

Time to Repeal U.S. Sanctions on Sudan?

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I. Overview

Decision time is fast approaching for U.S. policy toward Sudan. By 12 July 2017, the Trump administration must determine whether to permanently lift the economic and trade sanctions its predecessor suspended in January. This is not an easy choice. Sudan's government has gone some way toward meeting U.S. criteria for sanctions relief. But its progress, particularly on humanitarian access and ceasing hostilities in its internal conflicts, at best is partial and President Omar al-Bashir's government remains autocratic, corrupt and abusive. To lift sanctions would reward a regime that must do much more to improve governance and end its wars; not to do so could lead to a reversal of advances made and discourage further cooperation. On balance, lifting sanctions is the better of two imperfect options, particularly if coupled with clear signals that far more is needed for the government to escape those sanctions that will remain in force and obtain debt relief. The U.S. should also make clear that it stands ready to impose new targeted financial sanctions should Khartoum renege on its commitments.

By 2015, after decades of an estranged and hostile relationship, the U.S. opted for a cautious engagement strategy. Thanks to a series of high-level bilateral meetings, the two sides clarified steps Khartoum would take. This culminated in the 13 January 2017 announcement by the U.S. that it temporarily would lift certain specified sanctions based on positive actions that had been taken over the preceding six months, and would permanently repeal them if progress were sustained over the subsequent six months. It listed five tracks on which advances would be gauged: counterterrorism cooperation; addressing the threat of the Lord's Resistance Army (LRA); ending hostilities in the "Two Areas" (South Kordofan and Blue Nile) and Darfur; improving humanitarian access; and ending negative interference in South Sudan. The arrangement broke an impasse born of mutual mistrust – Washington's deep scepticism that Khartoum's conduct would ever change, and Sudan's profound doubts that the U.S. would ever be satisfied if it did.

Criteria for obtaining a passing grade are open to interpretation, which simultaneously gives the administration some leeway and guarantees a hotly contested decision no matter where it ends up. The first track appears to be the clearest cut: for years Sudan has cooperated with the U.S. on counter-terrorism, mostly through intelligence sharing; it also apparently has ceased for some time to lend support to

groups the U.S. designates as terrorists. On the LRA, now a much-diminished force, Sudan appears to be cooperating with, or at least not hindering, regional and U.S. backed counter-insurgency efforts. Khartoum likewise appears to have almost entirely refrained from channelling significant military support to armed groups fighting the South Sudan government.

Questions arise regarding the remaining two tracks – Sudan's internal wars and humanitarian access. Most observers likely would conclude that Khartoum has made some, albeit incomplete, progress. Over the past six months, the government has not launched any new military offensive in the Two Areas or Darfur and has largely – albeit not entirely – maintained its unilateral ceasefire. That said, insecurity and violence remain in both regions, in part because Khartoum is unable or unwilling to adequately control pro-government militias it armed to fight the rebels. In terms of humanitarian access, the government has begun, in cooperation with international organisations, to implement a new system gradually making it somewhat less onerous for relief organisations to reach new areas in need. But it is far from the unfettered access that Washington wants and the Sudanese people deserve.

In short, this comes down to a difficult judgement call: will repealing sanctions encourage progress, or will it play into the hands of an unreconstructed regime? There is understandable reluctance to take this step. Yet it would be a mistake to stop this process in its tracks. The record of the past several decades explains why the U.S. chose to test the path of deliberate and conditional engagement, and why it still is worth pursuing today. The steps taken by Khartoum are altogether real, modest and reversible, far from what would be needed for Sudan to correct its behaviour but more than comprehensive trade and economic sanctions had achieved in years past. The effectiveness of economic penalties in isolating Sudan is doubtful, especially now that it has improved ties with its direct neighbours, with Europe and – in exchange for a serious downgrade in Khartoum's relations with Tehran – with Gulf Arab states.

But the strongest argument to repeal the sanctions flows from what would happen if the U.S. chose not to. With some justification, Khartoum and its regional allies believe Washington has a history of moving goalposts in issuing demands; in their eyes, a decision to reinstate sanctions would further confirm this, discouraging any future steps and jeopardising those already taken. Worse, it might even bolster the argument in Khartoum that restraint has not paid off, and that the better course is to seek a military solution against weakened rebels in the Two Areas and Darfur.

Some have argued for an alternative option: to suspend sanctions for another six months, thereby signalling both dissatisfaction with Khartoum and hope that it could still meet the requisite bar. The compromise solution has merit, but it would be a half measure and, like all half measures, fail to entirely satisfy anyone: some would argue that Sudan still was being rewarded, others that the U.S. once again was breaking its word. Rather than give the process added impetus and set the stage for a more ambitious set of benchmarks, it would perpetuate an inadequate status quo.

Besides, repealing the sanctions would not leave the U.S. bereft of economic and political tools. There is much that Sudan wants that it still will not get: the return of a U.S. ambassador to Khartoum; removal of the country from the list of state sponsors of terrorism; and Washington's acquiescence to badly needed debt relief. For Sudan to achieve those goals, the U.S. could both make clear Khartoum needs to do far more

(including verifiable, unfettered humanitarian access and good faith efforts to end conflicts in the Two Areas and Darfur) and – with a repeal decision behind it – credibly assert that Washington will reward better behaviour. Finally, should the regime backtrack on the steps it has taken, the U.S. could do more than merely re-impose the suspended sanctions; it could put in place more effective, targeted financial sanctions for which some in the advocacy community have been calling.

There are no guarantees that this approach will work. At best, a decision to lift sanctions would be only the first and partial step on a much longer road. But the sanctions were not producing their intended effect, were disproportionately hurting ordinary Sudanese, and provided the government an excuse for its poor economic performance. The process of suspending them has prompted at least some improvements, without squandering Washington's leverage to achieve more. Repealing these particular sanctions is a risk worth taking.

II. U.S. Sanctions on Sudan

As with other U.S. sanctions regimes, those imposed on Sudan throughout the 1990s and 2000s generated a complex web of penalties which will prove hard to disentangle. Imposed successively in 1993, 1997 and 2006, they were a response to reprehensible and in some cases egregious foreign and domestic policies, with the aim of changing both Khartoum's support for international terrorism and the widespread human rights violations it committed fighting internal opponents.

