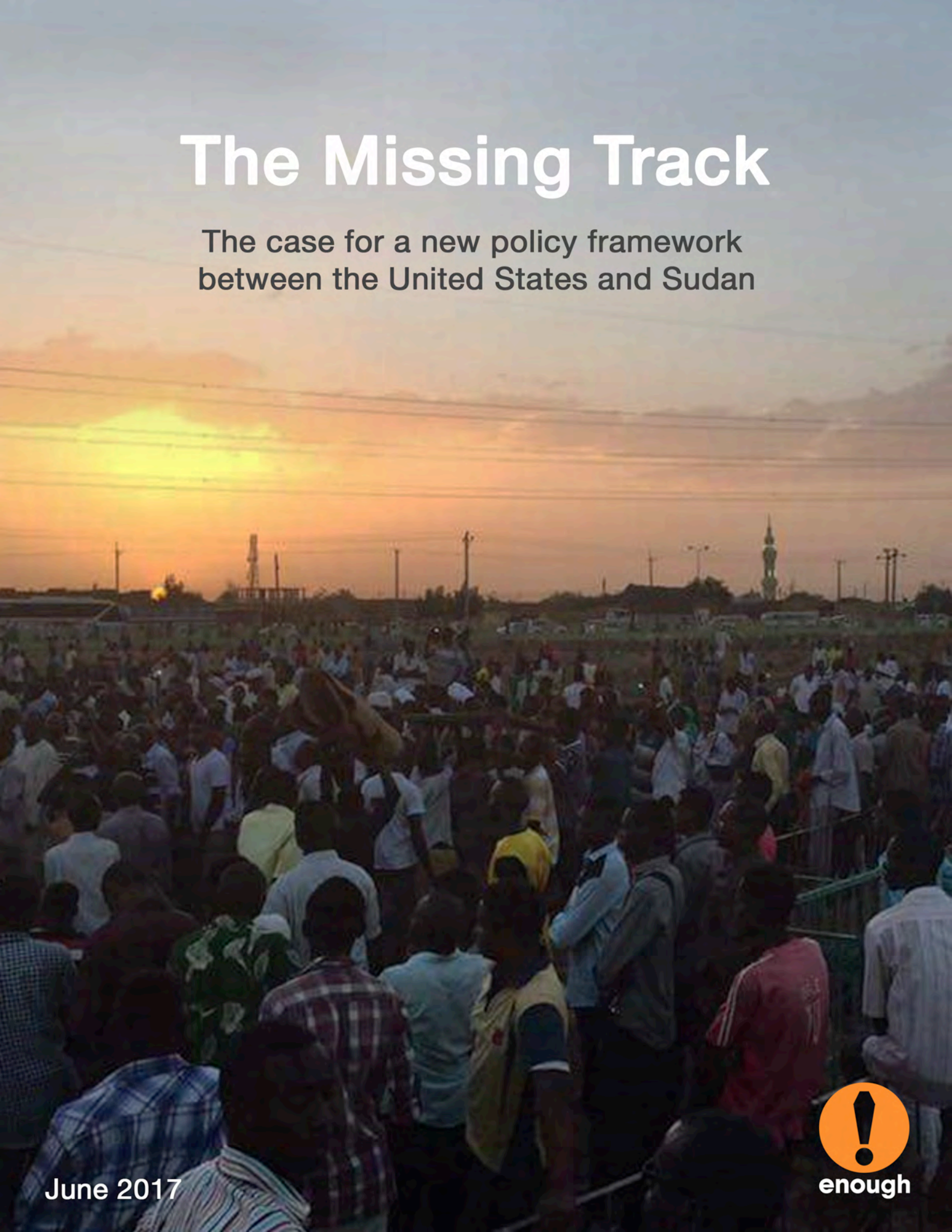


The Missing Track

The case for a new policy framework
between the United States and Sudan



June 2017





Cover Image: Sudanese protesters demonstrate against government after death of a student, April 2016.
Photo: Nuba Reports

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The case for a new policy framework between the United States and Sudan

