



Bankrupting Kleptocracy

Financial tools to counter
atrocities in Africa's deadliest war zones



By J.R. Mailey and Jacinth Planer
October 2016



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Executive Summary

In several conflict-affected countries in East and Central Africa, the state has been hijacked and transformed from an institution that is supposed to provide social services and safeguard the rule of law into a predatory criminal enterprise that does quite the opposite. These criminal cells use state power to loot public coffers and natural resource wealth with impunity, and sideline or silence those who get in their way. Oversight institutions are co-opted, marginalized, removed altogether, or used as political instruments to go after opponents or independent voices. Leaders loot natural resources and divert state funds, funneling public money directly into the instruments of war and repression. Security forces use lethal force to quell protests, and countless journalists and activists have been attacked, intimidated, and harassed. These regimes often deny any sort of peaceful path to political turnover or meaningful power sharing, thereby encouraging the rise of armed opposition movements, which in turn lead to cycles of increasingly deadly force, marked especially in East and Central Africa by the commission of mass atrocities. Militias supported by and loyal to violent and corrupt regimes, meanwhile, are often used to carry out campaigns of violence and intimidation against political opponents. This abusive and predatory system of governance is called violent kleptocracy. And, for most citizens, this type of governance yields disastrous results; it stifles commerce and economic development, facilitates a wide range of criminal activities, and often catalyzes violence and violent extremism.

The perpetrators of these practices have found ample facilitation in the workings of the globalized economy. The deluge of documents revealed in the Panama Papers leak show just how easy it is for criminals and kleptocrats to move their ill-gotten gains without being detected—and this leak still only represents a small fraction of the total number of anonymous shell companies used by government officials and secretive investors.

Fighting corruption must become a cornerstone of U.S. engagement with countries that have been plagued by violent kleptocracy. The U.S. government should expand its support for the development of robust oversight institutions and accountability mechanisms and redouble its efforts to create and protect space for civil society and the press to act as watchdogs and articulate public concerns. However, in hijacked states, efforts toward this end are typically thwarted by elites who co-opt, sideline, or bypass institutions designed to restrain their ability to loot with impunity. As evidenced in South Sudan—a country with a legal and institutional framework for managing state assets and combating corruption that in many ways exceeds international best practice—corruption is neither a purely technical challenge nor solely the result of insufficient institutional capacity. Progress achieved through good governance initiatives is likely to be short-lived unless external interventions can fundamentally alter the incentive structures of those in power. Simply put: there must be consequences for kleptocrats, for those who obstruct reform, and for private sector actors that facilitate and enable their operations. The international community has the power to chip away at the environment of impunity that characterizes violent kleptocracies—and the United States is in a position to play a leading role.

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Achieving this objective will involve harnessing the tools of financial pressure at the U.S. government's disposal to go after what often motivates violent kleptocrats in the first place: their ill-gotten gains.

The international anti-corruption architecture is insufficient for addressing the challenge of violent kleptocracy largely because current efforts largely fail to impose any consequences on kleptocrats themselves. However, given the interconnectivity of the global financial system, the size and primacy of the U.S. economy, and the significance of the U.S. currency in global trade and financial transactions, the U.S. government is in a unique position to target the assets of kleptocrats through the use of financial pressure. These tools of financial pressure that have successfully been used for other national security objectives should increasingly be deployed in countering atrocities and conflict fueled by mass corruption. Specifically, financial pressure should be used to create leverage in support of political and diplomatic strategies developed in concert with international partners and organizations like the United Nations (UN), European Union (EU), and African Union (AU). Three types of tools could be particularly potent for building leverage in the fight against violent kleptocracy: targeted sanctions, anti-money laundering measures, and anti-bribery provisions.

Targeted Sanctions. Targeted financial sanctions are a potent tool to counter kleptocracy precisely because of their ability to impact the target wealth of senior officials within kleptocratic regimes. This directly addresses the need to alter kleptocrats' problematic incentive structures, which in this region are often oriented in favor of violent extraction of wealth and repression of dissent. Sanctions programs developed before the past decade often resembled blunt instruments and, at times, negatively impacted the target country's population at large more than the regime officials whose behavior sanctions were meant to alter in the first place. Fortunately, there have been significant advances not only in the types of sanctions that can be deployed against foreign targets but also in the U.S. government's sanctions administration and enforcement capacity. Targeted sanctions programs aiming to address crises in violent kleptocracies can and should include provisions that allow the administration to place sanctions on individuals who engage in public corruption, undermine democratic processes or institutions, or stifle free speech or peaceful assembly. These programs should target not only the kleptocrats themselves but also the non-state actors who enable and facilitate the kleptocrats' abilities to loot and repress. In response to certain crises, the U.S. government can also consider placing sanctions on an entire business sector (known as "sectoral sanctions") believed to be either financing conflict or subject to significant looting by regime elites.

Real leverage is only typically strongest when senior military and government officials (and not bureaucrats and low-level officials) are targeted, and when resources are committed to enforcing the sanctions, which is often not the case. This leverage is amplified significantly when targeted sanctions are imposed as part of a coalition. Multilateral sanctions are virtually always preferable because they can be more effective when broadly backed, allow for fewer loopholes for

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sanctions-busters to exploit, and are deemed as more legitimate than unilaterally imposed sanctions.

The U.S. government must also step up efforts to identify violations across the range of sanctions programs that are currently in place. This will involve working with third parties (civil society, press, banks, etc.) to identify lapses in enforcement or means through which designated entities are sidestepping sanctions. In the cases of Iran and Sudan, banks that have attempted to circumvent sanctions have faced steep penalties, including an \$8.9 billion fine paid in 2015 by BNP Paribas. These hefty fines have served as a severe deterrent for banks, who, in turn, have greatly enhanced their internal controls and sanctions compliance regimes. This, in turn, has isolated the Sudanese regime in particular, creating greater leverage for potential diplomatic engagement on a wide range of issues.¹

Crucially, regardless of the type of sanctions program, a key priority for the U.S. government is to ensure that it minimizes the humanitarian impact of sanctions; this means prioritizing the development of more effective licensing processes for certain types of exports like medicine and medical devices, as is provided for in the Trade Sanctions Reform Act (TSRA). The licensing process for each country should be as streamlined as possible in order to allow the provision of humanitarian services to reach the people most in need. Export and broader trade controls are also an element of sanctions that, if well-targeted, can impact the development of economic sectors that rely on advanced equipment and technology as well as the military.

Anti-Money Laundering and Asset Forfeiture. Numerous anti-money laundering (AML) statutes provide the U.S. government with the power to trace, block and, in some cases, seize the illicit proceeds of overseas corruption. Anyone who knowingly facilitates the movement of the illicit funds into or through the United States (including the U.S. financial system) is guilty of money laundering and could be subject to criminal prosecution as a result. The Treasury Department's Financial Crimes Enforcement Network (FinCen) has significant authority to place enhanced due diligence requirements on financial institutions, investigate financial crimes, and even impose sanctions-like prohibitions on overseas entities believed to be involved in money laundering. Moving forward, FinCen should use these powers to identify banks, institutions, and classes of transactions that kleptocrats use to loot and launder state assets.

If kleptocrats attempt to launder their ill-gotten gains into the United States or through the U.S. financial system, U.S. authorities have the power to seize these assets. The launch of the Kleptocracy Asset Recovery Initiative in 2010 created a "dedicated, specialized team" of investigators from the departments of Justice and Homeland Security whose primary mission is to recover the assets looted by corrupt foreign officials that end up in the United States or pass through U.S. banks. Importantly, the U.S. government has recently enhanced the resources and staff allocated to this initiative, and it may become an increasingly potent tool to counter corruption.

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Foreign Corrupt Practices Laws. Another foundational element of the U.S. framework for countering violent kleptocracy is the Foreign Corrupt Practices Act (FCPA). This law imposes a compliance requirement that places certain record-keeping and accounting requirements on U.S. firms doing business overseas and criminalizes bribery of foreign officials in order to gain a competitive advantage. Tools like the FCPA should be more vigorously deployed in countries marked by violent kleptocracy where its impact will be more effective and meaningful in terms of saving lives. However, one major shortcoming of the law is its emphasis on punishing the bribe-payers as opposed to bribe-recipients. Moving forward, however, FCPA convictions can and should trigger corresponding anti-money laundering probes into the movement of the funds and should result in the recipient of the bribe being placed under sanctions. This means that if a U.S. company is found to have paid an illegal bribe to a government official in, say, South Sudan or the Democratic Republic of the Congo (DRC), the government official who received the bribe would automatically be placed under U.S. sanctions and prohibited from traveling to the United States or engaging in transactions with U.S. businesses (including foreign companies listed on U.S. stock exchanges) or financial institutions. Additionally, a key objective of such prosecutions should be to obtain evidence (via plea agreements) about the recipients of bribes as well as the institutions and middlemen involved in receiving and processing illicit payments.

While potent, the tools of financial pressure must be continuously sharpened. In order to calibrate these tools to counter kleptocracy, the U.S. government should develop a comprehensive strategy for countering violent kleptocracy and establish a coordination mechanism for the deployment of tools of financial pressure. Steps must also be taken to ensure that the agencies responsible for administering the tools of financial pressure have access to sufficient staff, resources, and intelligence about foreign officials engaging in corruption. The U.S. government must also continue to cultivate international partnerships to investigate and prosecute the perpetrators of corruption and use a variety of international forums to push reform-minded governments around the world to enhance anti-corruption controls and bolster their own capacity to deploy tools of financial pressure.

When kleptocracies turn violent

Across East and Central Africa, the state has been hijacked and transformed from an institution that is supposed to provide social services and safeguard the rule of law into a predatory criminal enterprise that does quite the opposite. Regimes that have captured these states use their power to loot state coffers and natural resources with impunity and sideline or silence anyone who gets in their way by any means necessary—whether by repressing internal dissent or through war strategies marked by mass atrocities. In these countries, leaders have tremendously strong incentives to remain in power indefinitely.² However, their incentives to govern effectively are virtually non-existent. The revenue streams they can capture while in office provide not only the incentive to remain in office but also the means of clinging to power, eviscerating any semblance of a social contract between government and citizenry.³

The vast majority of the instruments of state power—government ministries, the military, the police, courts, customs authorities, and more—become vehicles for carrying out two ultimate objectives: self-enrichment and self-preservation. Senior government officials and members of their inner circle can afford luxury cars and access to rent-seeking opportunities, and they stash their wealth—and often base their families—safely overseas. This looting continues with impunity, as oversight institutions are co-opted, marginalized, or removed altogether. Even anti-corruption bodies themselves are used to settle political scores and marginalize allies, as political opponents of those in power are purged and jailed under the auspices of anti-graft campaigns.⁴

Leaders typically cultivate elaborate patronage networks to secure the loyalty of key domestic constituencies, especially the military and security forces. The armed forces in these contexts tend to be calibrated to protecting the regime as opposed to citizens at large.⁵ And corrupt autocrats the world over have proven more than willing to unleash security forces on anyone who challenges the regime's authority—even if this means mounting sustained military or aerial bombardment campaigns against entire communities, as has been the case in Sudan. Civilians who speak out against corruption and other government transgressions are among the most frequent targets of state-sponsored violence in these societies. Security forces from multiple countries have also been deployed to directly take part in the looting of natural resources in places like eastern DRC, where senior military officials have been involved in multiple aspects of the illicit mineral trade. Frustratingly, the abuses committed by security forces and regime loyalists only serve to reinforce a vicious cycle. Individuals who steal blindly or commit human rights abuses—particularly mass atrocities in the context of armed conflict—today face greater international pressure, stronger popular demands for justice, and a wider array of international institutions for prosecuting grave crimes. However, given that punitive measures often target officials who have left office, the incentives of leaders to hold onto power and head of state privileges is therefore especially high. The Enough Project refers to this predatory and abusive system of governance as violent kleptocracy.