After the National Islamic Front (NIF) seized power in 1989, Khartoum developed links with and in some cases hosted Islamist movements and individuals implicated in attacks abroad. In 1993, largely on grounds that Sudan was harbouring Osama Bin Laden, the U.S. State Department designated it a state sponsor of terrorism. In 1997, in response to Khartoum's continued support for U.S.-designated terrorist groups and its long-running brutal war against the mostly Christian and animist South as it battled the Sudan People's Liberation Movement/Army (SPLM/A), President Bill Clinton signed Executive Order (EO) 13067 which described Sudan as "an unusual and extraordinary threat to the national security and foreign policy of the United States". As a result, individuals serving in the government were blocked

¹ Among groups and individuals deemed to be terrorists by the U.S. and that benefitted from Sudanese support: Hamas; the Palestinian Islamic Jihad (PIJ); Hizbollah; the Egyptian Islamic Jihad, and Osama Bin Laden, who resided in Khartoum between 1991 and 1995. Sudan also was accused of harbouring individuals suspected of attempting to assassinate Egypt's President Hosni Mubarak during a 1996 visit to Addis Abeba. Al-Qaeda operatives living in Sudan likewise allegedly were involved in the 1998 bombing of U.S. embassies in Kenya and Tanzania.

² This designation imposes restrictions on U.S. foreign assistance; bans defence exports and sales; imposes controls over exports of dual use items; and imposes miscellaneous financial and other restrictions. U.S. Department of State, "U.S. Country Reports on Terrorism", (www.state.gov).

³ The SPLM/A attracted strong support from U.S. advocacy organisations and enjoyed, at different times, the backing of regional states, particularly Eritrea, Ethiopia and Uganda, concerned about what they viewed as Khartoum's expansionist Islamist agenda. See "How to Handle Your Neighbour's Conflict: Ethiopia's Relations with Sudan and South Sudan", UNISCI Discussion Papers, no. 33, October 2013. Khartoum responded in part by supporting other armed groups, including the Lord's Resistance Army in Uganda, to destabilise its near enemies.

from owning property in the U.S.; Sudanese people or companies were prevented from exporting or importing goods to and from the U.S.; and U.S. citizens were banned from participating in the work of any organisation or company that did this.⁴ EO 13067 is one of two executive orders at issue in the ongoing review process.

Later, in 2002, the U.S. Congress passed the Sudan Peace Act, also motivated primarily by the war in the South, which required U.S. representatives in international financial institutions to vote against – and thus in effect block – any loans or credits to Sudan. Four years later, in 2006, the administration of President George W. Bush imposed yet another set of sanctions –EOs 13400 and 13412. EO 13400 targeted both government and rebels involved in the Darfur conflict, preventing them from owning property in the U.S. 6

EO 13412 – the other order implicated in the current review process – tightened earlier sanctions, blocking the Sudanese government from holding property or other interests in the U.S., and banning all transactions by U.S. citizens related to the country's oil industry.⁷ The U.S. justified these measures by pointing to the brutality of Khartoum's militia-led counter-insurgency response to the Darfur rebellion, which provoked a powerful public outcry in the U.S. and Europe, and which the U.S. labelled a genocide in 2004.⁸ That same year, the UN Security Council imposed an arms embargo on non-state actors in Darfur (targeting both government-backed militia and rebels).⁹ It extended sanctions in March 2005 by adding an arms embargo on government forces in Darfur, as well as a travel ban and assets freeze on individuals designated by the sanctions committee.¹⁰ In 2009, the International Criminal Court (ICC) indicted President Bashir, and several other senior political and security officials on charges of war crimes, crimes against humanity and genocide.¹¹

At the same time Khartoum was fighting in Darfur, it was negotiating the 2005 Comprehensive Peace Agreement (CPA) with the Sudan People's Liberation Movement/Army (SPLM/A) in the South. The CPA included a provision for the South to hold a referendum on self-determination in 2011. It was in this context that, in return for Sudan's allowing the referendum to proceed unhindered, the Obama administration offered to review Sudan's listing as a state sponsor of terrorism, along with incentives ranging from modest steps such as delivery of agricultural equipment to more sweeping measures, including debt relief and normalised diplo-

⁴ EO 13067, Federal register, vol. 62, no. 5, 5 November 1997.

 $^{^{5}}$ U.S. Department of State, "Sudan Peace Act", 21 October 2002.

⁶ EO 13400, Federal Register, vol. 71, no. 83, 1 May 2006.

 $^{^7}$ EO 13412, Federal Register, vol. 71, no. 200, 17 October 2006.

⁸ "U.S. calls killings in Sudan genocide", *Washington Post*, 10 September 2004.

⁹ Resolution 1556, UNSC S/RES/1556, 30 July 2004. The EU also expanded its 1994 arms embargo on Sudan to include technical military assistance. European Union Council Common Position 2004/31/CFSP, 9 January 2004.

 $^{^{10}}$ Resolution 1591, UNSC S/RES/1591, 29 March 2005. A separate resolution referred the situation in Darfur to the prosecutor of the International Criminal Court. Resolution 1593, UNSC S/RES/1993, 31 March 2005.

¹¹ "Warrant of Arrest for Omar Hassan Ahmad Al Bashir", ICC, 4 March 2009.

¹² The U.S. was heavily involved in facilitating the CPA. Because negotiations were well advanced when war broke out in Darfur, it was decided to treat that conflict separately.

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matic relations. ¹³ On 9 July 2011, South Sudan gained independence. However, both sides quickly proceeded to breach the terms of the agreement on secession that grew out of the CPA – Juba continued to provide salaries and military support to SPLA forces remaining in Sudan while Khartoum sent troops into the disputed Abyei region.

The combination of those actions, continued fighting in Darfur and the resumption of war between the regime and what became the SPLA-North in the Two Areas diminished Washington's willingness to remove sanctions even though Sudan had allowed South Sudan's independence. This led Khartoum to accuse the U.S. of "moving the goalposts" and reneging on its promises. ¹⁴ U.S. officials reply that, in reality, Khartoum had "shift[ed] the playing field, rather than us moving the goalposts". ¹⁵ Sanctions were kept in place. Sudanese leaders and some others in the region, including U.S. allies, saw this as backtracking, a legacy that colours their perceptions of the U.S. ¹⁶

After intense debates within the Obama administration, Washington beginning in 2015 decided to test whether engaging Khartoum through a series of bilateral talks could produce an agreed pathway toward sanctions repeal contingent on specific Sudanese steps. Washington was motivated in part by the desire to ensure continued cooperation on counter-terrorism, ¹⁷ but it demanded shifts in other areas as well. In June 2016 the two sides agreed on a roadmap that entailed a series of steps and a process for assessing whether these had been taken.

