



Creating a Cost for Those Destroying South Sudan

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Executive Summary

President Barack Obama's historic visit to Kenya and Ethiopia comes at a time of deep crisis in neighboring South Sudan. American contributions to the massive humanitarian response¹ and support for the Intergovernmental Authority on Development (IGAD) mediation effort² to end South Sudan's 19-month war have been considerable. However, the peace process has been undermined by competing mediation efforts by various African interlocutors³ which allows the warring parties to "forum shop"⁴ and demonstrate a complete lack of will to implement anything they agree to, particularly a string of agreements to cease hostilities.⁵

The recently expanded IGAD Plus mediation structure⁶ will hopefully address the forum-shopping concerns. However, much more work is needed to develop the essential ingredient for a durable and lasting agreement: the leverage necessary to alter the calculations of the parties from pursuing war to pursuing peace. The leaders of the two sides fight on in the belief that there will be no personal consequence, and outside actors collaborate in the destruction of this embryonic state through their military support and collusion in vast corruption, both past and present. Without a wider strategy of leverage-building financial pressures and a push to secure regional and broader international cooperation for that approach, it will be difficult to address the deep political divisions fueled by a violent struggle for the spoils of a corrupt state.

In South Sudan, corruption and illicit financial flows, the offshoring of assets by elites, large-scale abuse and mismanagement of the extractives industry, security sector fraud, the convergence of licit and illicit systems, disguised beneficial ownership, and regulatory evasion have all combined to create a kleptocratic governing system. **President Obama's trip offers an opportunity to reorient U.S. government policies to move beyond threats and focus on a much more robust strategy of disrupting and ultimately dismantling this system, which is funding, fueling, and profiting from the conflict in South Sudan.**

While in Kenya and Ethiopia, President Obama should take the following steps:

Asset Freezes, Travel Bans, and an Arms Embargo

Urge President Uhuru Kenyatta and Prime Minister Hailemariam Desalegn to work with the United States in support of a multilateral arms embargo and the imposition of an escalating set of high-level sanctions designations against politically influential individuals and their enablers. Also, encourage the Kenyan and Ethiopian leaders to enforce the existing sanctions designations by freezing the assets and restricting the

travel of the six military commanders who are already designated by the U.N. Security Council.⁷ Make it clear that if the presence of any of the designated individuals is required for the peace process, the government of Ethiopia can request a case-by-case exemption from the U.N. Sanctions Committee as provided under U.N. Security Council Resolution 2206.⁸ This push in the region should be coupled with a directive to the Departments of State and Treasury as well as to other relevant agencies to intensify their efforts to collect information and develop dossiers on potential additional targets for sanctions. These targets may include South Sudan's high-level political leaders and their financial backers, in the region and beyond. This strategy could lay the foundation for a rapidly escalating targeted sanctions regime that begins to finally create a cost for those making the decisions to continue the war or fund and profit from it.

Kleptocracy Asset Recovery and Return

Urge Kenya and Ethiopia to contribute actively to a transnational effort to trace, seize, freeze, and return the proceeds of corruption to the people of South Sudan by sharing intelligence through the Asset Recovery Inter-Agency Network of Eastern Africa. At the same time, prioritize U.S. inter-agency support to the Department of Justice's Kleptocracy Asset Recovery Initiative as it seeks to identify actionable cases of grand corruption with a strong connection to the United States. Work with the U.K.'s Proceeds of International Corruption Unit and with Europol, Canada, and Australia to pursue this agenda internationally.

Capacity Building for U.N. Sanctions Enforcement

Offer to expand the U.S. government's existing effort to build the technical capacity of East African financial institutions beyond the Treasury Department's current emphasis on anti-money laundering and counter-terrorist financing support to also include capacity-building assistance for more effective U.N. sanctions enforcement. Prioritize the programs that enhance the operational capacity of regional financial intelligence units in Uganda, Kenya, and Ethiopia to coordinate asset freezes. Urge President Kenyatta and Prime Minister Hailemariam to submit member state reports on Kenyan and Ethiopian efforts to enforce U.N. Security Council Resolution 2206.⁹ These reports should include a discussion of Kenyan and Ethiopian domestic sanctions implementation frameworks.

Beneficial Ownership Transparency

Ask Kenya, Ethiopia, and other African states to adopt regulatory reforms to increase transparency about the beneficial owners of corporate assets and trusts. Connect the proliferation of shell companies and secrecy jurisdictions in Africa¹⁰ with the broad problem the continent faces with illicit financial flows¹¹ and the recent U.N. decision to redouble efforts to combat these practices¹² At the same time, urge the U.S. Department of Treasury to incorporate expanded control requirements and a look-back provision into the U.S. government's proposed beneficial ownership rule,¹³ set to be released in August.