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Undermining development and stifling business

Kleptocracy yields disastrous results. The scale of resources looted or misappropriated is staggering. In South Sudan, the president admitted in 2012 that the country had lost \$4 billion within a year of achieving independence.⁶ The story is similar in other kleptocracies. In Nigeria, for example, more than \$380 billion was stolen between 1960 and 1999.⁷ In fact, numerous experts and international organizations have lamented that the value of illicit financial flows (IFFs) out of Africa dwarfs the total amount of development assistance received by the continent. “Whether IFFs are three times the amount of official development assistance, as attributed to the Secretary-General of the OECD, or are 10 times the amount of aid received, as claimed by the Tax Justice Network, the implications are clear,” according to a report by an international High Level Panel on Illicit Financial Flows from Africa. “These considerations compel urgent and coordinated action to curb these illicit outflows.”⁸

State assets that should be used to benefit citizens generally, provide critically needed services like healthcare, and improve citizens’ livelihoods are diverted to line the pockets of a select few and protect their place in power. Successive kleptocratic regimes in the Central African Republic have routinely diverted from state coffers and have done little to develop the country’s economy or improve citizens’ livelihoods. The country has ranked near the bottom of the U.N. Development Programme’s (UNDP) Human Development Index for more than a decade.⁹ The state has historically failed to provide public services to citizens outside the capital. This dynamic is reflected in a local saying that “the state stops at PK12” (a neighborhood on the outskirts of the capital). Additionally, although kleptocrats rarely disclose accurate government budgets, the ones that are leaked reveal that kleptocrats’ biggest priority is remaining in power. The government of Sudan, meanwhile, allocates a disproportionate amount of money to the military and security sector compared to what it allocates to agricultural, industrial, health, and education sectors combined.¹⁰

In many cases, the segment of the population most acutely impacted by systemic corruption and state-sponsored violence may be women. “[C]orruption can disproportionately affect poor women and girls, particularly in their access to essential public services, justice, and security and in their capacity to engage in public decision-making,” according to a 2010 report by UNDP and the U.N. Development Fund for Women (UNIFEM). “In contexts where bribery has become a prerequisite to accessing services, rights and resources, women’s relatively weaker access to and control of personal resources has meant that they are more frequently denied access to these services.”¹¹

Corruption also frustrates legitimate business and deters foreign investment. “Industry professionals see corruption as the biggest problem associated with doing business in emerging markets,” according to the 2016 Agility Emerging Markets Logistics Index. “[S]urvey respondents place increasing value on fair, open and transparent legal and regulatory institutions which can protect investments, enforce contracts and offer robust commercial markets.”¹² In violent

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kleptocracies, war and the absence of rule of law drive out legitimate investment and cede the playing field to those who are willing to play by the rules set by violent kleptocrats, perpetuating the status quo in the process.

A grave security threat

Kleptocracy is not simply a danger to a country's economic well-being; it is also a grave security threat, as it facilitates a wide range of criminal activities, violence, and extremism. In a violent kleptocracy, agents of the state—usually military and security personnel with direct ties to the top of the hierarchy—are perhaps the single worst perpetrators of violence and human rights abuses. In the case of Sudan, for example, President Omar al-Bashir has demonstrated that he will use brute force to counter any challenges to his rule. The result has been horrific.

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In Sudan and South Sudan, some of the money squeezed by the kleptocrats out of state coffers is funneled directly into the instruments of war and repression. In these countries, public money is being wrought from citizens in part for the purpose of waging war—and often in more violent and more deadly ways, directly against them, with equipment and forces that are increasingly sophisticated and expensive. For most of the past three decades, Khartoum has committed genocide and other atrocity crimes and waged war on its own people with heavy air and ground attacks on civilians in periphery areas to the south and west. Military and security forces have used lethal force to quell protests, and countless journalists and activists have been

attacked, intimidated, and harassed. The wars across East and Central Africa have resulted in millions of lost lives and have left millions more people displaced.

Here again, evidence suggests that women are disproportionately targeted in violent kleptocracies, as patterns of abuse mirror broader dynamics of institutionalized gender inequality. The case of Sudan is illustrative. “[W]omen involved in protests, rights campaigns, social services, legal aid, and journalism, and other public action have been targeted for a range of abuses, and operate in a wider context of gender inequality that makes their activism all the more challenging,” according to a March 2016 Human Rights Watch report on the abuse and repression of women activists in Sudan. “[W]omen activists and human rights defenders face an array of abusive practices their male colleagues are less likely to have to contend with—from sexual violence to the deliberate efforts of security personnel to tar their reputations in ways that can cause lasting social and professional harm.”¹³

Violent conflict also has a disproportionate impact on women, and sexual and gender-based violence (SGBV) has been a feature of many of the conflicts in East and Central Africa. “In the Democratic Republic of Congo, rape is regularly used as a weapon of war: it is estimated that 48 women were raped each hour in some regions during the height of the conflict,” according to the Global Fund for Women. “The story is the same in armed conflicts around the world as well as in unstable political climates and post-conflict regions: systematic rape is a favorite weapon of war aimed to control, intimidate, and humiliate millions of women and girls.”¹⁴ In a survey conducted in Bentiu, South Sudan, 23 percent of households responded that at least one member of the household had been sexually assaulted during the previous five years, 87 percent of whom were assaulted in 2015, a period coinciding with a military offensive launched by the government in spring of that year.¹⁵ The study notes, “The high incidence of sexual assault thus appears to be a direct consequence of the use of SGBV as a weapon of war by the warring parties and their proxies.”¹⁶

The link between violence and the kleptocrats, importantly, is not always overt. Private militias and paramilitary groups supported by kleptocratic regimes are often used to carry out campaigns of violence and intimidation against political opponents. In Sudan, gross human rights violations in Darfur are frequently not committed directly by agents of the state themselves but by militias backed by Khartoum, some of which have been loosely incorporated into state structures but have no effective restraint or accountability. In Burundi, significant violence and intimidation against activists, protesters, journalists, and opposition figures has been perpetrated by Imbonerakure, armed and militant youth militias loosely affiliated with the ruling party of President Pierre Nkurunziza. This creates a veneer of separation between corrupt regimes and the perpetrators of violence. The case is similar in South Sudan, CAR, and the DRC, where non-state militias often serve as proxies who perpetrate violence on behalf of governments or their foreign adversaries.

Additionally, kleptocratic regimes’ use of violence to retain power does not always result in mass atrocities or civil war. In some cases, a violent kleptocracy’s monopoly on the use of force is so profound, serious armed challenges to its authority are few and far between, as is the case in several oil-rich kleptocracies in the Gulf of Guinea. The most skilled kleptocracies typically seek to minimize direct use of violence by cultivating patronage networks secure the loyalties of key domestic constituencies. This dynamic exists in Angola, Equatorial Guinea, and Gabon. The regimes in these countries selectively use the country’s laws to reinforce existing power dynamics and tap into ideological and nationalist sentiments to distract from their misrule. The suppression of dissent and control of information remain crucial pillars of these regimes’ strategies for retaining power.

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Security forces usually remain at their disposal to quell any sign of dissent, even if only episodically.

Conversely, the consistent use of violence by these regimes is often a sign of weakness rather than a reflection of a regime's security. Regimes that resort to violence often do so because they are unable to use other means to quell dissent and other challenges to its rule or because of internal fractures resulting from disputes over the spoils of power. However, even kleptocrats presiding over countries not currently at war or facing armed opposition to their rule have shown willingness to use force to quell challenges to their authority. In Uganda, for example, the 2016 electoral campaign unfolded in an atmosphere of "state-brokered violence and intimidation."¹⁷

The case of South Sudan shows how rivalries between small groups of powerful individuals willing to use violence to gain or retain control over state assets can destabilize an entire country to the point of civil war. The African Union Commission of Inquiry report on abuses committed during South Sudan's recent conflict was unequivocal about the role corruption and greed of senior officials played in fomenting the crisis. "It was clear from the various consultations of the

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Commission that the absence of equitable resource allocation and consequent marginalization of the various groups in South Sudan was a simmering source of resentment and disappointment underlying the conflagration that ensued, albeit the implosion of the conflict was brought about by the political struggle by the two main players," the report noted.¹⁸ "[S]truggle for political power and control of natural resources revenue, corruption and nepotism appear to be the key factors underlining the break out of the crisis that ravaged the entire country."¹⁹

Violent kleptocracy can also provoke the rise of a wide range of violent non-state actors. Many types of criminals and illicit traffickers benefit from corruption. Illicit flows across the continent—of wildlife, weapons and ammunition, drugs, natural resources, and human beings—are facilitated by the linkages between criminals and corrupt officials.²⁰ "Experts usually agree that criminal organisations typically share a number of common features: they operate with some permanence as a structured group, commit serious crime for profit, using extreme violence and corruption as part of their modus operandi, and launder the proceeds of criminal activities into the legal economy," according to a report by the U4 Anti-Corruption Resource Centre.²¹ "Through corruption, criminals can obtain protection from public officials, influence political decisions and infiltrate state structures and legitimate businesses."²²

The relative lack of economic opportunities accessible by those outside of a kleptocrats' inner circle often provokes violent challenges to the regime's authority. In CAR, the country has experienced four coups d'état in the half-century since it gained independence. These coups

were driven in part by dissatisfaction with the state's abdication of responsibility to provide basic services and security to the Central African people. In other cases, armed groups that are excluded from government patronage use force to overtake large swaths of territory from which they can extract rent. In CAR, armed groups have staked claim to large plots of land that is rich in diamonds and high-quality timber. Armed groups eventually seized control of the country's most lucrative prize—the state itself—during a bloody civil war. In the DRC, a succession of armed groups has controlled lucrative mines along the country's eastern border for almost two decades, helping to fuel one of the continent's longest and deadliest civil wars.

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Corruption is also intimately linked to violent extremism. Although public corruption is not by any means the sole factor pushing individuals toward radicalization, there are numerous cases that illustrate the link. Reports by the U.N. Monitoring Group on Somalia and Eritrea show that corruption not only facilitates al-Shabab's operations but also provides the al-Qaida-linked terrorist group with fuel for its recruitment efforts, as many young Somalis (including those residing in northern Kenya) harbor deep resentment with military and government officials over rampant corruption. The situation is similar in Nigeria, where radical clerics have advanced narratives about government corruption in an effort to push young people toward Boko Haram. "Pervasive malfeasance, especially in the public sector, provides a key referent around which extremists can frame anti-secular ideology and radicalization," according to a 2014 report by Freedom C. Onuoha, head of the Department of Conflict, Peacekeeping, and Humanitarian Studies at the Centre for Strategic Research and Studies of Nigeria's National Defence College, Abuja.²³ Furthermore, corruption weakens states' capacities to respond to terrorism. Military campaigns against violent extremist organizations throughout the Middle East and Africa—from Boko Haram to the Islamic State group to al-Qaida in the Islamic Maghreb—have been severely constrained due to corruption in the armed forces.

An opportunity for U.S. leadership to counter kleptocracy

The international anti-corruption architecture is insufficient for addressing the challenge of violent kleptocracy. There are numerous global, multilateral, and multi-stakeholder initiatives that have taken aim at grand corruption. Although these efforts have helped to shape global norms about the need to fight corruption, they are largely ineffective for addressing the distorted incentive structures of kleptocratic regimes.