By The Enough Project*
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In early July, the Trump administration is due to make a pivotal decision concerning Sudan: the administration could fully remove sweeping sanctions that were suspended in the waning days of the Obama administration, reinstate those sanctions, or delay that decision in order to gather more information and allow new appointees to take their seats before any conclusions are reached. This July decision point is part of a five-track plan that the Obama administration negotiated with Khartoum in an effort to achieve tangible progress on a limited set of issues: partnering on counterterrorism priorities, defeating the Lord's Resistance Army (LRA), ending Sudanese support to South Sudanese armed opposition groups, enacting a cessation of hostilities, and expanding humanitarian access.¹

Both proponents and critics of the current flawed and outdated Sudan sanctions program agree that this policy has not precipitated the fundamental changes needed to bring about lasting peace and stability in Sudan. On its own, the five-track plan does not achieve this goal either. While the plan encompasses several critical issues, it does not get at the heart of what ails Sudan: a violent kleptocratic system that excludes many Sudanese people, especially those in periphery areas, and is the source of immense suffering.

Regardless of the decision on the five tracks in July (which Enough analyzes in a separate policy brief), it is imperative that the Trump administration, in collaboration with Congress and the broader international community, seek to directly address the Sudanese regime's governance failures and support the opening of political space that Sudanese actors can fill. The best chance to do so is through a new diplomatic initiative that builds on, but is not directly connected to, the current five-track plan.

In order to address the fundamental issues producing violence and state dysfunction in Sudan, the Trump administration should immediately design and enact a new track of engagement with Khartoum that is focused on peace and human rights. This new track should be tied to a new set of smart, modernized sanctions that spare the Sudanese public and target those who are most responsible for grand corruption

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and atrocities, including air strikes on villages, attacks on places of worship, obstruction of humanitarian aid, jailing and torturing opposition figures and civil society leaders, and undermining peace efforts. A modernized U.S.-led strategy of meaningful financial pressure would draw on valuable lessons from other higher profile cases and utilize a combination of network sanctions—meaning the targeting of not just a few individuals for sanctions, but also their business associates, facilitators, and the companies they own or control—with anti-money laundering measures designed to freeze those most responsible for violence and corruption in Sudan out of the international financial system altogether. This new track for peace and human rights should also be tied to new incentives for the Sudanese government, including reconsideration of Sudan’s inclusion on the list of State Sponsors of Terrorism (SST), should Sudan meet certain transformational benchmarks. Initiating this new track for peace and human rights would be a significant undertaking that would require a substantial investment of diplomatic capital, consistent congressional involvement and oversight, and strong multilateral coordination—but it offers the best chance to directly address the core drivers of Sudan’s instability and to open political space that allows Sudanese people to push for genuine reform.

The center of the bull’s eye: reforms urgently needed

This new track of engagement should focus on what should be the United States’ most pressing policy goals for Sudan: strongly supporting Sudanese advances in human rights, religious freedom, essential democratic reforms, good governance, and ultimately a comprehensive peace throughout the country. Absent serious and meaningful progress toward these goals, the government of Sudan will maintain the longstanding patterns of behavior that have marked its rule for the last 28 years, and Khartoum will continue pursuing policies that have led to continuous deadly war, religious persecution, authoritarian governance, mass migration to Europe, grand corruption, and affiliation with and support for terrorist organizations. While the Trump administration has indicated a de-prioritization of human rights concerns globally in favor of a focus on stability, hard-learned lessons from Sudan suggest that the only way to advance stability is to directly address human rights and governance failures. There will be a temptation for U.S.-Sudan relations to focus on perceived mutually agreeable issues such as counterterrorism and short-term, militarized efforts at containing migration, but such a narrow focus only allows Khartoum to perpetuate policies that ultimately work against U.S. goals on even these issues.²

The current five-track plan does not address the internal pathologies within Sudan that perpetuate the system of violent kleptocracy, which manifests itself in brutal attacks against civilians that include Christians and other minority groups, and involve reported attacks by the Rapid Support Forces—comprised of many former Janjaweed fighters—in Darfur. Three of the five tracks (counterterrorism, South Sudan, and the LRA) largely address regional and multilateral issues. The tracks do not incentivize the opening of political space within Sudan—for example, by freeing political prisoners or halting the practice of routinely closing down newspapers and independent civil society organizations. The five tracks do not incentivize an inclusive political process in which Sudanese people from all groups can openly discuss the future of their country. Lack of pressures and incentives to address these issues in Sudan has allowed the Khartoum regime to continue its relentless attacks on religious freedoms—including demolition of churches and