The first results appeared in January 2017. Citing "sustained progress by the Sudanese government on several fronts, including a marked reduction in offensive military activity, a pledge to maintain a cessation of hostilities in conflict areas in Sudan, steps toward improving humanitarian access throughout Sudan, and cooperation with U.S. on counter-terrorism and addressing regional conflicts", President Obama issued EO 13761 which revoked key sections of EO 13067 and EO 13412. ¹⁸ At the same time, he deferred the decision on lifting those sanctions permanently until 12 July to allow more time to test whether their easing would promote continued improvement. Important sanctions related to Darfur have remained untouched as

¹³ James Copnall, A Poisonous Thorn in Our Hearts: Sudan and South Sudan's Bitter and Incomplete Divorce (London, 2014), pp. 184-185.

¹⁴ "U.S.-Sudan Relations", Special Envoy Princeton Lyman speech at the Michael Ansari Center of the Atlantic Council, 1 August 2012.

 $^{^{15}}$ "U.S. Special Envoy Speaks on Sudan and South Sudan", Special Envoy Donald Booth at the U.S. Institute of Peace, 18 January 2017.

¹⁶ See A Poisonous Thorn in Our Hearts, op. cit. pp. 184-185.

¹⁷ As early as 2004, Sudan had been removed from a list of countries that were "not fully cooperating" in counter-terrorism efforts, and in 2007, the State Department said that Sudan had become "a strong partner in the War on Terror", U.S. Department of State, "U.S. Country Reports on Terrorism 2004", 27 April 2005; 2006, 30 April 2007 (www.state.gov).

¹⁸ "EO 13761 – Recognizing Positive Actions by the Government of Sudan and Providing for the Revocation of Certain Sudan-Related Sanctions", 13 January 2017; "Sudan and Darfur Sanctions". On 17 January, the treasury department issued a general license authorising all transactions previously prohibited under the Sudan Sanctions Regulations. EO 13761 "provides for revocation of sanctions provisions in EOs 13067 and 13412 on 12 July 2017 if the Government of Sudan sustains positive actions it has taken over the last 6 months". The Office of Foreign Assets Control (OFAC) within the U.S. Treasury Department also amended relevant regulations, meaning that "U.S. persons will generally be able to transact with individuals and entities in Sudan, and the property of the Government of Sudan subject to U.S. jurisdiction will be unblocked".

does, importantly, Sudan's designation as a state sponsor of terrorism and the congressional sanctions imposed by the 2002 Sudan Peace Act, which includes a block on crucial U.S. support for debt relief.¹⁹

III. Assessing Sudan's Progress on the Five Tracks

The decision whether to permanently lift those sanctions currently suspended, which is to be made by 12 July, rests on Sudan having sustained through the first half of 2017 the "positive actions" U.S. officials assessed it had made in the latter half of 2016. As defined by Washington, that assessment is to be measured along five tracks: cooperation on counter-terrorism; addressing the LRA threat; ending hostilities in the Two Areas and Darfur; improving humanitarian access; and ending negative interference in South Sudan. According to a senior Sudanese official, meetings to assess progress on the five tracks involved one official from each of the two sides, with locations alternating between Khartoum and Washington.²⁰

The yardstick the U.S. plans to use in this determination has been left deliberately vague; it is not clear how much progress must be made nor whether the evaluation will be holistic or require minimum progress on each individual track. This provides the administration with flexibility but also inevitably will make its decision a target of criticism from one side or the other. As of this writing, the U.S. administration was in the midst of an interagency review of progress on the five tracks. The end result is expected to be a public report, with classified annexes, which will inform a senior level decision on whether to permanently lift the sanctions.

A. Track 1: Counter-terrorism

Many of Bashir's domestic and international opponents believe that the imperative of ensuring continued counter-terrorism cooperation was the principal factor motivating the U.S. to consider repealing sanctions; certainly U.S. intelligence agencies were among the most forceful advocates of a change in approach.²¹ Khartoum has been keen to advertise its credentials as an ally against ISIS and al-Qaeda-linked groups, though how valuable its help has been is a matter of debate.²² On this score at least, Khartoum has met U.S. requirements with cooperation being described as "active".²³ Khartoum's counter-terrorism cooperation predates by many years the past six months' sanctions repeal process, having begun soon after the 11 September

¹⁹ Ibid. The Sudan Peace Act (2002) instructs "U.S. executive directors [of international financial institutions] to vote against and actively oppose loans, credits, and guarantees by international financial institutions". Sudan Peace Act, op. cit.

²⁰ Crisis Group interview, June 2017.

²¹ Crisis Group interviews, Sudanese opposition-aligned civil society; SPLM-N leadership, Nairobi, Kampala, London, January-March 2017; former U.S. officials, Washington, January-June 2017.

²² Crisis Group email exchange, former senior U.S. diplomat, 15 October 2015; interview, expert on Islamist groups in Somalia, 22 March 2017.

²³ Crisis Group Skype interview, U.S. official, 18 April 2017.

2001 attacks. If anything, it is Sudan's designation as a terrorism sponsor that appears ever more an anachronism.²⁴

B. Track 2: Lord's Resistance Army (LRA)

Khartoum is expected to prevent the Ugandan rebel LRA from operating within its territory. On this front, too, the record seems broadly positive. Much of this has less to do with Sudan's performance than with the LRA's decline; while it still represents a threat to the region, it is a much-diminished force, with latest estimates suggesting only a few hundred fighters remaining. ²⁵ Eradicating the LRA remains a U.S. goal, although both U.S. and regional efforts, particularly Uganda's, are being scaled back. ²⁶ Sudan used the LRA in the 1990s as a proxy to fight the Sudan People's Liberation Army (SPLA) in southern Sudan and Uganda. It also reportedly gave the group sanctuary from 2009-2013 in Kafia Kingi, a disputed region under Sudanese control on the border with South Sudan and the Central African Republic. ²⁷ Since then, however, Khartoum is believed to have distanced itself from the LRA and, in March 2017, showed signs of willingness to cooperate with regional efforts to eradicate the group when the chief of the armed forces attended a meeting of the Regional Cooperation Initiative for the Elimination of the Lord's Resistance Army (RCI-LRA).