The U.N. Convention against Corruption (UNCAC) is a prime example. The convention requires states to take preventive steps to combat corruption, prescribing specific measures such as the establishment of independent anti-corruption bodies.²⁴ It mandates that states criminalize a wide range of corrupt activities and requires them to cooperate with one another in the

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prevention, investigation, and prosecution of corruption.²⁵ However, experts and transparency advocates alike have highlighted several crucial deficiencies that severely undermine UNCAC's effectiveness. An October 2011 report published by the Chr. Michelsen Institute and the U4 Anti-Corruption Resource Centre found that UNCAC is ill-equipped to address the challenges associated with "elite capture of power and resources," which the report notes that the United Kingdom's Department for International Development (DFID) has identified as one of the most prevalent obstacles to change.²⁶ "Corruption in many countries . . . is part of a larger political system aimed at gaining and maintaining access to power and resources," the study found. "Since the primary objective of UNCAC is to contribute to the prevention and combating of corruption, the Convention does not explicitly address these larger dynamics."²⁷

Furthermore, while many governments around the world have made a commitment to tackling international corruption, few have followed through on this commitment. For example, when the Organization of Economic Cooperation and Development (OECD) ratified its Anti-Bribery

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Convention in 1996, each member state was required to enact laws that criminalize the bribery of foreign officials to gain a commercial advantage. Two decades later, however, enforcement remains extremely weak. Indeed, in a 2015 assessment of enforcement of these mandatory anti-bribery laws, Transparency International found that only four out of 41 countries engage in active enforcement.²⁸

The United States, however, is in a strong position to play a leadership role in the global fight against kleptocracy. The United States is one of only a few countries that proactively enforces its anti-bribery laws, it has also routinely reaffirmed its commitment to bolstering transparency and accountability around the world, and it is in a unique position to target the assets of kleptocrats through the use of several tools of

financial pressure. Although an effective international response to countering kleptocracy will require action from a wide range of governments, businesses, international organizations, and civil society actors, this report focuses on the role of the U.S. government. Accordingly, the remaining sections of this report detail how the United States can use these tools as part of a broader strategy to counter violent kleptocracy in East and Central Africa, a region of the world where violent kleptocracy is deadliest. Absent this sort of effort, the deadly status quo is likely to remain intact.

A new approach to countering violent kleptocracy

When developing strategies for engagement in conflicts in East and Central Africa—a region home to several of the longest-standing and deadliest conflicts in human history—the U.S.

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government must acknowledge that the wholesale theft of state assets is a central feature of each crisis. For decades, the United States and other international donors have poured billions of dollars into peace talks and endless peacekeeping missions. While these efforts may be valuable components of an effective peacebuilding strategy, they frequently have not achieved the desired result partly because of a failure to take into account the corrosive political dynamics at the root of the problem. In these contexts, political transitions often merely result in the installation of a new government in power that is ultimately subject to the same incentives and constraints as fallen kleptocrats. Even reform-minded donors and international organizations often forego efforts to root out corruption during political transitions because of the inherently destabilizing effect that attempts to alter the political status quo can have. Failing to deal with corruption early on, however, can allow patterns of patronage, nepotism, and looting to become entrenched.

Sustained progress will require a fundamental change in how external actors approach these countries. No longer can U.S. strategies toward these countries rely on the ascendance of a promising politician into a leadership position. Countless charismatic government officials have portrayed themselves as enlightened and reform-minded only to slip into the same predatory practices as kleptocrats past. For example, of the leaders heralded in the late 1990s as part of the “African Renaissance,” only South African President Thabo Mbeki ever left power as part of a democratic process; the others—Uganda’s Yoweri Museveni, Rwanda’s Paul Kagame, Ethiopia’s Meles Zenawi, and Eritrea’s Isaias Afwerki—either remained in power until death or still remain in power almost two decades later after having sidestepped constitutionally-imposed term limits.

Moving forward, U.S. officials should work to avoid engagements that either intentionally or unintentionally endorse kleptocrats. “Diplomats will need to significantly change their assumptions about and procedures for interacting with officials from corrupt states,” argues a 2014 report by the Working Group on Security and Corruption and Sarah Chayes that was published by the Carnegie Endowment for International Peace. “They should assume that such governments will structure themselves to capture most Western interventions—from development aid to high-level visits—for their own benefit, not that of their people.”²⁹

Meaningful U.S. engagement to counter kleptocracy will require recognizing and addressing the problematic incentive structures of senior government actors. This section outlines a framework for such an approach. The three pillars of this approach are (1) supporting the development of mechanisms that strengthen transparency and accountability; (2) safeguarding space for civil

In East and Central Africa—a region home to several of the longest-standing and deadliest conflicts in human history—the wholesale theft of state assets is a central feature of each crisis.

society and the press to scrutinize their governments; and (3) creating personal consequences for kleptocrats and their international enablers and facilitators.

Supporting mechanisms that strengthen transparency and accountability

Supporting efforts to promote transparency and accountability need to become a cornerstone of U.S. engagement with East and Central African countries that have been plagued by violent kleptocracy. The need for this was recognized by the international community in 2015, when the Sustainable Development Goals were updated and agreed to by all U.N. member states. Sustainable Development Goal 16, in particular, recognizes the need to “build effective, accountable, and inclusive institutions at all levels.” The targets for Goal 16 focus on the need to end corruption, protect access to information, and broaden inclusion in the institutions of global governance.

To build on the opportunity to advance these global goals through U.S. leadership, this support should come in the form of more carefully managed development programming, more strictly monitored financial support to prevent co-optation, and public messaging to support journalists, civil society groups, and other independent local voices calling for government accountability to the public.

A major priority should be to promote transparent governance of key government revenue streams. Foreign development assistance can be captured and looted just like natural resources or any other large, centrally-controlled revenue stream—but, crucially, foreign development aid is fundamentally different because of the inherent level of international discretion over the provision and oversight of funding. In its 2014 report on combatting international corruption, the Carnegie Endowment for International Peace recommends that donors “apply stricter conditionality, including monitoring and payback clauses if benchmarks are not met.”³⁰ The U.S. government should adopt an approach along those lines when dealing with violent kleptocracies, especially in East and Central Africa, where the impacts of such an approach could be transformative due to the high percentage that foreign aid comprises of national budgets in this region.

Another priority for reform of foreign assistance to the region should be to ensure that U.S. development programming itself is not co-opted by corrupt actors. A good start would be putting into practice a five-phase approach for implementing targeted and appropriate anti-corruption interventions outlined in USAID’s own January 2015 practitioner’s guide to anti-corruption programming. These phases include: (1) assessing the drivers of corruption in each country; (2) defining strategies that make anti-corruption issues a high priority; (3) finding entry points for anti-corruption initiatives; (4) tailoring programs to each country’s conditions; and (5) developing monitoring and evaluation plans to measure anti-corruption outcomes and impacts of the particular programs pursued.³¹ These principles could be expanded to include assessing the

structure and operations of the aid recipient country's violent kleptocratic networks and defining strategies that avoid inadvertently reinforcing them.

Similarly, the data-driven model of assistance implemented by the Millennium Challenge Corporation (MCC) could be used more extensively to drive anti-corruption efforts and to increase the incentives of leaders to measurably improve a country's governance indicators. Although violent kleptocratic states are often unlikely to be eligible for MCC programming, the use of the MCC's approach could provide an effective avenue for engaging key ministries and quasi-governmental entities on specific steps needed to qualify for significant levels of assistance. The government of Côte d'Ivoire, for example, following several years of violent conflict, has taken a number of measures to counter corruption and promote good governance. The country faces significant challenges in its fight against corruption,³² but it has recently improved its MCC governance indicator scores significantly. These developments contributed to the MCC's selecting Côte d'Ivoire to receive a five-year "compact" grant to support what many hope can be positive trajectory in improving governance.³³

Another revenue stream that merits significant attention from policymakers is the natural resource sector, given that it makes up a significant portion of state funding for numerous violent kleptocracies in East and Central Africa. South Sudan, for example, has depended on oil for almost 100 percent of its national revenue and a large amount of its hard currency supply.³⁴ The government of Sudan depends on minerals extraction, including gold, and transit fees from oil pumped out of South Sudan for a large share of revenue, which also comes from agricultural and livestock products, expatriate remittances, and customs duties.³⁵ The extractives sectors (mining and oil) provide DRC with 65 percent of its national revenue.³⁶ In order to ensure that natural resource revenue is used for the benefit (and not the detriment) of a country's population at large, robust oversight institutions and mechanisms to promote transparency must be implemented at every stage of the extractive industries value chain (i.e. from the allocation of licenses and concessions to the collection and allocation of royalties collected by the state). Public officials and private sector partners must respect the laws in place that provide citizens with access to crucial data about the extractive industries, such as the identities of beneficial owners of firms involved in resource extraction as well as information contained within natural resource contracts and details of the natural resource concession process.

The U.S. government can push for greater transparency in the extractive industries by encouraging countries to adopt the values, principles, and practices of the Extractive Industries Transparency Initiative (EITI), a multi-stakeholder initiative that provides a framework for natural resource sector transparency through the publication of payments to, and receipts by, governments. The mandatory linchpin of EITI at the national level of each implementing country is the multi-stakeholder group, a critical component for ensuring inclusion of civil society in natural resource governance. The United States should push for robust implementation of the updated EITI standard adopted in 2016. In the DRC, for example, which is already a member of EITI, policymakers should help strengthen EITI implementation by pushing for full beneficial

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ownership disclosure, especially for partners of state-owned companies. They should also press for EITI to require the disclosure of the spending of government agencies that receive extractive payments. Donors should also urge DRC's neighbors, Uganda and Rwanda, to implement EITI. While South Sudan is not an EITI member, the U.S. should support South Sudan's compliance with its natural resource revenue management laws and institutions and the general values and practices that EITI supports.

Additionally, the U.S. can work with the private sector to enhance the disclosure of payments to foreign governments. One key step toward this goal is the provision in Dodd-Frank 1504 that requires publicly-traded companies operating in the extractive industries to disclose payments made to foreign governments on a "project-by-project" basis (i.e. disaggregating the payments to these governments to show whom was paid and why). The SEC issued a new set of proposed rules in December 2015, following a 2013 court ruling overturning its initial regulations, and should proceed quickly to implementation of new rules.

Many government purchases and contracts are allegedly awarded with single-source, non-competitively bid contracts at inflated prices.

The United States should also support efforts to ensure that government expenditure and public procurement do not become vehicles for unchecked looting. Research undertaken by The Sentry³⁷ has found that "chronic abuse, mismanagement, and waste" have come to characterize public procurement in violent kleptocracies across the region. "Many government purchases and contracts are allegedly awarded with single-source, non-competitively bid contracts at inflated prices, and with minimal documentation and oversight," according to The Sentry's 2015 country brief on South Sudan.

"These contracts are allegedly awarded to bidders with connections to elites, armed group commanders the government is seeking to placate at the time, or as favors for helping the SPLA during the liberation struggle."³⁸

Political transitions provide a unique window of opportunity to push through public sector financial reforms. However, in countries that have a long history of state capture, even institutions with clear mandates and robust international support are at high risk of being captured by predatory elites. In these contexts, internationally supervised transition arrangements that entail a "dual-key" or "co-signatory" approach may be necessary in order to disrupt the vicious cycle of state capture.³⁹ Liberia's Governance and Economic Management Assistance Programme (GEMAP) provides one example of a policy intervention. Under GEMAP, international advisors embedded in government ministries, state-owned firms and security sector agencies had co-signatory authority for major government expenditures and for the allocation of natural resource contracts. Such programs are not easy to sell to domestic authorities; even in Liberia, the government only acquiesced to international calls for a dual-key approach after intense and difficult negotiations.⁴⁰ To be sure, a program like GEMAP would likely

be very controversial in most countries, given that it may be seen as an infringement upon a country's sovereignty. The potential payoff, however, may often be worth this period of tension in places where the hijacking of state institutions has been systemic. Some experts and activists have already called for a GEMAP-style program to be implemented in places where political transitions are underway and where the United States has a strong history of engagement on governance institutions, like South Sudan.⁴¹ In addition to GEMAP-style programs, encouraging countries to implement the standards and principles related to the Open Contracting Partnership and Global Initiative for Fiscal Transparency can be additional ways of promoting positive change in contract and budget management.