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denial of freedom of worship—free expression, and the rights to association and peaceful assembly. The regime also forged ahead with a unilateral political process through a national dialogue that was designed to impose a fait accompli on the opposition and the population and to further secure the regime’s grip on power. This process concluded in May with the appointment of a new government, which includes several compliant opposition figures in non-critical ministerial positions but is dominated by longtime regime elites and clearly signals the regime’s intent to maintain full control of the levers of power.

The reforms envisioned in this new peace and human rights track are substantial undertakings, and they will take time. Such reforms entail nothing less than a fundamental reconfiguration of the Sudanese state and the adoption of a new mode of governance. To date, the Khartoum regime has shown little capacity or willingness to pursue such reforms, which is why these reforms need to be attached to both significant pressures and attractive incentives. The size and scale are important, given the stakes. Smaller-scale piecemeal pressures and incentives will produce very little, as the last 20 years have aptly demonstrated.

Unfortunately, a national dialogue process like the one led previously by the Sudanese government no longer provides a viable road to reform. Sudan’s national dialogue process failed because the process was controlled by President Omar al-Bashir and the National Congress Party, providing no real room for debate within the ruling party, let alone among the country’s different political movements and groups. Although

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the United States, United Nations, and African Union pressed Sudanese opposition political parties to join the national dialogue process, these Sudanese opposition parties declined because they did not view the dialogue process as credible, and they viewed their participation as lending the process an undeserved degree of legitimacy.³

A constitutional convention could serve as an alternative reform vehicle, and such a platform may provide a new forum for Sudanese people to discuss the governance and power-sharing questions that they most seek to resolve among themselves. The United States and other interested partners

could use their political influence and engagement on this new track for peace and human rights to promote a constitutional convention in Sudan that is led by Sudanese stakeholders and can be overseen by independent international monitors, such as the African Union High-Level Implementation Panel (AUHIP), or a similar third-party guarantor mechanism.⁴

Any convention will need to be inclusive and sufficiently credible to attract the participation of Sudan’s armed groups and the willingness by all participants to make difficult concessions and honor their commitments. The AUHIP has been leading negotiations between the regime and those armed groups for many years. It is time to for the AUHIP to make a final, reinvigorated push, which should be tied to the conclusion of the AUHIP mandate.

New pressures to bring to bear...

Because the current five-track plan that the U.S. government is pursuing with Khartoum does not connect directly to political and governance reform in Sudan, and because the comprehensive sanctions regime

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was flawed in design and implementation,⁵ it is necessary to attach both new pressures and new incentives to this new set of goals.

The new pressures should include very specific and robust network sanctions based on the best financial intelligence available and aimed at key officials and their networks who are undermining peace and human rights in Sudan, combined with anti-money laundering measures designed to achieve broad U.S. foreign policy objectives and protect the integrity of the U.S. financial system.

These new financial pressures are not just a few more sanctions, or variations on the broad measures of the past. These new pressures would constitute a fundamentally different approach, shifting from one that is geography-based to one that is conduct-based. In this new approach, the new pressures would focus on individuals and entities that are responsible for major human rights abuses, grand corruption, religious persecution, conflict gold trading, weapons exporting, and the undermining of any peace process. This approach narrowly targets the individuals and entities that are most involved in committing mass atrocities against the population and diverting Sudan's rich resources to private purposes, and then seeks to disrupt the facilitating corporate and banking network that supports these individuals and entities. These new financial pressures explicitly seek to minimize impact on ordinary Sudanese people, as the comprehensive sanctions program gave the Sudanese regime a convenient scapegoat for its economic and financial mismanagement and grand corruption that has run the Sudanese economy into the ground.