C. Track 3: Ceasing Hostilities in Darfur and the Two Areas

If progress can be ascertained with relative clarity for the first two tracks, the third – refraining from military offensives in the Two Areas and Darfur – is more complex. Beginning in January 2016, Khartoum announced a series of unilateral ceasefires both in the Two Areas and in Darfur. The most significant outcome was the government's decision not to launch a "dry season" offensive in the Two Areas in 2016-2017

²⁴ According to the U.S., State Department: "In 2014, members of Hamas were allowed to raise funds, travel, and live in Sudan. However, in 2015 the use of Sudan by Palestinian designated terrorist groups appeared to have declined. The last known shipment was the Israeli-interdicted KLOS-C in 2014". U.S. Department of State, "State Sponsors of Terrorism", op. cit.

²⁵ "Sudan Joins African Union Anti-LRA Meetings", Sudan Vision, 30 March 2017; "Dominic Ongwen's Domino Effect", LRA Crisis Tracker, January 2017.

²⁶ "Hunt for Joseph Kony, no longer seen as a threat, may shrink", *New York Times*, 22 March 2017. In April 2017 Uganda began to withdraw its troops from the CAR, where they had been stationed since 2009 as part of the Lord's Resistance Army-Regional Task Force (LRA-RTF). "UPDF withdraws from Central African Republic", *Daily Monitor*, 19 April 2017. The African Union warns the LRA remains a threat. "Why is the AU going it alone in fighting the LRA?", ISS Peace and Security Council Report, 24 May 2017.

²⁷ "Hidden in Plain Sight: Sudan's Harboring of the LRA in the Kafia Kingi Enclave, 2009-2013", The Resolve, Invisible Children and the Enough Project, 20 April 2013. Sudan reportedly allowed U.S. personnel to visit Kafia Kingi. Crisis Group interviews, Washington, January-March 2017.

²⁸ This is also a precondition of the African Union (AU) peace process between the government and the Sudanese opposition based on the August 2016 Roadmap agreement, which set out a series of principles for further negotiations. "AUHIP Roadmap Agreement", African Union Peace and Security Council, 8 August 2016; Crisis Group Skype interview, U.S. government official, 18 February 2017; "U.S. Special Envoy Speaks on Sudan and South Sudan", op. cit.

(an annual occurrence since the war's start in 2011). Since January 2017, there has been little fighting, with only a few relatively minor recorded incidents.²⁹

Violent incidents that have occurred — for example mid-February clashes in South Kordofan that the Sudanese People's Liberation Movement-North (SPLM-N) initially described as the start of a Sudanese military offensive (an accusation it later withdrew) — seem to have been localised skirmishes over resources (generally cattle raids) between loosely aligned militias. ³⁰ These may on occasion have involved members of the Sudan Armed Forces (SAF) or the SPLM-N, although they should not be construed as significant offensive operations launched by either side. ³¹ Fighting also broke out in camps in Maban county, South Sudan, which house refugees from Blue Nile state. This appears to pit the Mabanese host community against the refugees, with unconfirmed allegations of involvement by Sudanese-governmentaligned militia. ³² This violence is a result of long-term conflict in the state, but does not appear to be the direct result of government action.

The security situation in Darfur also remains fragile, despite broad adherence to the ceasefire by both rebels and the government. The last major government offensive occurred in February-June 2016 and was led against Sudan Liberation Movement-Abdelwahid (SLM-AW) forces in the Jebel Marra. Although the fighting displaced more than 100,000 civilians and government forces reportedly committed brutal human rights violations, it took place prior to the start of the sanctions repeal process. ³³ Since then, there has been little conflict. Having suffered major setbacks in 2015 and 2016 the rebel groups presently are weak and mostly based outside of Darfur, in either South Sudan or southern Libya. ³⁴

There is one exception: a series of battles in May 2017 between the Sudan Liberation Movement-Minni Minawi (SLM-MM) and SLM-Transitional Council (a splinter group from the SLM-AW) on one side and the Sudanese army and Rapid Support Forces (RSF) militia on the other. The circumstances are complex: clashes occurred after a large SLM-MM contingent that was ordered by Juba to leave South Sudan (a step that reflected improved security cooperation between Sudan and South Sudan) entered Darfur in armed convoys. ³⁵ Simultaneously, or shortly thereafter, a second SLM-MM armed convoy entered North Darfur from bases in southern Libya, presumably in an effort to help their comrades. ³⁶ Both convoys were attacked, and defeated, by significantly larger and more powerful government forces in the

²⁹ See "South Kordofan and Blue Nile Coordination Unit Humanitarian Updates", South Kordofan and Blue Nile Coordination Unit (hsbcsudan.com), February-May 2017.

 $^{^{30}}$ "The Sudanese army and its allied militias started their military offensive against the SPLA/N in Kadougli area", SPLM-N Press Release, 21 February 2017.

³¹Crisis Group email exchange, South Kordofan-focused humanitarian monitor, 22 February 2017.

³² Crisis Group interview, humanitarian official, 1 June 2017; Sudanese opposition-aligned researchers, Kampala, January 2017.

³³ "Scorched Earth, Poisoned Air: Sudanese Government Forces Ravage Jebel Marra, Darfur", Amnesty International, 29 September 2016.

³⁴ "Final report of the Panel of Experts on the Sudan", UNSC, S/2017/22, 9 January 2017.

 $^{^{35}}$ The SLM-MM leadership asserts that the group already was based within Darfur.

 $^{^{36}}$ Crisis Group Skype interview, SLM-MM Chairman, Minni Minawi, 23 May 2017.

area.³⁷ Whether this was a government offensive or a defensive reaction to an armed rebel incursion is debatable.