A third major priority area of U.S. engagement should involve increased pressure and support for sound legal frameworks that curb the prevailing environment of impunity that characterizes violent kleptocracies. A key part of this engagement must include safeguarding the integrity of key oversight institutions that can target corruption at the source. Progress on this issue could be achieved under the auspices of the Open Government Partnership (OGP), an initiative launched by President Obama with seven other countries in 2011 that aims to provide a pathway toward enhanced transparency and more inclusive governance. In order to participate, countries must meet certain benchmarks for fiscal transparency, access to information, public officials' asset disclosure, and civic engagement.⁴² A key challenge is ensuring that countries participating in OGP honor their commitments. Given its leadership role in the launch of OGP, the U.S. government should aggressively follow up with each government on the commitments they have made so that OGP's participants do not reap all the reputational benefits of participation without effectively bolstering transparency and accountability.

While the exact combination of oversight institutions differs from country to country, certain institutions are particularly important for curbing corruption. Independent legislatures play a key role in scrutinizing government budgets and expenditures, and public accounts oversight committees within parliaments (which are typically chaired by a member of the opposition) are crucial to ensuring that parliament does not merely become a rubber stamp for executive branch spending decisions.⁴³ Performing a similar function, supreme audit institutions (i.e. equivalents of the U.S. Government Accountability Office) often have the technical capacity to meticulously examine complex financial data and public financial records to identify irregularities.⁴⁴ For example, even in Sudan, where the government of President Omar al-Bashir has routinely marginalized dissenting voices, the auditor general has been able to reveal the embezzlement of tens of millions of dollars.⁴⁵ Anti-corruption commissions can also serve as a potent weapon against graft if sufficiently funded and equipped with a broad and clear mandate.⁴⁶ More importantly, these commissions must be led by intrepid, savvy individuals with enough independence from politics to be credible and enough understanding of politics to stave off the wrong kind of involvement and blow the whistle when they must. Individuals serving in this capacity need continued international support for the efforts they make. They also need significant international pressure on the domestic actors who ignore, dismiss, or discredit their findings and recommendations—and who may limit the access of auditors to the full range of

information they need to perform audits in a timely and comprehensive manner.⁴⁷ Independent and adequately resourced courts could play a vital role in ensuring that, once identified, the perpetrators of graft are actually held to account.⁴⁸ The United States should work to empower these institutions and pressure partner governments to ensure that the oversight bodies remain free from political interference.

U.S. engagement should include encouragement of responsible business conduct. The U.N. Guiding Principles on Business and Human Rights, adopted by the Human Rights Council in 2011, serve as the global standard. The United States should encourage countries to develop adopt National Action Plans, a step the U.S. government is also taking, which set out the commitments of governments and expectations of businesses in implementing the U.N. guiding principles, which are critical both for both local and multinational corporations.

In conjunction with this overall approach to responsible business, the United States should seek to expand the model of the Burma Responsible Investment Reporting Requirements. In this mechanism, companies doing business at a certain level must file a report with the State Department that is made publicly available and covers elements of company conduct, including identifying business partners, explaining its due diligence procedures, and highlighting possible areas of concern. This reporting requirement provides a way for the U.S. government to encourage engagement and investment but at the same time reiterate key policy priorities that can help prevent U.S. companies from being connected to kleptocratic behavior.

Similarly, the United States should continue to encourage implementation by the private sector of the OECD Guidelines for Multinational Enterprises, which cover a wide range of critical issues—anti-corruption, environmental, labor, and human rights issues—for businesses operating in kleptocratic environments. These OECD guidelines include a system of “National Contact Points,” agencies created by governments adhering to the guidelines who help to arbitrate solutions when concerns arise about companies that may be running afoul of the guidelines. This “National Contact Points” mechanism has been used extensively with respect to business activity in the Democratic Republic of the Congo (DRC), and this practice has contributed to the development of additional standards and guidelines for business conduct.⁴⁹ This combination of voluntary guidelines with a government-run process for intervening when compliance issues arise provides a beneficial model that could be considered elsewhere.

Safeguarding space for civil society and the press

Promoting government transparency is an important component of an effective strategy to combat corruption, but transparency on its own means little if civil society and the press are unable to fulfill their vitally important watchdog role that includes articulating and amplifying public concerns about government policies. In violent kleptocracies, these groups are among the

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primary targets of corrupt and repressive elites who seek to ensure that their abuses are neither exposed nor discussed by the public.

In CAR, journalists have been imprisoned for criticizing powerful government officials. Ferdinand Samba, the editor of an independent weekly magazine published in Bangui, was convicted of “defamation, insult, and incitement to hatred” and sentenced to just under a year in prison after publishing a series of articles critical of a minister in the government of then-President François Bozizé.⁵⁰ The environment for reporters and activists changed little after Bozizé’s fall from power. Upon seizing control of Bangui, the Séléka immediately raided several independent news outlets and confiscated broadcast equipment from radio stations.⁵¹ Following Séléka’s departure, several journalists, including Ferdinand Samba, faced charges and legal action by the government for their coverage of transitional president Catherine Samba-Panza.⁵² Reporters Without Borders in that time frame found that CAR’s press freedom indicators had fallen more than any other country.⁵³ In March 2016, South Sudanese journalist Joseph Afandi was held without charge in Juba for nearly two months reportedly for criticizing the Sudanese People’s Liberation Army. He was later found by colleagues one morning badly beaten and dumped near a graveyard, with his body bearing marks of torture.⁵⁴

Transparency on its own means little if civil society and the press are unable to fulfill their vitally important watchdog role.

Moving forward, the international community must prioritize efforts to create and protect space for civil society and the press to scrutinize government activities. This entails ensuring that these entities have access to information about government operations and sustaining diplomatic pressure to ensure that governments respect the commitments they have already made in the laws they have enacted and the treaties they have joined to allow such groups to operate and express themselves without government interference and intimidation. Protecting space for civil society will also require engaging government officials and members of the security forces on the crucial role that these societal groups play. Military or government officials who obstruct these societal groups’ ability to operate freely should face stiff penalties. One way to enshrine this approach in law is to make intimidation and obstruction of civil society actors and journalists grounds for certain types of targeted sanctions (discussed further below, under “calibrating sanctions to counter kleptocracy”).

One specific option, which may not be practical in all cases because of the orientation of particular regimes, is for governments to opt in to the World Bank’s Global Partnership for Social Accountability, which enables countries to benefit from capacity-building opportunities for civil society.⁵⁵

Imposing consequences for violent kleptocrats and international facilitators

Promoting transparency, building effective institutions, and protecting space for civil society and the press may be the cornerstones of good governance—but in hijacked states, efforts toward achieving these goals are typically thwarted by elites that proactively work to co-opt, sideline, or

Corruption is neither a purely technical challenge nor solely the result of insufficient institutional capacity.

bypass the institutions that are designed to restrain the kleptocrats in their ability to loot with impunity. Corruption is neither a purely technical challenge nor solely the result of insufficient institutional capacity.⁵⁶ “The underlying problem is political. Developing-country elites often depend on the rule of law’s absence for their survival and enrichment,” Neil A. Abrams and M. Steven Fish wrote in *The Washington Post* in March 2016. “More money, training and education won’t work as long as those who hold power prefer that it not arise and can easily undermine any efforts to introduce it.”⁵⁷

South Sudan is a case in point. The country’s institutional and legal framework—developed with a massive amount of assistance from foreign donors—is considered to be among the best in the world, in some cases even exceeding international best practice. These laws may look great on paper but corruption remains rampant because there are rarely any meaningful consequences for noncompliance.⁵⁸ “Despite a gamut of initiatives, both legal and administrative, corruption in South Sudan remains pervasive, presumably owing to incredibly ineffective accountability and transparency measures,” according to a 2015 report by the Sudd Institute, a Juba-based research and policy analysis group.⁵⁹

Moving forward, there must be consequences for kleptocrats, reform spoilers, and the non-state actors that facilitate and enable their operations. Progress achieved through good governance initiatives is likely to be short-lived unless external interventions can fundamentally alter the incentive structures of those in power. The international community has the power to chip away at the environment of impunity that characterizes kleptocracy—and the United States is in a position to play a leading role in this effort. Achieving this objective will involve harnessing the tools of financial pressure at the U.S. government’s disposal to go after what often most motivates kleptocrats in the first place: their wealth.

Ending impunity through financial pressure

This section identifies three key tools of financial pressure at the U.S. government’s disposal—anti-bribery law, sanctions, and anti-money laundering provisions—and argues that they could be used to counter violent kleptocracy. This section provides an overview of each tool, the institutions involved in their administration, and specific ways tools of financial pressure can be

calibrated to counter kleptocracy. The section concludes by identifying priorities for maximizing the effectiveness of each tool. The appropriateness of each policy tool outlined in this report varies from country to country. Accordingly, this section should be viewed as a toolbox for policymakers seeking to address violent conflicts and political crises in East and Central Africa as opposed to a blueprint for action.

The Foreign Corrupt Practices Act

The most straightforward power the U.S. government can wield in the fight against overseas corruption is perhaps the Foreign Corrupt Practices Act (FCPA), a law passed in 1977 that prohibits U.S. persons from bribing foreign officials.⁶⁰ The law was developed after an investigation by the U.S. Securities and Exchange Commission found that in order to secure business opportunities overseas, over 400 U.S. companies had paid hundreds of millions in bribes to foreign officials. The same investigation found that these firms were using “secret slush funds” and falsifying corporate records to disguise illicit payments to foreign officials (as well as illegal campaign contributions to U.S. politicians).⁶¹

Several policymakers at the time expressed strong views that bribery was not only morally wrong but also did not materially improve U.S. commercial competitiveness overseas. Lawmakers argued that U.S. engagement in foreign corruption hurt the United States and created numerous foreign policy problems. “Paying bribes—apart from being morally repugnant and illegal in most countries—is simply not necessary for the successful conduct of business here or overseas,” then-U.S. Secretary of the Treasury Michael Blumenthal said in testimony before the Senate committee on banking, housing, and urban affairs prior to the passage of the law.⁶² Lawmakers believed the FCPA was essential to restoring confidence in U.S. businesses. A group of senators said, “Unfortunately, the reputation and image of all U.S. businessmen has been tarnished by the activities of a sizable number, but by no means a majority of American firms.” Lawmakers continued, “a strong anti-bribery law is urgently needed to bring these corrupt practices to a halt and to restore public confidence in the integrity of the American business system.”⁶³

Authorities and enforcers of the FCPA

While it took decades for the FCPA to become effective, the law Several amendments have been made to the law over the past four decades to clarify previously unclear issues, as well as which types of entities and transactions are subject to the FCPA. Currently, there are two main components of the FCPA. The first is a compliance requirement that places certain record-keeping and accounting requirements on U.S. firms

The FCPA is now considered one of the strongest foreign anti-bribery laws in the world.

doing business overseas. The second component is the criminalization of bribing foreign officials in order to gain a competitive advantage.⁶⁴

The key U.S. government agencies and law enforcement institutions responsible for administering the FCPA are the Justice Department (DOJ) and the Securities and Exchange Commission (SEC). Working closely with law enforcement agencies and the Federal Bureau of Investigation (FBI) as well as U.S. attorneys around the country, the Fraud Section of DOJ's Criminal Division is largely responsible for both the criminal and civil enforcement components of the FCPA when the case involves "domestic concerns." This includes U.S. citizens, nationals, residents, and U.S. businesses (including officers, directors, employees, agents, or stockholders acting on behalf of the business) as well as select cases involving foreigners who violate the FCPA while under U.S. jurisdiction. The SEC, meanwhile, is responsible for civil enforcement of the FCPA as it applies to publicly traded entities.⁶⁵ Convictions in FCPA criminal cases can result in imprisonment, while civil cases can yield multi-million dollar fines.