The United States knows how to target this kind of kleptocratic system and implement these sorts of measures, as they have been imposed to address threats with Iran, Burma, and North Korea. Some of the key pressures to implement and steps to take can include:

- Sanctions that freeze the assets of Sudan's National Intelligence and Security Service (NISS) and its corporate network, establishing a 25 percent threshold for ownership that would result in designation.
- Sectoral sanctions focused on the conflict gold and weapons manufacturing sectors.
- Targeted network-based sanctions related to acts of public corruption and serious human rights abuses throughout Sudan, ensuring that the focus is on targets with significant assets and/or corporate holdings. These should be network sanctions that concentrate on not just key individuals but also their business associates, facilitators, and the companies they own or control.
- Requiring compliance with these sanctions by foreign subsidiaries of U.S. companies to prevent evasion.
- Public reporting by companies doing business in Sudan in order to ensure companies are taking appropriate due diligence measures.
- Directing the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) to investigate whether the gold sector or other networks in Sudan constitute a "primary money laundering concern," to issue advisories related to their investigations, and to work with financial institutions and other jurisdictions to investigate Sudanese "politically exposed persons" and other targets. These efforts would focus the financial sector on the key concerns in Sudan and help to mitigate against future, large-scale de-risking.
- Congressional appropriation of funds to the relevant agencies, particularly within the Departments of Treasury and State, to do this work that has been desperately needed for many years but never done.

These new, more targeted pressures should be calibrated to both short- and long-term reform goals. If there are not strong early indications of the Sudanese government's commitment to political and governance reform—which is unlikely—some of these pressures should be applied early, as a signal of intent and to demonstrate the effectiveness of the measures. But there should also be room to escalate sanctions and target the networks that are closer and closer to the centers of power.

...and new incentives too

While the five-track plan offers to rescind many of the current pressures imposed on Sudan, there are other pressures not included in the plan that Khartoum is eager to see removed. Foremost among them is the inclusion of Sudan, alongside Iran and Syria, on the United States' list of State Sponsors of Terrorism (SST). Sudan was first added to this list in 1993, during a period when Khartoum hosted Osama bin Laden. The SST designation is meaningful because of the stigma associated with it, but the SST designation is especially important to Khartoum because it links directly to debt relief. U.S. law prohibits the United States from voting in favor of debt relief for countries on the SST list, which effectively blocks any movement on debt relief (such as participation in the World Bank's Heavily Indebted Poor Countries debt relief process).

Along with the Sudanese regime's gross mismanagement of the economy over the past 28 years, Sudan's substantial debt is a major impediment to economic growth. That debt has ballooned to over \$50 billion,⁶ making Sudan the second-most heavily indebted country in Africa.⁷ Sudan has long campaigned for debt relief, especially through the process of South Sudan's secession and negotiations over debt apportionment (Sudan took on the entire debt under an agreement which called for Sudan and South Sudan to jointly approach creditors to lobby for debt relief, which has not happened due to civil war in South Sudan). While Sudan has reportedly enjoyed some recent success in attracting grants and loans from partners in the Persian Gulf, the debt blocks new lending from the international financial institutions, shutting off an important source of potential financing. This creates real leverage for the United States and others who control decision-making at the international financial institutions.

As the most significant incentive the U.S. has to offer, removal of the SST designation and support for Sudanese debt relief should only be associated with solid evidence of major Sudanese reforms, such as holding open and transparent elections, concluding and verifiably honoring comprehensive peace deals with relevant armed opposition groups, and adopting a new constitution developed through an inclusive, participatory process. These steps will likely come toward the end of any reform process. Furthermore, removal of the SST designation should only happen if Sudan is confirmed to not be supporting terrorist actors.

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In the shorter term, there are additional incentives that can be tied to progress benchmarks. One potential incentive could be the appointment of a full U.S. ambassador to Sudan, as the U.S. Embassy in Khartoum is currently led by a chargé d'affaires. The Sudanese government seeks this full ambassadorial appointment for the legitimacy it confers. Appointing a U.S. ambassador to Sudan would be a moderate concession on

the part of the United States, while simultaneously serving U.S. interests in Sudan, as long as the instructions for the ambassador are to increase America's capacity to engage the Sudanese people beyond the regime.

