, U.S. Permanent Representative to the United Nations “Explanation of Vote at the Adoption of UN Security Council Resolution 2265 on Sudan Sanctions,” U.S. Mission to the United Nations, February 10, 2016, available at <http://usun.state.gov/remarks/7131>.

³⁷ U.S. President (Barack Obama), Executive Order 13722, “Blocking Property of the Government of North Korea and the Workers’ Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea,” March 15, 2016, available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/nk_eo_20160316.pdf; U.S. Secretary of the Treasury, “Determination Pursuant to Subsection 2(a)(i) of the Executive Order of March 16, 2016, ‘Blocking Property of the Government of North Korea and the Workers’ Party of Korea, and

Prohibiting Certain Transactions With Respect to North Korea,’” March 16, 2016, available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/nk_determination_20160316.pdf.

³⁸ Although gold mining in Darfur and other conflict areas in Sudan is largely artisanal at present, the scale indicates the potential for future investment, and this measure would prevent that from occurring.

³⁹ U.S. Treasury Department Office of Foreign Assets Control, “Directive 2 (as amended) Under Executive Order 13662,” September 12, 2014, available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/eo13662_directive2.pdf.

⁴⁰ Evan Weinberger, “Hedge Fund Arm’s Investment Could Flout Sudan Sanctions,” Law 360 blog, March 3, 2016, available at <http://www.law360.com/articles/766253/hedge-fund-arm-s-investment-could-flout-sudan-sanctions>.

⁴¹ OFAC is not the only relevant agency for sanctions enforcement, but it is the principal one. Agencies such as the Commerce Department have civil enforcement authority, and potential criminal activity may be referred to the

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Justice Department. The Commerce Department did recently act against EGYPTAIR for re-exports of two aircraft to Sudan Airways. U.S. Commerce Department Bureau of Industry and Security, “Order relating to EGYPTAIR Airlines Company,” November 2015, available at http://efoia.bis.doc.gov/index.php/component/docman/doc_view/1034-e2443?Itemid=.

⁴² U.S. Treasury Department Office of Foreign Assets Control, “Effectiveness of U.S. Sanctions with Respect to Sudan.”

⁴³ U.S. Treasury Department Office of Foreign Assets Control, “Enforcement information for August 7, 2015,” available at https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20150807_schlumberger.pdf.

⁴⁴ U.S. Treasury Department Office of Foreign Assets Control, “Enforcement information for November 26, 2013,” available at https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20131126_weatherford.pdf.

⁴⁵ U.S. Treasury Department Office of Foreign Assets Control, “Enforcement Information for August 6, 2015,” available at https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20150806_navigators.pdf.

⁴⁶ Provision of insurance and reinsurance services in support of sanctioned activity was the target of secondary sanctions in the Iran context. Iran Freedom and Counter-Proliferation Act of 2012, U.S. Public Law 112-239, available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/pl112_239.pdf. Sanctions enforcement experts say that insurance is relatively easy to diversify away from the United States and Europe, but the reinsurance market—syndicated out to other groups—often include assets with a U.S. nexus. Personal communication with international lawyer specialized in economic sanctions enforcement, Washington, D.C., March 2016.

⁴⁷ U.S. Treasury Department Office of Foreign Assets Control, “Enforcement Information for February 8, 2016,” available at https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20160208_barclays.pdf; Sentry Team, “OFAC: What Banks Don’t Know Can (and Should) Hurt,” Blog post, February 16, 2016, available at <https://thesentry.org/2016/02/16/937/ofac-what-banks-dont-know-can-and-should-hurt/>. In addition to the financial penalties themselves, the follow-on costs of an OFAC enforcement action are often far higher than the fines imposed. Entities must conduct internal audits or investigations, implement enhanced OFAC compliance programs, deal with litigation associated with any employee/contract terminations, and face reputational damage.

⁴⁸ Financial Action Task Force (FATF), “Laundering the Proceeds of Corruption” (Paris: July 2011), available at <http://www.fatf-gafi.org/publications/methodsandtrends/documents/laudingtheproceedsofcorruption.html>.