The most important evolution in the interpretation and enforcement of the FCPA in recent years is that it can be applied to non-U.S. persons who bribe officials outside the United States. For such cases, investigators must demonstrate that at some point during the planning or execution of a bribery scheme the perpetrators either crossed into U.S. territory or used the U.S. financial system to process an illegal transaction. For example, several companies based outside the United States that were implicated in the now notorious Bonny Island bribery scheme—a decade-long arrangement to bribe government officials in petroleum-rich Nigeria—paid a total of \$1.4 billion in criminal and civil penalties. There has also been an evolution in the interpretation of what constitutes a bribe,⁶⁶ as major U.S. companies have come under scrutiny for hiring the children of foreign officials.⁶⁷

U.S. law enforcement and regulatory institutions are merely keeping pace with increasingly innovative criminals who have come up with clever new ways of paying bribes.

Preserving and strengthening the FCPA

Since the FCPA came into force, a small but vocal set of powerful critics from within the business community have called for it to be rolled back. In recent years, opponents have claimed that the U.S. government is overly aggressive in its enforcement of the law. The government's definition of bribery, this line of reasoning goes, is too expansive.⁶⁸ This argument is off base. U.S. law enforcement and regulatory institutions are merely keeping pace with increasingly innovative criminals who have come up with clever new ways of paying bribes. The United States should further expand and strengthen the FCPA.

One major shortcoming of the FCPA is that it does not criminalize all types of bribery. “The FCPA’s bribery prohibition contains a narrow exception for ‘facilitating or expediting payments’ made in furtherance of routine governmental action,” according to a resource guide to the FCPA jointly published by the DOJ and the SEC. “The facilitating payments exception applies only when a payment is made to further ‘routine governmental action’ that involves non-discretionary acts.”⁶⁹ This is problematic. Petty corruption—such as the extortion of bribes by the recipients of facilitation payments—is inextricably linked to grand corruption. Venal bureaucrats who may appear to be acting in isolation are only able to extort such payments because they operate in a permissive system that allows them to steal without facing consequences. Furthermore, their position of privilege often means they are the recipient of patronage from more powerful elites.⁷⁰ Outlawing “grease payments” would help reduce kleptocrats’ ability to use the allocation of civil service appointments as fuel for patronage networks.

A second shortcoming is the FCPA’s emphasis on the payers of bribes as opposed to the receivers of bribes.⁷¹ This has meant that, historically, government officials who extort and receive bribes from foreign businesses—especially officials operating in places where government and law

The FBI and SEC should be directed to thoroughly examine credible accusations of bribery of government officials in East and Central Africa wherever there may be a U.S. nexus.

enforcement agencies have been hijacked by a small ruling clique—rarely suffered consequences. Efforts to bridge this gap, however, are already underway. FCPA investigations have now begun to feed into other types of criminal investigations or administrative inquiries into bribe recipients (as described in each section below). An FCPA case, for example, could trigger: an investigation by the DOJ’s Kleptocracy Asset Recovery Initiative, which traces and seizes the illicit proceeds of corruption that pass through U.S. jurisdiction; investigations into money laundering (given that these cases tend to involve attempts to disguise and stash illicit sources of wealth); and placement under sanctions (in cases where engaging in public corruption is listed among a sanctions program’s designation criteria.) These FCPA-triggered actions and investigations are discussed in greater detail in the following sections.

The FBI and SEC should be directed to thoroughly examine credible accusations of bribery of government officials in East and Central Africa wherever there may be a U.S. nexus—even if the case does not directly involve U.S. companies. One case that merits further attention from U.S. authorities is that of

SOCO International Plc., a London-registered oil company that has operated in the past in the DRC’s Virunga National Park, although SOCO said in 2015 that it had ceased to hold a license and conduct operations in Block V.⁷² SOCO has come under scrutiny in recent years amid accusations and witness testimony that it has made illicit payments to Congolese park rangers, members of parliament, and rebel groups.⁷³ Evidence published in 2014 and 2015 by anti-corruption

watchdog Global Witness suggested that SOCO had been making payments in 2014 directly to Congolese soldiers in the form of checks denominated in U.S. dollars.⁷⁴ SOCO has repeatedly denied allegations of wrongdoing.⁷⁵ According to Global Witness, the SOCO CEO said that these payments were “above board,” the company’s legal counsel was “investigating matters,” and allegations were taken with utmost seriousness.”⁷⁶ For transactions in U.S. dollars, the United States may have jurisdiction over the case if there is a U.S. nexus. Should this be the case, the FBI and the DOJ should investigate to determine if illicit payments were made using the U.S. financial system or within U.S. jurisdiction. Furthermore, any such investigation should not only target the bribe payers but also the recipients. If Congolese officials are found to have received illicit payments from SOCO, they too should be subject to penalties, including the possibility of being prohibited from accessing U.S. financial institutions or traveling to the United States.

Targeted sanctions

Economic sanctions have been part of the United States’ foreign policy arsenal for nearly two centuries, and in the last two decades these sanctions regimes have become more sophisticated. The consequences for designation under sanctions can include asset freezes, travel bans, arms embargos, trade restrictions and prohibitions accessing banks and foreign currency.⁷⁷ The United States’ ability to impose economic sanctions is particularly potent for two main reasons. First, the inability to access the U.S. financial system and do business with U.S. companies can have a devastating impact on a government, individual, or commercial network’s ability to operate effectively. Second, the laws, institutional framework, and doctrine for imposing and enforcing economic sanctions are considerably more developed than many other countries and international organizations.⁷⁸

U.S. sanctions programs focused on African countries have increased and evolved, including those for South Sudan, the DRC, and CAR. These sanctions regimes would benefit from further enhancements. U.S. sanctions with Sudan need a modernized approach that more sharply targets the military and financial assets of those most responsible for continuing conflict, atrocities, and mass corruption in Sudan. U.S. and international sanctions for South Sudan should designate the country’s most powerful military elites who allocate the greatest streams of financial resources for military purposes. For the DRC, sanctions by the United States, European Union, and U.N. Security Council should target the politically exposed persons who are most centrally responsible for violence and who would also be most affected by measures that limit their travel and access to financial assets. U.S. and international sanctions with CAR designate powerful military and political elites and the individuals and entities that facilitate or finance atrocity crimes. Greater diplomatic engagement to ensure coordination, capacity-building, support, and pressure for enforcement of these sanctions, particularly with regional partners, is critical to ensure the effectiveness of the sanctions that have been implemented.

Authorizing and administering sanctions

In the United States, economic sanctions come into force in one of three ways. First, the president of the United States has robust authority to impose sanctions on foreign actors, dating back to the passage of the Trading with the Enemy Act of 1917, which empowers the president to restrict U.S. trade with adversaries during wars.⁷⁹ These powers were expanded significantly when the International Emergency Economic Powers Act (IEEPA) was signed into law in December 1977.⁸⁰ IEEPA, in conjunction with the National Emergencies Act, authorizes the president to restrict commerce when a “national emergency” has been declared. In practical terms, this law allows the president to establish a sanctions program by issuing an executive order. Such programs have been established for numerous conflict-affected countries across East and Central Africa, including Burundi, the Central African Republic, the Democratic Republic of the Congo (DRC), Somalia, South Sudan, and Sudan.

Second, the U.S. Congress has the authority to impose sanctions through legislation. For example, the Sergei Magnitsky Rule of Law Accountability Act of 2012 aims to punish Russian officials who are responsible for the death of a lawyer who died in prison after exposing a \$230 million tax fraud scheme—by prohibiting the officials from entering the United States or accessing the U.S. banking system.⁸¹ Congress also has the power to alter, expand, or restrict sanctions programs established through an executive order. Congress has passed laws to amend and expand U.S. trade restrictions on Cuba and Iran several times.⁸²

The third category of U.S. sanctions programs are in place to comply with international systems (such as the Rough Diamond Controls program, which fulfills U.S. obligations as a participant in the Kimberley Process)⁸³ or U.N. Security Council resolutions. Notably, even when the U.N. Security Council initiates a sanctions program, the United States is not restricted to placing sanctions solely on individuals designated by the United Nations. In addition to fulfilling its U.N. obligations, the U.S. government has the power to place sanctions unilaterally on individuals or entities operating in the target country who meet criteria laid out in an executive order.

Responsibility for administering sanctions is spread across three different U.S. government agencies: the departments of Treasury, State, and Commerce. Comprehensive sanctions, which are increasingly rare, prohibit a range of economic activity with a target country. These measures can include bans on all imports, exports, new investment, etc., and are currently only in place with respect to countries such as Sudan, Iran, Cuba, Syria, and North Korea.

Specific sanctions impose restrictions on targets determined to meet particular criteria. The Treasury Department’s Office of Foreign Assets Control (OFAC), in consultation with the State Department, is principally responsible for conducting investigations and formally placing entities under specific sanctions. However, before a sanctions designation can be made, the departments of State and Treasury must follow an interagency consultation process. This process entails examining and analyzing a package of available information to ensure that it adequately meets

the criteria spelled out in the executive order that authorized sanctions in the first place. The interagency consultation process also aims to generate consensus among key interagency stakeholders that sanctions are the most effective policy option to address the target at hand.⁸⁴

OFAC has the power to designate various types of individuals, entities, jurisdictions, and economic sectors (as is described in further detail below). Once a designation has been made, an announcement is posted to the Treasury Department's website. OFAC issues a press release for every designation, and most banks (and many other companies) have compliance software that is integrated with OFAC's specially designated nationals (SDN) list, which OFAC updates each time there is a designation. For most institutions, their filters automatically adjust when OFAC updates the list. A lack of this basic software is usually seen as a compliance failure.⁸⁵

Accordingly, several U.S. federal and state government agencies have responsibility for enforcing sanctions. The first is OFAC's enforcement division, the primary agency responsible for sanctions enforcement. The DOJ handles criminal enforcement of sanctions violations. Several other state-level agencies play a role in sanctions enforcement, with those in New York having a particularly important role due to New York City's prominence in the international financial industry.