Connecting Regional Infrastructure Projects to Peace

Make clear that the U.S. government is ready to work with Chinese President Xi Jinping to lead a comprehensive review of bilateral and multilateral funds earmarked for regional infrastructure projects in East Africa to assess the viability of such investments given the conflict in South Sudan. Regional sanctions enforcement should be made a criteria in an overall risk mitigation strategy governing the disbursement of donor funds, foreign investment, and technical assistance to implement these important infrastructure development projects.

Accountability for Pillage and Grand Corruption

Build on the U.S. government's May 2015 pledge of \$5 million for justice and accountability in South Sudan¹⁴ and on both warring parties' February 2015 commitment to a hybrid court¹⁵ by urging the immediate creation of a hybrid court for South Sudan with an investigative wing to begin work even before the conflict ends. The court should have jurisdiction over crimes against humanity, human rights abuses, economic crimes—including pillage, as a war crime—and grand corruption. While in the region, also amplify the U.S. government's push for the African Union Peace and Security Council to consider and release the AU Commission of Inquiry's report on South Sudan.

Empowering Anti-Corruption Civil Society Actors

Meet with civil society, especially anti-corruption campaigners from Kenya, Ethiopia, and South Sudan. In the longer term, the United States should prioritize funding to civil society groups in South Sudan that are actively engaged in anti-corruption campaigns to improve transparency and accountability in government spending. In South Sudan, which recently ratified the U.N. Convention Against Corruption, laws already criminalize corruption and require elected officials to disclose their assets and corporate interest.¹⁶ South Sudanese civil society groups can advocate that these provisions be enforced.

Tackling Corruption and Conflict Financing in South Sudan

South Sudan's political elites—and their backers and enablers—finance and profit from the conflict in South Sudan in seven distinct ways. Disrupting the violent kleptocratic system that has established itself in South Sudan requires understanding and addressing each of these seven vehicles for corruption and conflict financing.

1. Countering Corruption and Illicit Financial Flows

The outright theft and mismanagement of government revenues has become a hallmark of the kleptocratic system in South Sudan.¹⁷ South Sudan and its neighbors are all signatories to the U.N. Convention Against Corruption (UNCAC), which obliges them to criminalize corruption within their national jurisdictions and cooperate in response to requests for mutual legal assistance from other states parties in support of ongoing corruption investigations into current and former government officials.¹⁸ South Sudan's ratification of the convention¹⁹ also provides an entry point for support to civil society, as article 13 of the convention explicitly recognizes the role for civil society in anti-corruption work.²⁰ U.S. government support, in the form of solidarity from a meeting with President Obama, and longer-term capacity-building efforts could make a difference in how corruption is perceived and prosecuted going forward.

2 The Enough Project • enoughproject.org

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Beyond support to civil society, President Obama should use his trip to advance progress on the commitments made by South Sudanese warring parties and the United States towards the creation of a hybrid court, with an investigative wing, for South Sudan. President Obama should urge the creation of a court with a holistic mandate that considers atrocity crimes of all types, from pillage and grand corruption to sexual and gender-based violence.

2. Countering Elite Financing and Offshored Assets

South Sudan has failed to see significant development or a peace dividend and slides further into debt while many South Sudanese elites live comfortably abroad²¹ with access to their offshored assets. While 40 percent of South Sudan's population faces starvation,²² elites pay little cost for war.

While in the region, President Obama should ask the governments of Kenya and Ethiopia to share information and actively contribute to investigations into the modalities of alleged corruption and the misappropriation of state revenues by current and former South Sudanese government officials. Recognizing that there is important added value from sharing leads within the region, President Obama should encourage both Kenya and Ethiopia to share any relevant information through the Asset Recovery Inter-Agency Network of Eastern Africa.

Even as South Sudan's conflict continues, attorneys, investigators, and financial analysts with the U.S. Department of Justice Kleptocracy Asset Recovery Initiative should work closely with their counterparts in the United Kingdom, Europe, Canada, and Australia—countries which host significant South Sudanese diaspora communities—to initiate global asset recovery investigations. The global frameworks available for such cooperation and information sharing include the World Bank Stolen Asset Recovery Initiative (StAR)—Interpol Asset Recovery Focal Point Initiative and the Camden Asset Recovery Inter-Agency Network. The Asset Recovery Inter-Agency Network of Eastern Africa has observer status with the Camden network, allowing leads shared within the East African region to be forwarded to European authorities as well. Generally, the U.S. Department of Justice's Kleptocracy Asset Recovery Initiative focuses its works on cases where there is an established U.S. nexus. Nonetheless, given the transnational nature of these investigations, close cooperation with the U.K.'s Proceeds of International Corruption Unit, Europol, Canada, and Australia may help to identify a broader array of actionable cases of grand corruption. While investigations remain at the discretion of the U.S. Attorney General and her team, President Obama can help move these efforts forward by directing Department of State, the Department of Homeland Security, and the FBI to provide inter-agency support for these investigations.