⁴⁹ Anti-corruption criteria exist for a number of sanctions programs, such as Venezuela and Zimbabwe. U.S. President (Barack Obama) Executive Order 13692, “Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela,” March 8, 2015, available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/venezuela_eo.pdf; U.S. President (George W. Bush) Executive Order 13469, “Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe,” July 25, 2008, available at <https://www.treasury.gov/resource-center/sanctions/Documents/13469.pdf>. If enacted, which the Enough Project strongly supports, the Global Magnitsky Human Rights Accountability Act, S. 284/H.R. 624, would also provide critically important authority as well as Congressional oversight and involvement for this type of sanctions measure. Text available at <https://www.congress.gov/bill/114th-congress/senate-bill/284/text>.

⁵⁰ The Sentry, “Sudan” country brief.

⁵¹ Financial Action Task Force (FATF) and the Asia/Pacific Group on Money Laundering (APG), “Money laundering / terrorist financing risks and vulnerabilities associated with gold” (Paris and Sydney: July 2015), available at <http://www.fatf-gafi.org/media/fatf/documents/reports/ML-TF-risks-vulnerabilities-associated-with-gold.pdf>.

⁵² Afua Hirsch, “WikiLeaks cables: Sudanese president ‘stashed \$9bn in UK banks,’” *The Guardian*, December 17, 2010, available at <http://www.theguardian.com/world/2010/dec/17/wikileaks-sudanese-president-cash-london>; The Guardian, “US embassy cables: ICC prosecutor alleges Bashir secret fortune of \$9bn,” cable dated March 24,

2009, posted by *The Guardian* on December 17, 2010, available at <http://www.theguardian.com/world/us-embassy-cables-documents/198641>.

⁵³ Liat Shetret, Tracey Durner, Danielle Cotter and Patrick Tobin, “Tracking Progress: Anti-Money Laundering and Countering the Financing of Terrorism in East Africa and the Greater Horn of Africa,” pp. 49-54 (Goshen, Indiana: Global Center on Cooperative Security, March 2015), available at <http://www.globalcenter.org/wp-content/uploads/2015/03/Tracking-Progress-low-res.pdf>.

⁵⁴ Financial Action Task Force (FATF), “Public statement,” [regarding Iran, Democratic People’s Republic of Korea (DPRK), Myanmar] October 23, 2015, available at <http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/public-statement-october-2015.html>.

⁵⁵ See the following for an example of an advisory identifying possible money laundering risks in a specific jurisdiction with respect to North Korea: U.S. Treasury Department Financial Crimes Enforcement Network, “Update on the Continuing Illicit Finance Threat Emanating from North Korea,” Advisory FIN-2013-A005, July 1, 2013, available at https://www.fincen.gov/statutes_regs/guidance/html/FIN-2013-A005.html.

⁵⁶ Title 31 U.S. Code of Federal Regulations (C.F.R.) § 538.521 (2016), available at http://www.ecfr.gov/cgi-bin/text-idx?SID=f1eed67bd9de734fc5f5f8a64285475e&mc=true&node=se31.3.538_1521&rgn=div8.

⁵⁷ 31 C.F.R. § 538.523 (2016), available at http://www.ecfr.gov/cgi-bin/text-idx?SID=f1eed67bd9de734fc5f5f8a64285475e&mc=true&node=se31.3.538_1523&rgn=div8.

⁵⁸ 31 C.F.R. § 538.533 (2016), available at http://www.ecfr.gov/cgi-bin/text-idx?SID=f1eed67bd9de734fc5f5f8a64285475e&mc=true&node=se31.3.538_1533&rgn=div8.

⁵⁹ Proactive federal outreach with state financial authorities—which are arguably as powerful and fear-inducing if not more so—is particularly important to ensure that the practices at the state level are consistent with updated federal guidelines and do not lead to further de-risking of approved parties. Personal communication with international lawyer specialized in economic sanctions enforcement, Washington, D.C., March 2016.

⁶⁰ Tracey Durner and Liat Shetret, “Understanding bank de-risking and its effects on financial inclusion” (Oxford: Global Center on Cooperative Security and Oxfam, November 2015), available at https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/rr-bank-de-risking-181115-en_0.pdf.

⁶¹ Ian McKendry, “Treasury to Banks: Derisking Is Your Problem to Solve,” *American Banker*, November 13, 2015, available at <http://www.americanbanker.com/news/law-regulation/treasury-to-banks-de-risking-is-your-problem-to-solve-1077844-1.html>.