Targeted and sophisticated sanctions programs

For almost two centuries, sanctions imposed by the United States were primarily in the form of comprehensive trade restrictions and, especially during the second half of the 20th century, complete embargoes on the target country. In many cases, however, comprehensive sanctions programs were found to disproportionately hurt opponents of the regime in the target country while creating rent-seeking opportunities for key regime supporters and increasing the level of repression. Fortunately, there have been significant advances, not only in the types of sanctions that can be deployed against foreign targets but also in the U.S. government's sanctions administration and enforcement capacity. "Sanctions can now be applied and administered in ways that are almost without precedent," former U.S. Assistant Secretary of Defense Richard Perle said in April 2015. "This is partly the result of the digital revolution around us. Data can be obtained about individuals, about where their money is stored. The integration of the economic and financial global system means that so-called 'smart' or 'clever' or targeted sanctions are possible in a way that they never were before."⁸⁶ The following types of sanctions programs, for example, have only become part of the U.S. and international sanctions arsenal in the past two decades:

Targeted or "Smart" Sanctions. In the mid-1990s, partly in response to the well-documented humanitarian consequences on comprehensive sanctions on Iraq, governments and international organizations involved in imposing sanctions increasingly began to develop more precise means of placing financial pressure on targets. This allows the United States to assess local conditions and international economic considerations, and in turn, to design sanctions programs that minimize harm inflicted on innocent

civilians as well as allies and partners with commercial relationships with the country under sanctions.⁸⁷ These types of targeted sanctions for top political and military elites in South Sudan, for example, are under serious consideration as a further step to bring leverage for a peace process to take hold.

Provisions for Targeting Facilitators and Enablers. Most U.S. sanctions programs contain provisions that authorize the Treasury Department to place sanctions on any facilitators and enablers who provide financial, material, or technological support to those already placed under sanctions.⁸⁸ This allows the Treasury Department to place sanctions on individuals involved in sanctions busting or who provide assistance to designated entities. This serves as a deterrent to those who consider helping a regime evade sanctions by raising the possibility that they might face a consequence. This, in turn, raises the cost of doing business for would-be sanctions-evading regimes by reducing the number of partners willing to come to their aid or transact business.

Sectoral Sanctions. The U.S. government also has the power to place sanctions on entire economic sectors in target countries. For example, U.S. sanctions imposed on Russia in the wake of Moscow's annexation of Crimea targeted not only senior officials within the Russian government but also business persons and industries that are particularly important to the regime. On July 16, 2014, the Treasury Department announced that U.S. persons would be prohibited from engaging in certain types of transactions with Russia's financial services and energy sectors.⁸⁹ This allowed the U.S. government to cut off key sources of revenue for the Russian government while attempting to minimize the direct impact on most Russian citizens and U.S. partners and allies in the region. Enough has recommended that the Obama administration target the gold and arms manufacturing sectors in Sudan, which are key lifelines of the kleptocratic regime based in Khartoum. In pursuing sectoral sanctions against gold and arms manufacturing in Sudan the United States could use as a model the directive under U.S. sanctions on Russia that targeted the Russian energy sector.

Secondary Sanctions. The United States also has the power to place sanctions on overseas entities from third countries that do business with an entity or jurisdiction already subject to U.S. sanctions. The best example of the effective use of these "extraterritorial" or "secondary" sanctions is the case of Iran.⁹⁰ In this case, the United States, through a mix of legislation and executive branch actions, imposed specific measures, beyond asset freezes, that would target foreign banks facilitating certain types of activities in Iran from maintaining correspondent relationships with U.S. financial institutions, effectively cutting Iran off from the international financial system. Several banks faced secondary sanctions, and the impact was significant.

Sanctions are of course not appropriate for every foreign policy challenge. However, they should be at the forefront of policymakers' minds when considering approaches with violent kleptocracies.

Calibrating sanctions to counter kleptocracy

Sanctions are well-suited to countering kleptocracy because of their ability to impact the target regime's wealth. This directly addresses the need to alter kleptocrats' problematic incentive structures. There are several precedents for using sanctions to combat corruption, but such efforts can be refined and improved by ensuring that several best practices with regard to anti-corruption-focused sanctions become standard procedure when designing programs. Additionally, the recent innovations described above have dramatically expanded the options available to policymakers.

A straightforward means of using sanctions to counter kleptocracy involves making corruption itself grounds for designation. There is already a strong precedent for this, as at least seven sanctions programs—Belarus, Burma, Libya, Syria, Zimbabwe, Venezuela, and Ukraine/Russia—contain provisions that allow the Treasury Department to place sanctions on individuals who engage in or facilitate public corruption.⁹¹ For example, the executive order for Libya, released in April 2016, blocks the property and interests of persons involved in “actions that may lead to or result in the misappropriation of state assets of Libya” or activities that include “threatening or coercing Libyan state financial institutions or the Libyan National Oil Company.”⁹² Importantly, given that most sanctions programs also include provisions that allow the Treasury Department to place sanctions on individuals who materially assist or provide financial or technological support to designated entities, the Treasury Department can place sanctions on government officials who engage in corruption, investors or companies in a sanctioned country who do business in the country and participate in graft, international actors who facilitate corruption, and government or business entities under these individuals' control.

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Sanctions can also be used to impose costs on those who subvert or co-opt accountability mechanisms in the country under sanctions and to protect nongovernmental actors, such as investigative journalists and anti-corruption civil society activists, who seek to expose government officials who abuse their power. Numerous sanctions programs contain provisions that allow the Treasury Department to designate anyone found to “have engaged in actions or policies to undermine democratic processes or institutions” in the specified country. Such provisions allow the United States to

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place sanctions on individuals who subvert the domestic institutions—courts and regulatory bodies—that are meant to hold them to account. Additionally, two U.S. sanctions programs (Burundi and Venezuela) allow for the designation of those who commit “actions that prohibit, limit, or penalize the exercise of freedom of expression or peaceful assembly.”⁹³ Importantly, passing the Global Magnitsky Human Rights Accountability Act would provide the president with

Passing the Global Magnitsky Human Rights Accountability Act would provide the president with the authority to place sanctions on perpetrators of attacks against journalists and human rights defenders.

the authority to place sanctions on government officials who misappropriate state assets as well as the perpetrators of attacks against journalists and human rights defenders.⁹⁴

The advent of sectoral sanctions allows the U.S. government to block corrupt elites’ access to captured revenue streams. In other words, the United States can now place sanctions on an entire business sector believed to be either financing conflict or subject to significant looting by regime elites. The precedent for this is the sanctions that were placed on Russia and Ukraine in mid-2014 when the Treasury Department announced that “sectoral sanctions” had been put in place to block certain types of transactions in the energy, financial, mining, and other key sectors. Notably, these were some of the most sophisticated sanctions ever to be developed. They blocked only future oil and gas production and limited Russian financial institutions to a very narrow type of borrowing. This ensured that, although the sanctions could put a dent in Moscow’s revenue, they would not harm oil and gas supplies bound for U.S. allies.⁹⁵ The Treasury Department could work to develop similar creative sanctions programs

that target companies and sectors captured by elites while minimizing the impact on innocent civilians.

Similarly, sanctions programs can be designed to obstruct corrupt elites’ access to illicit “slush funds.” The U.S. could place sanctions on entities believed to be key sources of discretionary revenue for the perpetrators of abuses. The case of Belarus provides a precedent for this. In 2007, the United States froze the U.S. assets of the state-owned oil and petrochemicals firm Belneftkhim, a key revenue generator under the control of Alexander Lukashenko, the leader of Belarus.⁹⁶ In other violent kleptocracies around the world, the U.S. government could identify and target the corporate vehicles or government institutions such as state-owned enterprises that are used to misappropriate wealth.

The U.S. government can also use sanctions to take aim at the corruption-crime nexus. Transnational criminal organizations around the world depend on the ability to co-opt government officials who can be paid off to either turn a blind eye or otherwise facilitate their operations. The U.S. government should expand efforts to place sanctions on foreign officials

found to provide support or top-cover to transnational criminal organizations. A good example of this was the designation under sanctions of Jose Americo Bubo Na Tchuto, Guinea-Bissau's former Navy Chief of Staff,⁹⁷ and Ibraima Papa Camara,⁹⁸ current Air Force Chief of Staff, for their roles in facilitating the trafficking of narcotics through West Africa.⁹⁹

Enough and others have repeatedly documented the ways that elephant poaching in the DRC and CAR and ivory trafficking through Central and East Africa have enriched and sustained the Lord's Resistance Army and numerous violent Congolese, Sudanese, and South Sudanese armed actors.¹⁰⁰ The extraction and trade or smuggling in diamonds has enriched armed groups in CAR and their business partners. The U.S. government should target government officials and financial enablers who engage in pillage and facilitate illicit trades like these in natural resources that financially benefit and sustain the activities of violent armed groups and kleptocratic political elites.

Maximizing sanctions' effectiveness against corruption

Sanctions are not a magic wand. The launch of a U.S. sanctions program is not by itself likely to solve the problem it is designed to address. Numerous steps must be taken to maximize the effectiveness of sanctions. When developing sanctions programs, policymakers should consider the following seven priorities.

First, the U.S. government must continue to ensure that sanctions programs are developed and implemented within a broader political strategy. As Ambassador Daniel Fried, the U.S. Coordinator for Sanctions Policy said in April 2015, "Sanctions are only as good as the policy they seek to advance."¹⁰¹ Indeed, in order to be effective, economic sanctions must explicitly address a clear foreign policy or national security problem, where there is an articulated diplomatic strategy. For every sanctions program developed, the U.S. government should have clearly-defined policy objectives (even if the main objective is to stigmatize a certain type of illicit behavior) and, in most cases, U.S. diplomats should work to establish a mechanism for dialogue that can translate the leverage created through financial pressure into tangible actions by the target.

Second, sanctions must prioritize high-impact targets. In the past, there have been incidences in which sanctions have been placed on foreign targets for purely symbolic reasons.¹⁰² These symbolic sanctions are often either less potent or target low-level officials who do not have bank accounts, rarely travel, and are not involved in high-level policy discussions. There are isolated cases where purely symbolic sanctions may be appropriate (i.e. programs designed to stigmatize certain types of behavior). However, in most cases, sanctions programs should be designed to inflict actual economic pressure and, therefore, should target influential individuals who are actually vulnerable to economic pressure. Sanctions programs should in turn be tied to these vulnerabilities and, whenever possible, to the foreign policy objective itself. Sometimes,

sanctions targeting lower-level officials may be used as a warning to more senior officials that a continuation of certain practices may result in their designation as well. However, for sanctions aiming to counter kleptocracy, this means investigating and targeting powerful government officials that are found to have misappropriated state assets (especially those who have done so with impunity) or cases that illustrate systemic failure to combat graft.

Third, U.S. sanctions will be most effective if imposed as part of a coalition. Multilateral sanctions are virtually always preferable because they will be more effective, allow for fewer loopholes for

The greater the number of countries participating in a sanctions program, the more potent the impact of economic sanctions.

sanctions-busters to exploit, and are deemed more legitimate than unilateral sanctions. In most cases, when sanctions are imposed, third parties will attempt to fill the vacuum left by investors or donors. Others will assist a regime in covertly circumventing sanctions. Therefore, the greater the number of countries participating in a sanctions program, the more potent the impact of economic sanctions. The most effective means for securing international support for economic sanctions is to ensure that sanctions are adopted by the U.N. Security Council. However, sanctions packages proposed at the U.N. Security Council are often blocked by countries like China and Russia for either political or commercial reasons. Therefore, the United States and others should not hesitate to develop ad-hoc coalitions for the design and implementation of sanctions packages. When recruiting partners to participate in such coalitions, the U.S. government should prioritize the inclusion of governments of territories where elites in the target country

bank or stash their wealth. Of course, at times, building this coalition may first require unilateral U.S. actions and leadership as a precursor to broader partnerships with other states.