3. Countering Security Sector Fraud and Abuse

To counter the diversion of public funds and resources to the war effort and to curb the flow of weapons and military spending, the United States should support the imposition of a U.N. Security Council arms embargo on the government of South Sudan. The existing U.N. Panel of Experts already has a complementary mandate to monitor transfers of weapons and ammunition to the armed opposition.²³ The Panel's investigation and final report, which is slated to be released in September 2015, could expose facilitators and enablers who violate or evade sanctions enforcement and who could also be subject to

secondary sanctions designations under the U.N. sanctions regime. Further investigations and designations would also potentially deter actors and entities in the region from providing illicit support to the warring parties.

4. Countering Extractive Industries and Natural Resource Trafficking

Despite the economic collapse of the state, South Sudan's natural resources and extractive industries, particularly oil, continue to provide streams of funding and finance to elites and financial backers and enablers of warring parties. As the conflict continues, the U.S. government should initiate investigations into foreign companies that attempt to profit from the civil war. The U.N. Panel of Experts should also scrutinize opaque oil deals and other business transactions involving foreign companies. Similar efforts should be made to investigate foreign companies engaged in logging, gold mining, and land deals with the government in Juba while the conflict is still ongoing. A second round of sanctions enforcement actions must be directed not just at the perpetrators of atrocities and abuses, but also against their financial backers and enablers—many of whom have some stake in the extractive sector.

5. Countering Disguised Beneficial Ownership

It is difficult to identify the beneficial owners—those who enjoy the benefits of ownership of a company regardless of the name on the company's title—of companies and assets registered in South Sudan. Although there are fiscal transparency laws and regulations in place, compliance with disclosure and reporting standards has been minimal, and there have been several allegations of shell companies in South Sudan that have been used to steal public resources.

To help combat the use of deceptive beneficial ownership techniques and shell companies to shield illicit activity, President Obama should urge the region to adopt standards that comply with guidelines issued by the Financial Action Task Force (FATF),²⁴ a standard-setting intergovernmental body that was established to combat money laundering and terrorist financing. At the same time, he should urge the U.S. Treasury to revise its proposed rule to include a look-back provision before the final rule's publication in August 2015. Given the size of the U.S. financial system and the U.S. dollar's status as an international currency of choice, the U.S. government must take a leadership role in implementing standards for beneficial ownership transparency. Beneficial ownership transparency will allow compliant governments to stay a step ahead of those who profit from violent criminality, terrorism, human rights atrocities, and tax evasion. More support for civil society groups and independent journalists can also help pierce the veils of these anonymous companies. In South Sudan, elected officials are required to disclose their assets and corporate interests under both domestic law and the U.N. Convention Against Corruption.²⁵ South Sudanese civil society groups can advocate that these provisions be enforced.

6. Countering the Convergence of Licit and Illicit Systems

There are allegations that individual South Sudanese elites also profit from the manipulation of currency exchange and cash transfer mechanisms²⁶ within the otherwise bankrupt country. Well-connected elites in South Sudan with access to both the official and black market rates for currency exchange for the South Sudanese pound have opportunities to exploit the large spread in the rates and engage in currency speculation to profit by wide margins.²⁷ Currency speculation is causing South Sudan's currency to depreciate as real prices increase with inflation. The South Sudanese Central Bank has been forced to borrow or print more money in response to currency speculation, further exacerbating the overall sharp

economic decline.²⁸ In a climate with little documentation or oversight by financial intelligence units,²⁹ private for-profit foreign exchange bureaus have proliferated,³⁰ enabling money laundering and the servicing of illicit financial transactions. Cash couriers in airports and wire transfer services are readily available,³¹ allowing for faster and more secure flows of cash without disclosures and documentation. In cases where licit and illicit systems converge, targeted sanctions with asset freezes can be particularly effective. Even if money has been laundered through a legal or licit channel, once a high-level political official or conflict enabler is designated by the U.N. Security Council, the individual's assets are subject to seizure regardless of their provenance.

7. Countering Regulatory and Sanctions Evasion

While South Sudan passed its first anti-money laundering law in 2012,³² the country does not have operational anti-money laundering and counter terrorist financing regulatory structures, and it lacks the functioning financial intelligence unit that it established under the 2012 law.³³ The U.S. Department of State has concluded that the country lacks independent legal and regulatory frameworks necessary to monitor financial transactions.³⁴ The informality of the predominantly cash-based economy, combined with economic hardship due in part to the global decline in oil prices, along with the alleged currency speculation and money-laundering, have undermined the political will to enforce national laws and investigate and prosecute those responsible.