⁶² The non-enforcement approach has been attempted with Somalia, specifically with respect to provision of services that could benefit al-Shabaab. U.S. Treasury Department Office of Foreign Assets Control, “Frequently Asked Questions Regarding Private Relief Efforts in Somalia,” August 4, 2011, available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/somalia_faq.pdf. This measure produced mixed results, at best, but could be developed further in this context, where the circumstances of possible violations would arguably be more clear.

⁶³ *The Economist*, “Poor correspondents: Big banks are cutting off customers and retreating from markets for fear of offending regulators,” June 14, 2014, available at <http://www.economist.com/news/finance-and-economics/21604183-big-banks-are-cutting-customers-and-retreating-markets-fear>.

⁶⁴ Darbo, “Sudan 2015,” pp. 4, 5, 12.

⁶⁵ Trade Sanctions Reform and Export Enhancement Act of 2000, Title IX of Public Law 106-387, available at <https://www.treasury.gov/resource-center/sanctions/Documents/tsra.pdf>.

⁶⁶ Iranian Transactions Regulations; Final Rule, 31 C.F.R. Part 560 (2012), available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/fr77_64664.pdf.

⁶⁷ Iranian Transactions and Sanctions Regulations; Final Rule, 31 C.F.R. Part 560 (2014), available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/fr79_18990.pdf.

⁶⁸ In addition to a comprehensive regulatory review, this could also include entirely internal matters to OFAC, such as ensuring the clearance process for a licensing file is as expeditious as possible.⁶⁹ U.S. State Department Bureau of Democracy, Human Rights and Labor Office of Policy Planning and Public Diplomacy, “Responsible Investment Reporting Requirements,” [for Burma] OMB NO. 1405-0209, <http://www.humanrights.gov/wp-content/uploads/2013/05/responsible-investment-reporting-requirements-final.pdf>.

⁷⁰ Vicky Bowman, “New reports under the State Department’s Burma reporting requirements underline the importance of thorough due diligence,” Myanmar Centre for Responsible Business, July 3, 2015, available at <http://www.myanmar-responsiblebusiness.org/news/importance-of-thorough-due-diligence.html>.

⁷¹ General Electric Company, “Report on Responsible Investment in Myanmar,” February 19, 2016, available at <http://photos.state.gov/libraries/burma/895/pdf/GE%20Public%20Report%20MM%20Feb-15-2016.pdf>.

⁷² For background on the National Action Plan see U.S. State Department Bureau of Democracy, Human Rights and Labor Office of Policy Planning and Public Diplomacy, “USG National Action Plan on Responsible Business Conduct: Frequently Asked Questions,” February 12, 2015, available at <http://www.humanrights.gov/dyn/2015/usg-national-action-plan-on-responsible-business-conduct/>.

⁷³ The reports by General Electric, Western Union, and Coca Cola all provide insight in to the important level of detail that can be obtained. These reports are all available at <http://burma.usembassy.gov/reporting-requirements.html>.

⁷⁴ 31 C.F.R. § 538.533 (2016), available at http://www.ecfr.gov/cgi-bin/text-idx?SID=f1eed67bd9de734fc5f5f8a64285475e&mc=true&node=se31.3.538_1533&rgn=div8.

⁷⁵ U.S. Treasury Department Office of Foreign Assets Control, “Sudanese Sanctions Regulations: 31 C.F.R. Part 538: General License No. IA: Certain Academic and Professional Exchanges Authorized,” August 7, 2014, available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/sudan_gl1a.pdf.

⁷⁶ 31 C.F.R. § 515.564 (2016), available at http://www.ecfr.gov/cgi-bin/text-idx?SID=f1eed67bd9de734fc5f5f8a64285475e&mc=true&node=se31.3.515_1564&rgn=div8; 31 C.F.R. § 560.554 (2016), available at http://www.ecfr.gov/cgi-bin/text-idx?SID=f1eed67bd9de734fc5f5f8a64285475e&mc=true&node=se31.3.560_1554&rgn=div8.