Another potential U.S. incentive for Sudan can be increased trade promotion, if sanctions are eventually removed through the five-track plan. Some in Sudan paint an overly optimistic picture of the foreign investment that will flow into the country if sanctions are removed, but in reality, many investors are wary of Sudan, as it remains a poor and risky environment in which to do business due to grand corruption, weak or hijacked institutions, and little commitment to rule of law. If Sudanese authorities show genuine commitment to rule of law reform, which is a key component of larger political and governance reform, the U.S. could more actively promote bilateral trade and investment.

Conclusion

Two principles are critical to the success of any new line of engagement with Sudan. First, U.S. policy must remain flexible. Lack of flexibility was one of the failures of the comprehensive sanctions regime, as those sanctions were rarely updated and there has been little ability or will to calibrate the sanctions to current dynamics in Sudan. The United States and partners need to regularly update sanctions—either tightening or loosening them—in response to Sudanese actions (not merely promises). Regional and international peacemaking partners should draw on information about patterns of corruption and money laundering by Sudanese regime officials and their accomplices put forward by The Sentry, among other similar initiatives. The information produced by such highly specialized research can help inform and support policy responses.

Second, the United States should pursue a multilateral approach to Sudan, but not at the expense of unilateral action if necessary. Sanctions programs are usually more effective if they are more multilateral, but the financial pressure strategy described above involving network sanctions and anti-money laundering measures can be employed directly by the United States and would have significant impact. The United States should seek to advance this approach, while simultaneously developing as broad a multilateral coalition as possible.

While the fate of the five-track plan and the existing comprehensive sanctions will attract attention, that decision is ultimately less important than the development of a detailed plan for what comes next—and putting the diplomatic and political weight of the United States, in coordination with other leaders in the international community willing to work with the United States, behind any new plan. Even if a decision on the five-track plan is delayed, now is the time for the Trump administration, working closely with Congress, to develop and articulate the next phase in the U.S. policy approach to Sudan. This approach should include deploying the types of modernized pressures that can generate meaningful leverage for stimulating real and lasting change in Sudan, and combining these pressures with incentives that cannot be ignored.

Influencing Sudanese behavior requires the use of the most effective tools that the international community has at its disposal, in support of grassroots pressure from the Sudanese population. The Trump administration should ensure that the pressures and incentives employed are tied to clear foreign policy objectives and verifiable reform. Doing so will give the U.S. government the best chance to effectively advance what should be its core policy objectives in Sudan.

Endnotes

¹ U.S. President (Barack Obama), Executive Order 13761, “Recognizing Positive Actions by the Government of Sudan and Providing for the Revocation of Certain Sudan-Related Sanctions,” January 13, 2017, available at <https://obamawhitehouse.archives.gov/the-press-office/2017/01/13/executive-order-recognizing-positive-actions-government-sudan-and>.

² Suliman Baldo, “Border Control from Hell: How the EU’s migration partnership legitimizes Sudan’s ‘militia state’” (Washington: The Enough Project, April 2017), available at <http://enoughproject.org/reports/border-control-hell-how-eus-migration-partnership-legitimizes-sudans-militia-state>.

³ The Enough Project, “Sudan’s Deep State: How Insiders Violently Privatized Sudan’s Wealth, and How to Respond” (Washington: April 2017), available at http://enoughproject.org/wp-content/uploads/2017/05/SudansDeepState_Final_Enough.pdf.

⁴ The Enough Project, “Sudan’s Deep State.”

⁵ Testimony of Brad Brooks-Rubin, Policy Director to The Sentry and The Enough Project, House Foreign Affairs Committee, Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, “The Questionable Case for Easing Sudan Sanctions,” April 26, 2017, available at http://enoughproject.org/wp-content/uploads/2017/05/BradBrooks-Rubin_testimony_HFAC_4.26.17_FINAL.pdf.

⁶ The World Bank, “Sudan: Overview,” available at <http://www.worldbank.org/en/country/sudan/overview> (last accessed June 2017).

⁷ The most indebted African country is South Africa. See U.S. Central Intelligence Agency (CIA) World Factbook, “Country Comparison: Debt – External,” available at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2079rank.html> (last accessed June 2017).