If given further capacity-building assistance, South Sudanese civil society groups can push for greater enforcement of existing laws. These groups can also help counter damaging perceptions and misinformation about the impact of targeted sanctions on communities in South Sudan. Support for public information sensitization projects that highlight the individual scope of targeted sanctions designations will be essential to counter government and opposition narratives that sanctions will adversely affect the people.³⁵ Greater public outreach would also help stem the flow of misinformation to banks and businesses that have also expressed concerns about the effect of sanctions, which have also fueled popular concerns and opposition.³⁶ In other words, the United States should have a basic public diplomacy strategy to help counter false and damaging narratives about targeted sanctions and other financial measures that are designed to build leverage for peace and create a cost for committing atrocities.

Sanctions enforcement remains the key for a successful leverage regime. To help improve enforcement among South Sudan's neighbors, the United States should also offer to expand its existing support, which is currently focused on meeting global Anti-Money Laundering/Counter Terrorist Financing standards, to also strengthen regional legal, technical, and regulatory capacity for effective sanctions enforcement. Kenya and Ethiopia, in particular, have made progress on establishing their national financial intelligence units tasked with identifying suspicious transactions.³⁷ According to the Financial Action Task Force, Kenya and Ethiopia have made significant progress towards meeting their global obligations and were removed from the body's monitoring list in 2014.³⁸ Kenya and Ethiopia are also making progress towards membership in the Egmont Group, a global information-sharing and capacity-building network of financial intelligence units to combat money laundering, terrorist financing, and other financial crimes.³⁹ One way to improve financial oversight and accountability is to expand the operational mandates of financial intelligence units to monitor the banking sector for accounts and transactions made by individuals designated under U.N. sanctions regimes.

Using the Trip to Galvanize Regional Action

While in East Africa, President Obama should include South Sudan on his agenda for bilateral meetings with both President Kenyatta and Prime Minister Hailemariam. Specifically, President Obama should urge both leaders to express their support for an arms embargo and additional high-level designations against individuals who continue to undermine the peace process and orchestrate brutal attacks. President Obama can also use the meeting as an opportunity to urge both leaders to enforce the UN's existing sanctions designations by freezing the assets and restricting the travel of the six military commanders already designated⁴⁰ and supporting further sanctions designations.

Additionally, President Obama should urge Kenya and Ethiopia to share intelligence and contribute actively to a regional transnational effort to trace, seize, freeze, and return the proceeds of corruption to the people of South Sudan. President Obama should support capacity-building by East African financial institutions to encompass sanctions implementation as well as building anti-money laundering and counter-terrorist financing capabilities. Finally, while asking Kenya, Ethiopia, and other African states to adopt regulatory reforms to increase transparency about the beneficial owners of assets, President Obama can help highlight the connections between the use of shell companies to hide the proceeds of corruption and Africa's ongoing struggle to combat illicit financial flows. The United States can lead on this issue if President Obama asks the Department of the Treasury to ensure that this rule contains a look-back provision⁴¹ and adequate control disclosures.⁴²

In order spur the regional support that is necessary to effectively cut off financing for the warring parties and build leverage for the peace process, the U.S. should also take steps to fundamentally realign the security and economic development agendas in the region. To date, efforts to convince South Sudan's neighbors to set aside their short-term interests in favor of targeted sanctions and other punitive measures to put pressure on the warring parties has proven particularly difficult in light of competing priorities and interests.

The most worrying dimension of the current conflict is the direct military intervention of Uganda on the side of the government of South Sudan⁴³ and Sudanese support to the armed opposition, which has hamstrung IGAD's ability to negotiate a political settlement. These interventions are designed to protect mutually beneficial relationships between South Sudanese and regional business elites that also contribute material and financial support to the warring parties.⁴⁴

In Kenya, concerns about the impact of sanctions on the banking industry and the South Sudanese diaspora derailed a proposal to impose domestic sanctions in 2014.⁴⁵ Uganda, a strong U.S. ally that has worked to counter Sudanese influence in the region for decades, is primarily concerned with supporting political allies in power in Juba and preserving its significant economic and trade ties with South Sudan.⁴⁶

As part of a comprehensive approach to support security and development in the region, the United States and other major donors and investors should make it clear that insecurity in South Sudan is undermining prospects for stable transnational development projects in the region. The conflict is putting major infrastructure development projects that include South Sudan at risk, including the Northern Corridor and Lamu Port Southern Sudan-Ethiopia Transport Corridor.⁴⁷ The United States should make it clear that it is willing to work with China to conduct a comprehensive review of bilateral and multilateral funds earmarked for these projects to assess the viability of such investments given the conflict in South Sudan. Efforts by states in the region to meet their international legal and financial obligations, including sanctions enforcement, should be considered when donors are evaluating the risks associated with

disbursing funds, supporting foreign investment, and offering technical assistance to implement these important infrastructure development projects. These projects are critical for regional development, but a more holistic risk evaluation would diversify the security balance for South Sudan and promote shared economic prosperity and progress in the region.