More broadly, violent incidents regularly are reported in Darfur, including during the sanctions review period, attributed to either "unknown gunmen" or unspecified militia groups, most likely including undisciplined pro-government militia such as the Rapid Support Forces. Whether or not Khartoum has knowledge of, or directs such attacks, its responsibility is both heavy and unmistakable: it has long used such militia groups to augment its security forces in Darfur while doing little to control them.³⁸

While the government's record on this track is far from flawless, it has displayed restraint and, in particular, refrained from offensive actions that could provoke large-scale civilian displacement. What it still must do – and, should the U.S. repeal the sanctions, what Washington should condition lifting of remaining sanctions on – is dismantle or firmly integrate government-backed militias into the security forces and hold their leaders accountable for abuses committed by their fighters. Moreover, a ceasefire on its own is neither sufficient nor sustainable in the absence of political resolution of the underlying conflict. In this respect too, Khartoum's policies have been far from adequate, failing to offer opposition groups a realistic political future.³⁹

D. Track 4: Humanitarian Access

Humanitarian access arguably is the most problematic of the five tracks, although the requirement to "[take] steps toward the improvement of humanitarian access throughout Sudan" seems deliberately vague. ⁴⁰ Sudan's past behaviour itself is an obstacle. For decades, it has sought to block or manipulate humanitarian access; as a result, it faces huge impediments of its own making. This is true particularly at the local administrative and security levels, where officials who habitually have engaged in obstructionism may not adequately apply new rules and procedures or work constructively with humanitarian organisations.

Too, there is the legacy of serious distrust among government, rebels and humanitarian officials dating back to the Second Sudanese Civil War (1983-2005), when Khartoum accused humanitarian organisations of supplying rebel groups with food and other resources. Conversely, distrust on the part of humanitarian organisations stems from years of near constant battles with the government just to carry out basic functions. ⁴¹ Finally, there is the impact of conflict between government and rebels.

³⁷ Crisis Group interview, South Sudanese security official, May 2017. The SLM-Transitional Council (SLM-TC) also participated in the fighting. Crisis Group Skype interviews, SLM-MM official, 22 May 2017; Sudanese journalist with knowledge of the events, 23 May 2017; Western military official, 26 May 2017; SLM-TC members, 27 May 2017.

³⁸ See Crisis Group Africa Briefing N°110, *The Chaos in Darfur*, 22 April 2015.

³⁹ Its current proposal – to have the opposition join the next stage of the National Dialogue by offering it places on the High Implementation Committee which is responsible for implementing its outcomes – is unlikely to be attractive to armed groups that remain highly sceptical of a process they see as government dominated. Crisis Group Skype interview, AU official, 21 April 2017.

⁴⁰ EO 13761, op. cit.; Crisis Group Skype interview, U.S. government humanitarian officials, 24 February 2017; email correspondence, U.S. government official, 29 April 2017.

⁴¹ Crisis Group Skype interviews, humanitarian official, 23 February 2017; international humanitarian official, 4 May 2017.

In some cases, notably that of rebel-controlled areas of South Kordofan and Blue Nile states, humanitarian access is stymied by disagreements between the government and the SPLM-N rebels over the route, origin and delivery mechanism for aid. 42 Given this context, and more so than with the other tracks, there as yet has been insufficient time for either serious advances in humanitarian access or a serious assessment of Khartoum's performance. Under the circumstances, what emerges is a mixed picture: some improvement in an otherwise deplorable overall situation. 43

One positive step is the 15 December 2016 issuance by Sudan's Humanitarian Aid Commission (HAC), the regulatory body entrusted with humanitarian and civil society activities, of amended Directives and Procedures for Humanitarian Action, with the stated intent of putting "the contractual relationships between the Government and Humanitarian Aid partners into clear and agreed frameworks". 44 Humanitarian officials concur that, if fully implemented, these new directives would constitute a meaningful step forward. On paper, they say, the system is simpler and more streamlined; general interactions with Humanitarian Aid Commission officials reportedly have become more harmonious – particularly as compared to early 2016, when the government effectively expelled the UN's most senior humanitarian official in Sudan. 45 The new directive also includes a shared database thanks to which UN officials monitoring humanitarian access and Sudan's Humanitarian Aid Commission can compare the situation prevailing in different areas.

The real test, of course, will be whether these new directives, which only became effective at the end of February 2017, are fully implemented. To date, reports from the ground are inconclusive. Putting aside legitimate concerns that the government will manipulate the issue of access to achieve sanctions repeal by making small although ultimately insignificant initial improvements to the official system (but not to the situation on the ground), international organisations see at least some improvement in the operating environment, particularly the ability to move within non-conflict areas where access already had been permitted.⁴⁶ Khartoum has opened

⁴² August 2016 talks between the government and SPLM-N stalled due to disagreement over the issue of humanitarian access to rebel-controlled areas. The U.S. proposed that the US Agency for International Development (USAID) airlift medical supplies from Sudan into rebel-controlled areas. This was rejected by the SPLM-N, which insisted it would only permit humanitarian relief from Sudan if access also were permitted from South Sudan, Ethiopia and Kenya. The SPLM-N accepted a proposal by the mediating African Union High-Level Implementation Panel (AUHIP) for a single point of external access from Ethiopia, but this was rejected by Khartoum, which insisted on the USAID's proposal. The SPLM-N continues to push for an access deal that includes aid being delivered from outside Sudan as it fears Sudanese government control and manipulation of relief efforts from within the country. Crisis Group interview, U.S. government humanitarian official, 24 February 2017; SPLM-N officials and supporters, Kampala, March 2017. Humanitarian access negotiations are further impeded by current leadership discord within the SPLM-N.

⁴³ Crisis Group interviews, U.S. government officials and humanitarian aid agency representatives, Washington, April-June 2017.

⁴⁴ "AMENDED – Directives and Procedures for Humanitarian Action", Republic of the Sudan Ministry of Welfare and Social Security Humanitarian Aid Commission, 15 December 2016.

⁴⁵ "UN says Sudan has 'de facto expelled' humanitarian official", *Sudan Tribune*, 23 May 2016; Crisis Group Skype interview, Sudan-based humanitarian official, 23 February 2017.