Enough has recommended, for example, that the U.S. sustain diplomatic pressure and increase engagement and training with Kenyan, Ugandan, and Ethiopian partners and regional groups like the Asset Recovery Inter-Agency Network for Eastern Africa to improve enforcement of sanctions against South Sudanese actors who have assets and resources in these countries.¹⁰³ Enough has also recommended closer cooperation among financial investigators in the United States, Europe, Canada, and Australia through information-sharing frameworks like the World Bank Stolen Asset Recovery Initiative (StAR), Interpol Asset Recovery Focal Point Initiative and the Camden Asset Recovery Inter-Agency Network on cases of grand corruption involving South Sudanese citizens.¹⁰⁴

Fourth, to ensure that sanctions authorities designed to curb corruption are actually used, the U.S. government should establish triggers for placing corrupt foreign officials under sanctions. In cases in which the DOJ determines that transactions involving the illicit proceeds of corruption have a “U.S. nexus,” the officials involved in the predicate act of corruption should be

automatically placed under sanctions. Likewise, if the DOJ or the SEC determines that an individual or company is in violation of the FCPA, the overseas official determined to have received the bribe should be automatically designated under sanctions and placed on the State Department's visa blacklist (described in further detail below).

Fifth, sanctions are virtually pointless if they are not adequately enforced. Compliance with sanctions is mandatory but, unfortunately, not automatic. For example, in April 2014, the U.S. Treasury Department placed a Hong Kong-based tycoon named Sam Pa under sanctions for undermining democracy and facilitating public corruption in Zimbabwe. However, his account with HSBC Bank was not frozen until March 2015. This was the case despite several incidents over several years that brought the institution's relationship with the client to the bank's attention.¹⁰⁵ This is just the latest in a long line of sanctions enforcement lapses by major banks. A January 2016 report by the U.N. Panel of Experts on South Sudan revealed several instances where asset freezes and travel bans imposed on South Sudanese officials responsible for abuses have been overtly violated.¹⁰⁶ Several major U.S. financial institutions¹⁰⁷ have been fined by U.S. regulators for processing thousands of transactions for blocked entities in Sudan.¹⁰⁷ Regulators must continue to impose steep penalties for banks and companies found in violation of sanctions. They must also step up efforts to identify violations in the first place; this will involve working with third parties (civil society, press, banks, etc.) to identify lapses in enforcement or means through which designated entities are sidestepping sanctions.

Sixth, the U.S. government must prioritize efforts to minimize collateral damage resulting from sanctions wherever possible and deliberately design each program along these lines. Sanctions often have unintended or undesirable consequences, including detrimental impact on civilian populations as well as the economies of U.S. partners and allies who have trade relationships with the target country. In order to mitigate the humanitarian impact of sanctions, the U.S. government should prioritize the development of expanded and expedited general licensing processes for certain types of exports like medicine and medical devices, as is permitted under the Trade Sanctions Reform and Export Enhancement Act (TSRA).¹⁰⁸ The licensing process for each country should be tailored to each country's unique situation and also be as streamlined as possible in order to allow the provision of humanitarian services to flow as freely as possible. Additionally, the case of the Russia/Ukraine sanctions provides a strong example of steps can be taken to minimize harm inflicted on U.S. partners and allies. In Sudan, for example, existing U.S. sanctions measures have harmed the medical, humanitarian, people-to-people, and academic sectors. Enough has recommended new, expanded, and expedited licenses that more effectively exempt the transactions in these sectors from the U.S. sanctions.¹⁰⁹

Finally, the U.S. government must develop robust strategic communications and public messaging campaigns whenever developing a sanctions program. This is because regimes targeted by sanctions often attempt to blame repression or economic problems resulting from poor management on sanctions and divert attention away from poor governance. In 2009 congressional testimony sanctions expert George A. Lopez said, "In nations where strong internal

opposition to the regime exists, sanctions provide national leaders of the target regime with a classic ‘rally around the flag’ policy tool and benefit. In this, the regime justifies further internal repression by blaming the extreme economic and political situation the nation faces on the impact of the sanctions.”¹¹⁰ In Sudan, President Omar al-Bashir’s government has deftly managed to blame a wide range of economic problems on sanctions, deflecting criticism away from the way it has siphoned off public funds from the country’s resource wealth and overspent for personal enrichment and the funding of a war industry that has been used to commit genocide and other large-scale atrocity crimes against the Sudanese people in the country’s periphery. Similarly, in Zimbabwe, the regime of President Robert Mugabe blamed the country’s economic woes on highly targeted sanctions imposed by the United States and several other actors when in fact the country’s economic plight was the result of years of looting and catastrophically misguided economic policies.¹¹¹

Although it may not be possible to sway public opinion about sanctions entirely, diplomats should work to convey the message that the United States remains committed not only to bolstering accountability but also to the ultimate goal of improving the lives of citizens in the country of focus. One example of this sort of messaging occurred in November 2015 in Nairobi when the U.S. Ambassador to Kenya Robert Godec announced that the United States would redouble efforts to combat corruption overseas, he did so at an event to announce the launch of a \$650 million USAID program to strengthen medical partnership.¹¹² In the case of Sudan, Enough has recommended the appointment of a U.S. ambassador in Khartoum if the Sudanese government makes verifiable progress toward inclusive peace. Expanded U.S. diplomatic support with Sudan and increased on-site monitoring by U.S. diplomats of human rights in Sudan with a range of Sudanese civil society and independent actors could serve as an important component of the overall U.S. policy approach with Sudan that includes tightened sanctions measures.

Anti-money laundering and asset seizure

Corruption and money laundering go hand in hand. “Corruption is not just done by the dictator who has control of natural resource revenues,” according to a report by Global Witness on the links between banks and corruption. “He [the dictator] needs a bank willing to take the money. It takes two to tango.”¹¹³ A wide range of anti-money laundering provisions have come into force over the past century that can be used to combat corruption. However, numerous loopholes that remain in place allow ill-gotten gains to enter the United States with ease and prevent efforts aimed at tracing and seizing the proceeds of corruption.

Several key laws underpin the U.S. anti-money laundering framework. The first is the Bank Secrecy Act of 1970 (BSA) that provides the foundation for the U.S. anti-money laundering

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regime. A wide range of other laws enacted since then have enhanced and augmented reporting, record-keeping, and due diligence responsibilities spelled out in the BSA. These laws impose strict compliance requirements on banks and other financial institutions. They prohibit financial

The U.S. government has been primarily defending against money laundering since such laws were first introduced.

institutions maintaining accounts with offshore shell banks. “Know Your Customer” provisions within laws require financial institutions to conduct due diligence on each of their clients. Moreover, banks are required to conduct more thorough investigations—“enhanced due diligence”—on politically exposed persons (PEPs), so that the financial dealings of government officials and their close relatives are subject to increased scrutiny.¹¹⁴

Beyond protections against money laundering, the U.S. government also has the power to freeze and seize the laundered proceeds of criminal activity and to penalize the financial institutions and intermediaries who facilitate the movement of illicit funds. The U.S. departments of Justice, Treasury, and Homeland Security have more power to pursue

individuals and entities responsible for money laundering than ever before. In many ways, the U.S. government has been primarily defending against money laundering since such laws were first introduced; now, the government has the power to go on the offensive.

Criminal investigations into money laundering

The U.S. government has broad powers to investigate and prosecute individuals who facilitate the movement of corrupt proceeds into the United States, as those who knowingly facilitate the movement of the illicit funds into or through the United States are guilty of money laundering. In order to bring charges for money laundering, prosecutors must establish that a case satisfies the following three criteria: first, that the funds in question derive from a “specified unlawful activity”; second, that the individual or institution involved in the laundering scheme understood that the funds derived from some sort of crime; and third, investigators must show evidence of a transaction designed to conceal the sources of the proceeds or the parties involved in the transaction.

Investigations that begin as inquiries into FCPA violations can feed directly into money-laundering probes, given that FCPA investigations inherently center around an illegal (and typically concealed) transaction. In 2013, for example, executives and one Venezuelan government official were charged with money laundering for facilitating a series of bribes to the Venezuelan official. One U.S. citizen was charged in the case for acting as an intermediary who “caused certain funds to be sent from the Broker-Dealer in New York, New York to an account in Switzerland controlled by [the Venezuelan official], to carry on the bribery scheme.”¹¹⁵

Criminal Justice Tools to Tackle Financial Crimes

The tools of financial pressure are certainly not the only tools that can be brought to bear to curb impunity in violent kleptocracies. There are numerous criminal justice mechanisms that can and should be deployed vigorously in these contexts to ensure that the perpetrators of human rights abuses and atrocity crimes are held to account. Ideally, these abuses would be investigated and prosecuted by law enforcement and prosecutors in the countries where the crimes were committed. However, in many such contexts, the justice sector suffers from severely limited capacity and consistent political interference. Courts themselves often become captured by ruling elites. Accordingly, the international community has established multinational mechanisms such as the International Criminal Court (ICC), which investigates war crimes and human rights violations in instances where national courts are thought to be either unwilling or unable to do so, as well as ad hoc tribunals to investigate abuses committed during particular conflicts or crises, such as the Special Criminal Court set up in June 2015 to investigate and prosecute human rights violations committed in the Central African Republic since 2003.

Additionally, numerous other countries around the world have enacted laws that allow their courts to take action against the perpetrators of human rights abuses committed overseas. In the United States, for example, the DOJ's Human Rights and Special Prosecutions section "investigates and prosecutes human rights violators for genocide, torture, war crimes, and recruitment or use of child soldiers, and for immigration and naturalization fraud arising out of efforts to hide their involvement in such crimes."¹¹⁶ As part of its strategy to counter violent kleptocracy in places like East and Central Africa, the U.S. government should continue to support and strengthen these transitional justice and accountability mechanisms—and ensure that U.S. legal tools to investigate human rights abuses overseas are adequately resourced.

Additionally, these institutions often focus narrowly on acts of violence and other grave human rights abuses (which are rightfully the central part of their mandate) but rarely examine financial crimes linked to human rights abuses. Moving forward, the United States should encourage international bodies like the ICC and ad hoc tribunals like the Central African Republic's Special Criminal Court and the hybrid court being set up to examine abuses in South Sudan to investigate financial crimes in addition to other types of grave human rights violations.

FinCen's anti-money laundering powers

The Financial Crimes Enforcement Network (FinCen), an office within the Treasury Department, is one of the most important and powerful U.S. agencies involved in efforts to combat money laundering and other financial crimes. In 2001, the passage of the Patriot Act significantly expanded FinCen's power, and the office now has broad authority to place enhanced due diligence requirements on financial institutions, investigate financial crimes, and even impose sanctions-like prohibitions on entities believed to be involved in money laundering.

Section 311 of the Patriot Act provides the U.S. Treasury Department (and in particular FinCen) with an extraordinary amount of power. This provision allows FinCen to declare that a foreign jurisdiction, foreign financial institution, class of transaction, or type of account is a "primary money-laundering concern." Once such a declaration is made, FinCen has the power to enact one of the following five special measures: (a) require additional record-keeping and reporting of certain financial transactions; (b) require collection of information about the beneficial owners of accounts; (c) require collection of information pertaining to certain payable through accounts; (d) require collection of information relating to certain correspondent accounts; and, most importantly, (e) prohibit or impose conditions on opening or maintaining correspondent or payable through accounts. This prohibition can effectively block a foreign institution from using the U.S. financial system—a virtual death sentence for a bank, given the interconnectivity of the global financial system, the size and primacy of the U.S. economy, and the significance of the U.S. currency in global trade and financial transactions.¹¹⁷

The recent rise in the production and trade of artisanal gold makes the gold sector throughout East and Central Africa vulnerable to money laundering.

While the final special measure is the most potent of FinCen's special measures, it is the only one that has been ever used. In total, these measures have only been employed just over a dozen times. Although Special Measures under Section 311 have been used explicitly to counter corruption (in Ukraine in 2002, for example), so far the implementation of this tool has only scratched the surface of possibilities.¹¹⁸ FinCen also has the power to issue advisories to U.S. financial institutions about the risk of possible money laundering associated with particular jurisdictions, types of transactions, or financial institutions. These advisories can trigger banks to provide more information about these transactions to FinCen and, in turn, help the Treasury Department determine if any institution or activity should be declared a primary money laundering concern.