South Sudan's neighbors, particularly the countries President Obama is visiting, have much to lose from an unstable South Sudan. Every day, the conflict exacts a heavy toll on South Sudanese people and great collateral damage on the economies of neighboring countries as well.⁴⁸ Those same neighbors also hold the key to unlocking much-needed leverage for the peace process: through sanctions enforcement, kleptocracy asset tracing and information sharing, and more robust beneficial ownership transparency disclosure rules. While he is in East Africa, President Obama should use his meetings with key heads of state from the region to secure those commitments and announce his own.

Conclusion

Sanctions and other financial pressures are a means to an end: curbing the culture of impunity in South Sudan and creating an enabling environment for peace negotiations. In order to prevent a return to the status quo of corruption and nepotism, elites need to know that there will be accountability for economic crimes, including pillage and grand corruption.

Endnotes

¹ U.N. Office for the Coordination of Humanitarian Affairs Financial Tracking Service, “South Sudan,” available at <http://fts.unocha.org/pageloader.aspx?page=emerg-emergencyDetails&appealID=1071>; U.S. Department of State Office of the Spokesperson, “U.S. Pledges Additional Humanitarian Assistance for People Affected by the South Sudan Crisis,” Media note, June 16, 2015, available at <http://www.state.gov/r/pa/prs/ps/2015/06/243889.htm>.

² U.S. Congress Tom Lantos Human Rights Commission hearing, “The Current Human Rights Situation in South Sudan,” testimony by Susan Page, July 10, 2015.

³ Outside of the IGAD-led process in Addis Ababa, meetings in Nairobi have been hosted by the Kenya’s former president, Daniel arap Moi, and Kenya’s current president, Uhuru Kenyatta. Meetings in Arusha have been held by Tanzania’s ruling party, the Chama Cha Mapinduzi (CCM) and South Africa’s ruling party the African National Congress (ANC). Meetings in Kampala have been hosted by Uganda’s president Yoweri Museveni. A meeting in Khartoum was hosted jointly by the Chinese and Sudanese governments. Sudan Tribune, “Former Kenyan president Moi urges Dinka and Nuer elders to advocate for peace,” June 11, 2015, available at <http://www.sudantribune.com/spip.php?article55299>; Sudan Tribune, “Kenya’s ex-president criticises S. Sudan leaders over conflict,” February 13, 2015, available at <http://www.sudantribune.com/spip.php?article53969>; Agence France Presse, “South Sudan’s rival leaders meet as fighting continues,” June 29, 2015; Sudan Tribune, “South Sudanese rival leaders urged to make proposals over outstanding issues,” June 29, 2015, available at <http://www.sudantribune.com/spip.php?article55518>; Peter Fabricius, “Ramaphosa navigates a minefield in South Sudan,” Institute for Security Studies, June 4, 2015, available at <https://www.issafrika.org/iss-today/ramaphosa-navigates-a-minefield-in-south-sudan>; Marc Nkwame, “ANC joins CCM in South Sudan peace talks,” *Daily News*, February 19, 2015, available at <http://www.dailynews.co.tz/index.php/local-news/41714-anc-joins-ccm-in-south-sudan-peace-talks>; Mehari Taddele Maru, “In defense of the IGAD-led mediation original position on multi-stakeholder negotiations,” *The Reporter*, April 18, 2015, available at <http://www.thereporterethiopia.com/index.php/opinion/viewpoint/item/3411-in-defense-of-the-igad-led-mediation-original-position-on-multi-stakeholder-negotiations>; South Sudan TV (Juba), “South Sudan leader receives Tanzanian ruling party secretary-general,” BBC Monitoring, March 17, 2015, 1700 GMT; New Vision, “Museveni, Kenyatta and Kiir meet in Kampala,” August 23, 2014, available at <http://www.newvision.co.ug/news/659021-museveni-kenyatta-and-kiir-meet-in-kampala.html>; Agence France-Presse, “S. Sudan rivals in Khartoum for China-led peace talks,” January 12, 2015, available at <http://reliefweb.int/report/south-sudan/ssudan-rivals-khartoum-china-led-peace-talks>; Xinhua, “China-supported consultations in Khartoum reactivate peace process in South Sudan,” January 13, 2015, available at http://news.xinhuanet.com/english/china/2015-01/13/c_133915537.htm; HAN and Geeska Afrika, “Sudan: China’s led South-Sudan Peace Process in Khartoum,” January 17, 2015, available at <http://www.geeskaafrika.com/sudan-chinas-led-south-sudan-peace-process-in-khartoum/7740/#sthash.5rRz3NGf.dpuf>.