⁴⁶ Crisis Group Skype interviews, international humanitarian official, 23 February 2017; international humanitarian official, 24 February 2017; diplomat, February 2017. Crisis Group interviews, humanitarian officials, Sudan, U.S., Kampala, February-March 2017.

up access to Kurmuk (Blue Nile state), Golo (Central Darfur state) and Belle El Serief (South Darfur state),⁴⁷ as well as two humanitarian corridors to South Sudan as part of an international effort to avert famine in its neighbour.⁴⁸ Overall, in April 2017, United Nations Children's Fund (UNICEF) reported that "[the] landscape has gradually opened out since the beginning of 2017".⁴⁹

These modest advances constitute only "necessary first steps", rather than a sea change in the government's approach. ⁵⁰ Moreover Sudan starts from such a low base that even real advances may yield an unsatisfactory outcome. The bottom line is that some advances have been made, but access continues to be restricted in many areas, and the new system put in place by the Humanitarian Aid Commission still is not entirely functional. It remains to be seen whether these modest improvements constitute the start of a much-improved relationship between the humanitarian community and the government or simply a minor uptick in cooperation in response to U.S. inducements. To answer this question, humanitarian organisations will need to more rigorously test the system by attempting to gain access to new areas. To that end, they will have to overcome their understandable reluctance to force the issue and their preference for delivering relief to areas where access already is established. ⁵¹

E. Track 5: Ending Negative Interference in South Sudan

Since the December 2013 onset of the South Sudanese civil war, Sudan has carefully calibrated its military support for armed groups.⁵² For the U.S. and other external actors, ensuring Khartoum cease such interference and avoid a renewed proxy war is of primary importance, particularly given the danger of famine.⁵³

On the whole, since October 2016 Khartoum has refrained from providing significant military support to South Sudanese armed groups opposed to the Juba government. Moreover, when fighting broke out in Juba in July 2016, Khartoum maintained contacts with opposition leaders but did not arm their factions. ⁵⁴ In return, Khartoum gained

⁴⁷ "Sudan Humanitarian Situation Report", UNICEF, op. cit.; Crisis Group email correspondence, Sudan-based humanitarian activist, 28 April 2017; "Sudan authorises humanitarian and medical assistance to Jebel Marra areas", *Sudan Tribune*, 21 January 2017.

⁴⁸ "Bashir directs to facilitate delivery of humanitarian aid to South Sudan", *Sudan Tribune*, 24 February 2017; Crisis Group Africa Briefing N°124, *Instruments of Pain (II): Conflict and Famine in South Sudan*, 29 April 2017.

⁴⁹ "Sudan Humanitarian Situation Report", UNICEF, April 2017.

 $^{^{50}}$ Crisis Group Skype interview, U.S.-based humanitarian official, 4 May 2017.

 $^{^{51}}$ Crisis Group Skype interview, senior humanitarian official, 27 April 2017.

⁵² Though Sudan provided weapons and ammunition, it limited both the quantity and quality of ammunition. It did not provide enough for the Sudan's People's Liberation Army-In Opposition (SPLA-IO) to seriously threaten Juba's overall control. Crisis Group Report, *Sudan and South Sudan's Merging Conflicts*, op. cit., pp.22-23; Crisis Group interviews, SPLA-IO generals, Addis Ababa, 2015.

⁵³ Crisis Group Report, *South Sudan: Rearranging the Chessboard*, op. cit., pp. 6-8; Crisis Group Briefing N°124, *Instruments of Pain (II)* ..., op. cit.

⁵⁴ Initially Sudan provided only limited support to the forces during their flight from Juba to the Democratic Republic of Congo (DRC) leading SPLA-IO forces to speculate they were given just enough to enable their escape but not enough to remain and fight. By October, with Machar and other leaders moved to Sudan and their troops disarmed and under the care of UN peacekeepers in the DRC, support halted. Crisis Group Report, *South Sudan: Rearranging the Chessboard*, op. cit.,

public assurances from Juba that it would expel from its territory Sudanese rebels that sided with South Sudan's government during the civil war.⁵⁵

Several senior South Sudanese opposition leaders still reside in Khartoum, but they say they are frustrated by lack of military support.⁵⁶ This does not include former First Vice President Riek Machar, who leads the largest recent rebellion and enjoys historic ties to the Sudanese government. He has lived in South Africa since late 2016, subject to restrictions on his political activities.⁵⁷

The situation remains fragile, however. Khartoum accuses Juba of continuing to support the SPLM-N and Darfur armed groups, allowing them to resupply within South Sudanese territory, arguing this is why the rebels have not agreed to a cessation of hostilities. South Sudan's May 2017 expulsion of SLM-MM forces based in its territory was the first evidence of Juba's willingness to cooperate on security and take the hard decisions necessary to avert a new proxy war. But it will be harder for Juba to halt support for the SPLM-N, most of whose leaders and fighters belonged to the Sudan Peoples Liberation Movement (SPLM) – the southern rebels who fought Khartoum prior to the 2005 Comprehensive Peace Agreement and now sit as the government in Juba – and still retain personal and, to some extent ideological links with former comrades in Juba. If Khartoum believes Juba is not doing enough to stop Sudanese rebels from crossing into South Sudan for supplies, it could decide once again to arm South Sudanese rebels in response.

IV. To Lift or Not to Lift?

As the discussion above makes clear, this will be a difficult decision for the Trump administration. The Executive Order is vague both in terms of the metrics used and the array of potential policy responses. There are two clear options, one at each end of the spectrum: the Trump administration could lift these specific sanctions permanently or it could re-impose them. There also is an intermediate option pursuant to which the administration could again suspend sanctions temporarily while deferring the decision on whether to lift them permanently until a clearer picture emerges. Valid arguments exist for all of these options, coloured by the Sudanese government's history of brutal behaviour and human rights violations.

To state the obvious: permanently lifting the sanctions in question will be seen by many as rewarding a regime whose record, limited progress aside, remains dismal,

p. 6; Crisis Group telephone interviews, General James Koang Chuol, SPLA-IO members who fled fighting in Juba, General Peter Gatdet Yaka, 2016.

⁵⁵ Initially, Juba failed to act on those assurances, which elicited complaints and accusations from Khartoum. Sudanese rebel presence inside South Sudan has become more discreet and, as noted above, Juba expelled a large SLA-MM contingent in May 2017. Crisis Group interviews, SPLA officers, Juba, May 2017; telephone interview, SLM-MM member, 23 May 2017.

⁵⁶ Crisis Group interviews, Generals Simon Gatwech Dual, James Koang Chuol, and Peter Gatdet Yaka, 2017. All three are senior opposition leaders who currently live in Khartoum.

⁵⁷ Crisis Group telephone interview, Riek Machar, February 2017.

⁵⁸ Crisis Group interview, senior Sudanese official, June 2017. See also "Khartoum renews accusations over Juba's support to rebels but SPLM-N denies", *Sudan Tribune*, 24 April 2017.