⁷⁷ 31 C.F.R. § 560.544 (2016), available at http://www.ecfr.gov/cgi-bin/text-idx?SID=f1eed67bd9de734fc5f5f8a64285475e&mc=true&node=se31.3.560_1544&rgn=div8.

⁷⁸ 31 C.F.R. § 515.564 (2016), available at http://www.ecfr.gov/cgi-bin/text-idx?SID=f1eed67bd9de734fc5f5f8a64285475e&mc=true&node=se31.3.515_1564&rgn=div8.

⁷⁹ 31 C.F.R. § 560.545 (2016), available at http://www.ecfr.gov/cgi-bin/text-idx?SID=f1eed67bd9de734fc5f5f8a64285475e&mc=true&node=se31.3.560_1545&rgn=div8. In the Iran context, this provision allows for the issuance of specific licenses, but it could be expanded to a general license.

⁸⁰ U.S. Treasury Department Office of Foreign Assets Control, “Iranian Transactions and Sanctions Regulations: 31 C.F.R. Part 560: General License F: Authorizing Certain Services in Support of Professional and Amateur Sports Activities and Exchanges Involving the United States and Iran,” September 10, 2013, available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_glf.pdf.

⁸¹ Iran Threat Reduction and Syria Human Rights Act of 2012, U.S. Public Law 112-158, available at https://www.treasury.gov/resource-center/sanctions/Documents/hr_1905_pl_112_158.pdf

⁸² U.S. Treasury Department Office of Foreign Assets Control, “Iranian Transactions and Sanctions Regulations (31 C.F.R. Part 560): Statement of Licensing Procedure on Support of Human Rights-, Humanitarian-, and Democracy Related activities with Respect to Iran,” available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/statement_of_pol_hr_10222012.pdf.

⁸³ U.S. Commerce Department Bureau of Industry and Security, “Sudan eligible for License Exception Consumer Communication Devices,” available at <https://www.bis.doc.gov/index.php/policy-guidance/country-guidance/sanctioned-destinations/sudan> (last accessed March 2016).

⁸⁴ Richard Pace, “Sudan, State Sponsors of Terrorism: Hires D.C. Lobbyist Bart Fisher Again,” Everything PR, August 13, 2015, available at <http://everything-pr.com/bart-fisher-omni-advisors-sudan-lobbyist/>; Tarini Parti, “Turkey hires Squire Patton Boggs — Sudan hires Omni Advisors to seek debt relief — Rational 360 promotes Bartlett to VP,” Politico, August 12, 2015, available at <http://www.politico.com/tipsheets/politico-influence/2015/08/turkey-hires-squire-patton-boggs-sudan-hires-omni-advisors-to-seek-debt-relief-rational-360-promotes-bartlett-to-vp-212543>; Sunlight Foundation Reporting Group, “Patton Boggs LLP for U.S.-Sudan Business Council,” March 3, 2015, available at <http://reporting.sunlightfoundation.com/lobbying/firm/patton-boggs-llp/24CDBAC3-C3DA-42FC-8C91-198096F09116>.

⁸⁵ Umbadda, “Towards Institutional Reform and Economic Policies Supporting Stability,” p. 12.

⁸⁶ U.S. Commerce Department Bureau of Industry and Security, “Sudan eligible for License Exception Consumer Communication Devices,” available at <https://www.bis.doc.gov/index.php/policy-guidance/country-guidance/sanctioned-destinations/sudan> (last accessed March 2016).

⁸⁷ U.S. State Department, “State Sponsors of Terrorism,” available at <http://www.state.gov/j/ct/list/c14151.htm> (last accessed March 2016). The Terrorism List Governments Sanctions Regulations are set forth at 31 C.F.R. Part 596.

⁸⁸ U.N. Office for the Coordination of Humanitarian Affairs, “Jebel Marra Crisis Fact Sheet,” March 10, 2016, available at http://reliefweb.int/sites/reliefweb.int/files/resources/Jebel_Marra_Crisis_Fact_Sheet_10_Mar_2016.pdf.

⁸⁹ Akshaya Kumar and Omer Ismail, “Janjaweed Reincarnate: Sudan’s New Army of War Criminals” (Washington: The Enough Project, June 2014), available at <http://www.enoughproject.org/reports/janjaweed-reincarnate-sudan%E2%80%99s-new-army-war-criminals>.