⁴ Enough defines forum-shopping as actors bringing their policy positions to multiple platforms in hopes of optimizing their chances for an outcome that favors their interests.

⁵ Both warring sides have signed (and violated) nine previous agreements to cease hostilities. These agreements include the following: (1) “Agreement on Cessation of Hostilities Between the Government of the Republic of South Sudan (GRSS) and the Sudan People’s Liberation Movement/Army (In Opposition) (SPLM/A In Opposition),” January 23, 2014, available at <http://southsudan.igad.int/attachments/article/250/cessation%20of%20hostilities.pdf>; (2) “Implementation Modalities in Support of the Agreement on Cessation of Hostilities Between the Government of the Republic of South Sudan (GRSS) and the Sudan People’s Liberation Movement/Army (In Opposition) (SPLM/A IO),” February 24, 2014, available at <http://southsudan.igad.int/attachments/article/251/Implementation%20Modalities%20for%20CoH.pdf>;

(3) “Recommitment on Humanitarian Matters in the Cessation of Hostilities Between the Government of the Republic of South Sudan (GRSS) and the Sudan People's Liberation Movement/Army (In Opposition) (SPLM/A IO),” May 5, 2014, available at <http://southsudan.igad.int/attachments/article/252/Recommittment%20to%20Humanitarian%20Matters%20of%20COH,%205%20May'2014.pdf>; (4) “Agreement to Resolve the Crisis in South Sudan,” May 9, 2014, available at <http://southsudan.igad.int/attachments/article/249/Agreement%20to%20Resolve%20the%20crisis%20in%20S.%20Sudan,%209%20May'14.pdf>; (5) “Re-Dedication of and Implementation Modalities for the Cessation of Hostilities Agreement signed on 23rd January 2014 between the Government of the Republic of South Sudan and the Sudan People’s Liberation Movement / Army (In Opposition),” August 25, 2014; agreement text (not signed by Riek Machar but signed by all regional heads of state) referenced in Intergovernmental Authority on Development, “IGAD Mediation Calls on South Sudan Parties to Respect Cessation of Hostilities Agreement,” Press release, August 30, 2014, available at <http://southsudan.igad.int/attachments/article/262/30%20Aug%20Press%20Release%20Statement%20from%20the%20Mediation.pdf>; (6) “Re-Dedication of and Implementation Modalities for the Cessation of Hostilities Agreement signed on 23rd January 2014 between the Government of the Republic of South Sudan and the Sudan People’s Liberation Movement / Army (In Opposition),” November 9, 2014, available at <http://southsudan.igad.int/attachments/article/272/CoH%20Implementation%20Matrix%20and%20Addendum%20signed%209%20%20November.pdf>; (7) January 12, 2015 recommitment by South Sudanese representatives in a one-day special consultation in Khartoum initiated by the Chinese government; Government of Ethiopia, “Special Consultation in Support of IGAD-Led South Sudan Peace Process Concluded in Khartoum,” AllAfrica.com, January 14, 2015, available at <http://allafrica.com/stories/201501150268.html>; Ministry of Foreign Affairs of the People’s Republic of China, “Foreign Ministry Spokesperson Hong Lei's Regular Press Conference on January 13, 2015,” January 13, 2015, available at http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1227905.shtml; (8) Agreement signed January 21, 2015, in Arusha, Tanzania; Paanluel Wël, “Arusha Declaration: The Draft Agreement on the Reunification of the SPLM Factions,” January 21, 2015, available at <http://paanluelwel.com/2015/01/21/arusha-declaration-the-draft-agreement-on-the-reunification-of-the-%E2%80%AA%E2%80%8Esplm%E2%80%AC-warring-factions/>; see also Fumbuka Ng’wanakilala, “South Sudan ruling party rivals sign peace deal in Tanzania,” Reuters, January 21, 2015, available at <http://uk.reuters.com/article/2015/01/21/southsudan-crisis-idUKL1N0V01X720150121>; (9) Intergovernmental Authority on Development, “South Sudan Parties Sign Areas of Agreement on the Establishment of the Transitional Government of National Unity (TGoNU),” February 2, 2015, available at <http://southsudan.igad.int/index.php/278-south-sudan-parties-sign-areas-of-agreement-on-the-establishment-of-the-transitional-government-of-national-unity-tgonu>. At the time of publication, 46 violations of the cessation of hostilities agreement had been documented and published by the Intergovernmental Authority on Development Monitoring & Verification Mechanism.