⁵⁹ Crisis Group telephone interview, South Sudanese security official, May 2017.

diminishing U.S. leverage and potentially allowing Khartoum to continue to manipulate the process by doing just enough to extract benefits without effectuating genuine change. They have a point. President Bashir remains under indictment by the International Criminal Court, his government continues to commit egregious human rights violations and it is guilty of both poor governance and political repression, notably in the country's neglected peripheries.⁶⁰

For the U.S. administration, there also are potential political downsides. A decision to lift sanctions inevitably would provoke a backlash from many non-governmental organisations, human rights activists, constituencies concerned about the religious persecution of Christians, and important members of Congress.

Yet, at bottom, the position of those advocating re-imposition of sanctions appears to have more to do with their opposition to the initial decision to launch this engagement process than with whether Sudan in fact has met the relevant bar, and in that respect their preferred response is likely to do more harm than good. ⁶¹ As Sudanese and regional leaders repeatedly have made clear, they would view such a decision as yet another instance of moving the goalposts, backtracking on a U.S. commitment that – even opponents of lifting the sanctions acknowledge – elicited at least some modicum of progress. Failure to recognise these advances could jeopardise the engagement process, prompt Khartoum to reverse its steps and make it virtually impossible to extract new concessions in the foreseeable future. ⁶²

An intermediate position – one that recognises limited progress, sees Khartoum as having only partially met the conditions, and fears loss of leverage in a permanent lifting of sanctions – argues for another time-limited, six-month suspension to further test the Sudanese government's good will. It presents a closer call. The Executive Order can be read as implicitly contemplating such an outcome in the event the administration cannot conclude Sudan has sustained progress on the five tracks. However, given the steps Khartoum has taken, there remains the danger that Sudan and its regional allies will view this as a U.S. breach of faith that calls into question the reliability of Washington's promises. This would slow down, if not reverse, progress on the many critical issues still at stake.

More broadly, the regime's evolution toward a (relatively) more pragmatic posture would be weakened should sanctions not be repealed. The January lifting of sanctions has played well in Khartoum and bolstered those within the regime who back the engagement process – notably Foreign Minister Ibrahim Ghandour, Presidential

⁶⁰ For prior Crisis Group reporting on Sudan's behaviour, see Crisis Group Africa Reports N°198, Sudan's Spreading Conflict (I): War in South Kordofan, 14 February 2013; N°204, Sudan's Spreading Conflict (II): War in Blue Nile, 18 June 2013; N°209, Sudan: Preserving Peace in the East, 23 November 2013; N°194, Sudan: Major Reform or More War, 29 November 2012; Briefing N°110, The Chaos in Darfur, 22 April 2015.

⁶¹ Indeed, many of the groups advocating re-imposition of sanctions, or a reassessment of the criteria on which the current review will be made, opposed the Obama administration's original decision to suspend sanctions. See hearings held by the Tom Lantos Human Rights Commission and the House Foreign Affairs Sub-committee on Africa, Global Health, Global Human Rights, and International Organizations.

⁶² Crisis Group interviews, Sudanese and regional officials, June 2017. Western envoys working on Sudan made the same point. Crisis Group interviews, June 2017.

Assistant Ibrahim Mahmoud Hamid and army Chief of Staff Imad al-Adawi⁶³ – as well as those in the region and beyond (particularly in the Gulf) who have pressed Khartoum toward improved relations with the U.S. and other Western powers.⁶⁴ How Khartoum would react to a decision not to repeal sanctions is uncertain, but at a minimum it could strengthen those who believe that Sudan should seek an outright military victory, especially at a time when it enjoys a serious advantage over isolated, weak and (in the case of the SPLM-N) internally divided armed groups.

On balance, the weight of the argument lies with repealing sanctions as contemplated in EO 13761. There is a positive case for this position: Sudan, as seen, has made real (albeit modest) progress, certainly more than when sanctions were not coupled with practical, realistic benchmarks for their removal. This progress should be encouraged. But the negative case arguably is even more persuasive: that a decision *not* to lift sanctions would set back those advances, erode trust and undercut U.S. influence which has been carefully built up over two years with some success.

Besides, there is good reason to question the value of these sanctions, which have affected the Sudanese people more than a regime that has become adept at surviving them. ⁶⁵ If the goal was to isolate Khartoum, this has become ever more elusive as Sudan gradually improves ties to both neighbours and nations outside the region. Relations with Juba are complex, but are better than many predicted at independence in 2011 or a year later, when the two countries briefly went to war over disputed areas and oil revenue sharing. ⁶⁶ Sudan's pivotal but relatively restrained role in South Sudan's civil war – extending limited support to the rebels after Uganda intervened to back President Salva Kiir – gave it a strong position in the regionally-led process that culminated in the August 2015 peace agreement. It also enabled Khartoum to insist that Juba stop backing rebel groups from Darfur and the Two Areas, thereby further bolstering Sudan's military position.

Likewise, relations have improved with Uganda, which Sudan engaged in a long proxy conflict during the Second Sudanese Civil War (1983-2005). Bashir and Ugandan President Museveni still regard each other warily, but diminished tension has enabled both to pursue shared interests in the region, especially limiting conflict

 $^{^{63}}$ Crisis Group interview, Sudanese political analyst, 19 May 2017; former U.S. official, 29 April 2017.

⁶⁴ Crisis Group Africa Briefing N°119, Sudan's Islamists: From Salvation to Survival, 21 March 2016.

⁶⁵ Many academics have illustrated how economic sanctions hurt ordinary people more than elites, who have the means to evade sanctions. See, eg, Thomas G. Weiss, David Cortright, George A. Lopez, Larry Minear (eds.), *Political Gain and Civilian Pain: Humanitarian Impacts of Economic Sanctions* (Lanham, 1997).