For documentation of violations 1 to 12 see “Summary of Reports of Cessation of Hostilities (COHs) Violations (as at 21 August 2014),” available at <http://southsudan.igad.int/attachments/article/258/Summary%20of%20Reports%20of%20Cessation%20of%20Hostilities%20%28COHs%29%20Violations%20%28as%20at%2021August%202014%29.pdf>. For documentation of violations 13 to 17 see “Summary of Reports of Cessation of Hostilities (COHs) Violations (22 August – 7 November 2014),” available at

<http://southsudan.igad.int/attachments/article/273/Summary%20of%20Reports%20of%20Cessation%20of%20Hostilities%2022%20Aug-7%20%20Nov.pdf>.

For documentation of violation 18 see “Addendum to Summary of Reports of Cessation of Hostilities (COH) Violations (22 August – 7 November 2014),” available at

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¹³ U.S. Federal Register, vol. 79, no. 149, August 4, 2014, Proposed Rules, p. 45152, available at http://www.fincen.gov/statutes_regs/files/CDD-NPRM-Final.pdf; U.S. Department of the Treasury, "Treasury Issues Proposed Rules to Enhance Financial Transparency," Press release, July 30, 2014, available at <http://www.treasury.gov/press-center/press-releases/Pages/jl2595.aspx>.

¹⁴ In remarks to press on May 4, 2015, in Nairobi, Secretary Kerry said, "It is increasingly clear that justice and accountability, as well as reconciliation, are essential to peace. And to complement our existing funding for local reconciliation efforts, the United States is committing an additional \$5 million to support South Sudanese and international efforts to create a credible, impartial, and effective justice mechanism, such as a hybrid court, in order to hold perpetrators of violence to account. The funds will also support efforts to build the capacity of civil society to document human rights violations. And I call on other international donors to join us in committing funds to these critical justice and reconciliation efforts." U.S. Department of State, Press availability of Secretary of State John Kerry in Nairobi, Kenya, May 4, 2015, available at <http://www.state.gov/secretary/remarks/2015/05/241822.htm>. See also Nichola Mandil, "Exclusive: Eye Radio interviews John Kerry," Eye Radio, May 4, 2015, available at <http://eyeradio.org/exclusive-eye-radio-interviews-john-kerry/>.

¹⁵ Article VI(2) of the February agreement, signed by President Salva Kiir and Riek Machar notes, "The independent hybrid judicial body, with participation from South Sudanese and eminent African lawyers and jurists, shall be established to investigate and prosecute individuals bearing the greatest responsibility for violations of international humanitarian law and/or applicable South Sudanese law, committed since December 15, 2013." Intergovernmental Authority on Development, "Areas of Agreement on the Establishment of the Transitional Government of National Unity (TGoNU) in the Republic of South Sudan," art. VI(2), February 1, 2015, available at http://www.sudantribune.com/IMG/pdf/1_feb_2015_agreement.pdf.

¹⁶ Article 121 of the 2011 constitution notes, "(1) All executive and legislative constitutional office holders, Justices, and senior Civil Service officials at all levels of government shall, upon assumption of their offices, make confidential declaration of their assets and liabilities including those of their spouses and children in accordance with the law. (2) The President, Vice President, Presidential Advisors, Ministers, and Deputy Ministers of the National Government, Governors, state Advisors, state Ministers, and other constitutional office holders shall, during their tenure of office, neither practice any private profession, transact commercial business, nor receive remuneration or accept employment of any kind from any source other than the National Government or a state government as the case may be." The Transitional Constitution of the Republic of South Sudan, 2011, art. 121, p. 40, available at http://www.sudantribune.com/IMG/pdf/The_Draft_Transitional_Constitution_of_the_ROSS2-2.pdf.

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¹⁸ U.N. Office on Drugs and Crime, "United Nations Convention against Corruption: Convention Highlights," available at <https://www.unodc.org/unodc/en/treaties/CAC/convention-highlights.html> (last accessed July 2015).

¹⁹ South Sudan ratified the U.N. Convention Against Corruption on January 23, 2015. U.N. Office on Drugs and Crime, "United Nations Convention against Corruption Signature and Ratification Status as of 1 April 2015," available at <https://www.unodc.org/unodc/en/treaties/CAC/signatories.html> (last accessed July 2015).

²⁰ Article 13 of the U.N. Convention Against Corruption notes, "1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes; (b) Ensuring that the public has effective access to information; (c) Undertaking public information activities that contribute to nontolerance of corruption, as well as public education programmes, including school and university curricula; (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary: (i) For respect of the rights or reputations of others; (ii) For the protection of national security or ordre public or of public health or morals. 2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention." U.N. Office of Drugs and Crime, "United Nations Convention Against Corruption," art. 13, pp.15-16, October 31, 2003, available at https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

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²⁵ Article 121 of the 2011 South Sudan constitution notes, "(1) All executive and legislative constitutional office holders, Justices, and senior Civil Service officials at all levels of government shall, upon assumption of their offices, make confidential declaration of their assets and liabilities including those of their spouses and children in accordance with the law. (2) The President, Vice President, Presidential Advisors, Ministers, and Deputy Ministers of the National Government, Governors, state Advisors, state Ministers, and other constitutional office holders shall, during their tenure of office, neither practice any private profession, transact commercial business, nor

receive remuneration or accept employment of any kind from any source other than the National Government or a state government as the case may be.” The Transitional Constitution of the Republic of South Sudan, 2011, art. 121, p. 40, available at

http://www.sudantribune.com/IMG/pdf/The_Draft_Transitional_Constitution_of_the_ROSS2-2.pdf; U.N. Office of Drugs and Crime, “United Nations Convention Against Corruption,” arts 8(5), 12(3), 20, 52(5).

²⁶ A June 2014 U.S. Department of State report noted, “There are reportedly 26 banks and approximately 79 foreign exchange bureaus in South Sudan, but 10 of the banks are banks in name only. The Bank of South Sudan is reported to distribute \$1.3 million to each bank each week. One million dollars is allocated for withdrawal by private businesses and \$300,000 for withdrawal by citizens with children living and studying abroad. However, allegedly only \$400,000 of the allocated one million dollars actually reaches businesses, while the remaining \$600,000 is channeled into the parallel market. Similarly, only \$50,000 of the \$300,000 allocated for families with children abroad is allegedly actually disbursed; the remainder goes to the parallel market. Several of the 79 foreign exchange bureaus, which benefit from this illegal structure, are allegedly owned by South Sudanese government officials or their relatives.” U.S. Department of State Bureau for International Narcotics and Law Enforcement Affairs, “Money Laundering and Financial Crimes Country Database,” p. 384, June 2014, available at <http://www.state.gov/documents/organization/222700.pdf>. For additional reporting on currency speculation and diversion of funds into the parallel market see The Indian Ocean Newsletter, “In IMF view, a kleptocratic State bordering on bankruptcy,” May 1, 2015; BMI Research, “Sudan and South Sudan Country Risk Report: Q3 2015,” July 1, 2015.

²⁷ A December 2014 International Monetary Fund report noted, “The parallel market emerged in September 2011 as the Bank of South Sudan (the central bank) decided to peg the currency at an overvalued level and ration foreign exchange. The rationing entails a hidden transfer of resources from the government to those with privileged access to foreign exchange at the official rate. The number of foreign exchange houses grew rapidly as they became beneficiaries of foreign exchange allocations.” The corresponding endnote further explains, “By mid-2013, there were 79 foreign exchange houses licensed in South Sudan. A significant part of goods are imported at the parallel market exchange rate while only a small number of transactions (i.e. imports of food, medicine, fuel, and construction materials) benefit from foreign exchange acquired at the official exchange rate.” International Monetary Fund, “IMF Country Report No. 14/345: Republic of South Sudan 2014 Article IV Consultation—Staff Report; Staff Statement; and Press Release,” para. 9, p. 7, available at <https://www.imf.org/external/pubs/ft/scr/2014/cr14345.pdf>. See also The Indian Ocean Newsletter, “In IMF view, a kleptocratic State bordering on bankruptcy,” May 1, 2015; BMI Research, “Sudan and South Sudan Country Risk Report: Q3 2015,” July 1, 2015. The Central Bank of Kenya’s supervisory report for 2014 references “a hard currency shortage with wide discrepancies between official exchange rates and black market exchange rates” in South Sudan caused by the crisis in the context of a discussion about complications for Kenyan citizens living in South Sudan at the time. Okuttah Mark, “Tanzania drives Kenyan banks profit as South Sudan falters,” *The East African*, June 9, 2015, available at <http://www.theeastafrican.co.ke/business/Tanzania-drives-Kenyan-banks-profit/-/2560/2745190/-/15nsOod/-/index.html>; The Indian Ocean Newsletter, “South Sudanese allowed to use SSP for their investments,” May 29, 2015.

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³⁰ A December 2014 IMF report noted, “The number of financial institutions is excessive compared to the size of the financial sector. There are 28 licensed banks, out of which 7 are majority foreign-owned. In addition, there are 79 licensed foreign exchange bureaus, 12 microfinance institutions, and ten insurance companies. Most foreign owned banks tend to be subsidiaries of reputable banks in their home countries and provide some banking products and services, the plethora of local banks and exchange houses cater exclusively to the foreign exchange market.” International Monetary Fund, “IMF Country Report No. 14/345: Republic of South Sudan 2014 Article IV Consultation—Staff Report; Staff Statement; and Press Release,” para. 4, p. 31.

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