⁶⁶ After South Sudan gained independence, several issues still required negotiating, including delineation of borders, status of disputed regions and future oil export arrangements. In January 2012, South Sudan shut down oil production in a dispute over its transit fees and, in March and April, the two countries fought a short border war. It took over a year to reach the still only partially implemented September 2012 Cooperation Agreements. "The Cooperation Agreement between The Republic of the Sudan and The Republic of South Sudan", 27 September 2012. Crisis Group interviews, South Sudanese officials, Juba, 2016-2017.

in South Sudan.⁶⁷ Tellingly, Uganda backs sanctions relief as a means of sustaining Sudan's improved regional behaviour.⁶⁸

Sudan's relations with the European Union (EU) and Gulf Arab states also have followed an upward trajectory. Khartoum has become a key, if controversial, partner in Europe's attempts to limit migration from the Horn of Africa. ⁶⁹ Sudan is both a source and transit country (particularly for Eritreans and Somalis) and serves as a base for people-trafficking networks. It plays a central role in the EU-Horn of Africa Migration Route Initiative (known as the Khartoum Process), and in bilateral cooperation with EU member states. ⁷⁰ This has meant increased European development assistance and support for border security as well as normalisation of relations between Khartoum and the EU, whose key members, including the UK, Germany and Italy, support U.S. sanctions repeal. ⁷¹

Among Gulf Cooperation Council (GCC) states, Saudi Arabia and the United Arab Emirates (UAE) have taken the lead, particularly since 2014, investing in Sudan and serving as strong advocates for an improvement in U.S.-Sudan relations.⁷² Their motivation was transparent – essentially, through pressure and inducements, to get Khartoum to pivot from Iran to Saudi Arabia – and the results quite significant: Sudan broke what had once been very close ties to Iran and joined the Saudi-led Islamic Military Alliance as well as the Saudi-led coalition waging war in Yemen, going so far as to provide several hundred troops in 2015 and strengthening the contingent to as many as 1,500 in early 2017.⁷³ As a result, not just Gulf states, but also Israel, in a remarkable turnabout, have encouraged Washington to engage and improve relations with Sudan.⁷⁴

Critically, a decision to end these particular sanctions will not mean that the U.S. has relinquished all leverage. To the contrary: it still will retain powerful cards,

⁶⁷ Crisis Group interview, Sudanese official, Addis Ababa, August 2015; Ugandan official, Juba, October 2016. See Crisis Group Report, *South Sudan: Rearranging the Chessboard*, op. cit., p.6. Officials say Uganda will not send its army back into South Sudan. Crisis Group interviews, Ugandan security officials, Kampala, September 2016, May 2017; Ugandan official, Juba, May 2017.

 $^{^{68}}$ Crisis Group interview, senior Ugandan security official, Kampala, 17 May 2017.

⁶⁹ Crisis Group interviews, EU officials, January-February 2017.

⁷⁰ See "Human Trafficking and Smuggling on the Horn of Africa-Central Mediterranean Route", Sahan Foundation and IGAD Security Sector Program, February 2016. Funding comes via the EU Emergency Trust Fund for Africa, including \$100 million through a "Special Measure for Sudan". Crisis Group interviews, EU officials, Brussels, January 2017.

⁷¹ Europe's migration initiative has faced significant criticism on grounds that it has formed partnerships with states whose human rights abuses and other policies helped provoke the crisis in the first place. Regardless of its fate, Sudan likely will remain an important partner for Europe on migration issues. "European Union considers the easing of the sanctions on Sudan as an important step", European Union External Action Service, 17 January 2017; Crisis Group interviews, European diplomats, January-May 2017; senior UK diplomat, 5 May 2017; Italian diplomat, 8 March 2017. For a critique of the migration initiative, see "Border Control from Hell: How the EU's migration partnership legitimizes Sudan's 'militia state'", Enough Project, 6 April 2017.

 $^{^{72}}$ Saudi and Emirati officials sought to mediate, and help devise forward a roadmap for improved relations. Crisis Group interviews, U.S., Saudi and Emirati officials, May-June 2017.

⁷³ "Is a bromance brewing between Sudan, the Saudis?", *Al-Monitor* (www.al-monitor.com), 5 February 2017.

⁷⁴ "Israel urges U.S., Europe to bolster ties with Sudan, citing apparent split with Iran", *Haaretz*, 7 September 2016.

including several Khartoum most values. Among these are sanctions on individuals involved in the Darfur conflict, Sudan's designation as a State Sponsor of Terrorism (SST), the congressional bar on debt relief imposed by the Sudan Peace Act in 2002 (Khartoum's external debt amounts to a crushing U.S. \$50 billion) and the absence of a U.S. ambassador in Khartoum. As Sudanese officials are quick to point out, the engagement process makes sense only to the degree that it can lead to normalisation of relations on those fronts as well.⁷⁵

In other words, the U.S. would retain significant leverage, which it should use to keep pressure on Khartoum. Progress on issues Sudan cares about should be contingent on moving toward a political solution to the conflicts in Darfur and the Two Areas. These steps should begin with convening new Cessation of Hostilities talks with armed groups, based on the August 2016 Roadmap Agreement, and include unfettered humanitarian access to government-controlled areas, with progress regularly reviewed by the UN, and tested by humanitarian organisations.

In this respect, critics of the current sanctions-lifting process are correct: "it does not address basic governance issues in Sudan, it does not include crucial human rights and religious freedom issues, and it [does not] requir[e] any peace agreement for the multiple wars being waged today in Sudan". ⁷⁶ If Sudan wants to further improve its relations with Washington, those are some of the additional yardsticks to be employed.

Finally, should Khartoum backtrack on its current commitments, the U.S. promptly could re-impose the sanctions. It could even go further and impose the type of sanctions critics of the current process advocate: "state-of-the-art financial pressures that target key elements of the regime and the corporate and banking networks that underlie it".⁷⁷

V. Conclusion

Reluctance to lift sanctions on Sudan before it demonstrates genuine, verifiable commitment on basic issues — not just humanitarian access, but also helping resolve conflicts in its own peripheries — is understandable. But it ultimately makes sense only if one believes the policy of seeking to change Khartoum's behaviour by isolating and punishing it economically worked. It did not in the past and is less likely to do so today. Changing that approach should not be mistaken for misguided unilateral concessions. Successful engagement with Sudan could yield real dividends, increase Washington's leverage and better position it to push for broader reforms as well as continued restraint in regional conflicts, notably South Sudan; pursued cautiously, without giving too much away but without being overly tight-fisted either, is worth the try. For now, that means showing the Sudanese government that their initial positive steps will generate reciprocal action from Washington.

Nairobi/Brussels, 22 June 2017

⁷⁵ Crisis Group interview, senior Sudanese official, June 2017.

 ^{76 &}quot;Testimony of Brad Brooks-Rubin: The Questionable Case for Easing Sudan Sanctions", U.S.
Congress House Foreign Affairs Committee hearing, 26 April 2017 (www.enoughproject.org).
77 Ibid.

Appendix A: About International Crisis Group

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