Enough has recommended that FinCen devote more attention to money laundering in sub-Saharan Africa and issue public or private advisories to financial institutions to flag activities that could point to money laundering and file suspicious activity reports (SARs). The recent rise in the production and trade of artisanal gold, which is mined in Sudan, parts of South Sudan, eastern

DRC, and CAR makes the gold sector throughout East and Central Africa vulnerable to money laundering, particularly in countries with high levels of corruption and low levels of financial transparency and accountability for revenue management. Enough has recommended, in the wake of Sudan's removal from the FATF list of high-risk and non-cooperative jurisdictions, the issuing of a FinCen advisory that could provide a source of information and create a foundation for future action if warranted.¹¹⁹ Enough has also recommended FinCen issue an advisory to U.S. financial institutions regarding the risk of money laundering and illicit transactions in South Sudan.¹²⁰ FinCen should use the information generated by that advisory to determine whether to designate institutions and accounts in South Sudan as money laundering concerns. This measure would also prohibit correspondent accounts connected to any institutions and accounts suspected of money laundering.

Another important tool possessed by FinCen is the power to enact Geographic Targeting Orders (GTOs), advisories (issued either publicly or privately) requiring financial institutions to collect additional information on types of accounts, institutions, and transactions in certain geographic areas within the United States for a (renewable) period of 180 days. While many GTOs issued thus far have been used to collect information about money laundering by drug cartels and other transnational criminal organizations, one landmark GTO issued in 2015 shows the key role that this tool can play in the fight against corruption. The GTO required that title insurance companies collect beneficial ownership information about individuals who purchase real estate in New York City, Miami in all-cash transactions.¹²¹ This move makes it more difficult for criminals and kleptocrats to park their ill-gotten gains in the United States.¹²²

Moving forward, FinCen should use these powers to identify banks, institutions, and classes of transaction that kleptocrats use to loot and launder state assets and use special measures to prohibit certain transactions where appropriate. In South Sudan, for example, Enough has recommended that FinCen play a leading role in creating consequences for kleptocrats responsible for looting state assets. Investigations conducted by The Sentry indicate that a significant portion of assets transferred out of the country by South Sudanese officials left through U.S. dollar-denominated accounts.¹²³ This means that FinCen and other U.S. government agencies should be able to follow up on these transactions and further investigate those involved in laundering the proceeds of corruption in the country. In this case, FinCen could send out a request to U.S. financial institutions inquiring about senior South Sudanese officials suspected of grand corruption. FinCen could also issue an advisory to all U.S. financial institutions regarding the risk of possible money laundering activity related to the laundering of the proceeds of

Investigations conducted by The Sentry indicate that a significant portion of assets transferred out of the country by South Sudanese officials left through U.S. dollar-denominated accounts.

corruption from South Sudan. This, in turn, would prompt U.S. banking and financial institutions to provide information about possible indicators of money laundering to the Treasury Department.

Asset tracing and forfeiture

Laundered money must eventually end up somewhere. If funds deriving from crime or corruption pass through the United States, the U.S. government has the power to seize them. The laws and policies empowering the U.S. government to trace and seize the illicit proceeds of corruption have evolved significantly over the last several decades. U.S. civil forfeiture law, which allows DOJ to seize the proceeds of criminal conduct (bribes, procurement fraud, theft, embezzlement or misappropriation of state funds, and kick-backs), is increasingly being used to go after the proceeds of grand corruption overseas.¹²⁴

Launched in 2010, the Kleptocracy Asset Recovery Initiative created a “dedicated, specialized team” whose primary mission is to recover the assets looted by corrupt foreign officials. After starting small, the initiative has expanded rapidly, and now includes “a dozen government lawyers and teams from the FBI and Homeland Security.”¹²⁵ Two components of the Justice Department play a leading role: the Asset Forfeiture and Money Laundering Section (AFMLS) and the Office of International Affairs. Representing DHS is the Foreign Corrupt Investigations Group, part of Immigration and Customs Enforcement (ICE) Homeland Security Investigations.¹²⁶ These offices work alongside the FBI’s International Corruption Unit as well as with U.S. attorneys across the country. Thus far, it has had some promising early success. In August 2014, the U.S. seized more than \$480 million that had been allegedly stolen by former Nigerian President Sani Abacha. The seizure was the largest kleptocracy-related forfeiture in U.S. history.¹²⁷

Like other inquiries into the laundering of foreign criminal proceeds, FCPA investigations can trigger DOJ to launch a “kleptocracy” case. Additionally, these cases can be sparked by: requests from foreign governments for assistance in recovering stolen assets; foreign prosecution for corruption, embezzlement or the misappropriation of state assets; notification of suspicious activity by financial institutions; reports by media and civil society organizations; information provided from other U.S. government agencies, including the intelligence community; and information provided by partner governments (especially those that may have evidence of the laundering of the proceeds of corruption but do not have laws on the books that allow for civil forfeiture).

In order for the U.S. government to pursue the seizure of the proceeds of corruption, two basic criteria must be met. First, the case must involve a “U.S. nexus,” meaning that the criminal act must have taken place within U.S. territory, the asset must be located in the United States, or the illicit funds must have passed through the U.S. financial system. The primacy of the U.S. financial system dramatically increases the likelihood that any given illicit transfer will become subject to

U.S. jurisdiction. The second prerequisite for opening a kleptocracy asset recovery case is “dual criminality” (i.e. the criminal act from which the funds are sourced must be illegal both in the United States and in the jurisdiction in which it was committed.)¹²⁸

The investigative, legal, and administrative processes involved in seizing assets can be fairly arduous. The seizure of assets from notorious Teodoro Nguema Obiang Mangue, the son of Equatorial Guinea’s president better known as “Teodorin,” for example, was a drawn-out process that took several years and ended in a settlement.¹²⁹ (Although there was not finding or admission of guilt, Obiang reportedly agreed to direct between \$20 and \$30 million from the sale of the assets seized by the U.S. government to a charity to benefit the people of Equatorial Guinea.¹³⁰) However, as DOJ becomes more experienced in pursuing these cases, the investigative and legal processes will likely become more streamlined. In fact, DOJ and the FBI have begun cooperating more regularly with foreign jurisdictions to navigate through the complicated webs of shell companies and offshore bank accounts that are often used to disguise the illicit movement, layering, and placement of funds.

Another challenge arises just as soon as the U.S. government seizes a kleptocrat’s assets: what to do with the funds recovered. Ideally, the funds would be repatriated to the country from which they were stolen. However, it makes little sense to do so if a corrupt government remains in power. Accordingly, several initiatives have been developed in order to ensure that the recovered proceeds of corruption are not simply re-captured by kleptocrats. Importantly, the U.S. government has recently enhanced the resources and staff allocated to kleptocracy cases. As a result, the Kleptocracy Asset Recovery Initiative may become an increasingly potent tool in the fight against international corruption.

In the case of South Sudan, for example, Enough has recommended that the Kleptocracy Asset Recovery Initiative open investigations into grand corruption in South Sudan, given the likelihood of a strong U.S. nexus, including U.S. companies, accounts, and citizens engaged in these activities in South Sudan and the East Africa region. For example, evidence obtained by The Sentry indicates that several senior South Sudanese officials have transferred significant sums out of the country using dollar-denominated bank accounts. Furthermore, The Sentry has also found evidence that senior South Sudanese officials believed to have engaged in grand corruption have parked their assets in real estate in numerous countries throughout the world.

Closing loopholes and expanding jurisdiction

Despite robust safeguards designed to prevent money laundering, numerous major loopholes exist that allow criminals and corrupt officials to launder their illicit proceeds. As the deluge of documents recently revealed in the Panama Papers leak, the most crippling of these loopholes is created by the rampant abuse of anonymous shell companies. The Panama Papers show just how easy it is for criminals and kleptocrats to move their ill-gotten gains without being detected. This

leak still only represents a small fraction of the total amount of anonymous shell companies used by government officials and secretive investors, but the scope of the revelations from this leak show how pervasive looting is in conflict-affected countries. The leak also shows how isolated regimes and predatory investors use anonymous shell companies to circumvent sanctions, thereby potentially diluting the impact of one of the more potent tools of financial pressure at the U.S. government's disposal.

Anonymous shell companies are corporate vehicles incorporated in jurisdictions that do not require the disclosure of the identities of a firm's beneficial owners. This loophole, which has been called "the Achilles' heel of capitalism," has been exploited by corrupt officials, bribe-payers, terrorist financing schemes, drug cartels, wildlife traffickers, weapons smugglers, sanctions busters, tax evaders and virtually anyone else who seeks to move and stash money without being detected. This loophole has allowed untold millions of dollars to be stashed in the United States, especially through high-end real estate purchases. Several prominent investigations over the past few years—including a five-part exposé in *The New York Times*—

Without exception, every jurisdiction around the world should maintain a public registry of corporate entities formed in its territory.

have shown countless cases of corrupt foreign officials and financial criminals using anonymous shell companies to park their illicit earnings in places like New York, Miami, and Los Angeles.¹³¹

Without exception, every jurisdiction around the world—especially major financial centers and incorporation hubs—should maintain a public registry of corporate entities formed in its territory. These registries should be publicly searchable and certain corporate filings from each company that contain basic information about the firm's true owners, including their name, date of birth, business address, and identification number. Corporate records should be accessible at a very low cost. Some interest groups have pushed back against beneficial ownership transparency for reasons of financial privacy (as well

as security and cost).¹³² This argument does not hold water. Corporate registries require only very basic information about individuals, much of which is already accessible through public records databases already available to the public. "In the U.S. state of Delaware, for example, you need to provide more identification to obtain a library card than you do to create a company," according to the Financial Transparency Coalition. "Being able to set up a company—which has the ability to move money, open subsidiaries and act as a legal front—without providing any information about who ultimately owns it, is a recipe for the perfect crime."¹³³

Others have suggested that beneficial ownership information should only be available to law enforcement officials. This approach, too, is insufficient in large part because many investigations into crime and corruption stem from probes launched by civil society and the press. Furthermore, crime and corruption in many foreign countries (apart from a few countries deemed to be

strategically important) currently receives little attention from U.S. law enforcement, and foreign law enforcement agencies that have been hijacked by corrupt elites are unlikely to investigate their patrons' corrupt dealings. Countries that fail to comply with beneficial ownership transparency standards should face tangible consequences, including being placed on the Financial Action Task Force's "blacklist" of countries that are not cooperative on anti-money laundering measures.

Similarly, another major loophole that allows criminals and kleptocrats to park their ill-gotten gains is that intermediaries who shepherd certain types of transactions are exempt from anti-money laundering provisions that require financial institutions from conducting customer due diligence. The most problematic exempted institutions are incorporation service providers. These firms are the main agents involved in the creation of corporations and trusts and, therefore, are in a key position to know who is behind anonymous shell companies. A 2010 Financial Action Task Force report notes, "When trust and corporate vehicles are misused for money laundering, there will almost always be a connection to a [Trust and Company Service Provider] that was either knowingly or otherwise involved in the establishment or administration of the misused trust or corporate vehicle."¹³⁴

Two other groups of service providers are problematically exempt from due diligence responsibilities: entities involved in closing real estate transactions as well as the "seller[s] of vehicles, including automobiles, airplanes, and boats" are also exempt from due diligence responsibilities.¹³⁵ While not all purchases of this class of goods should be subject to enhanced due diligence, cases in which the automobile, aircraft or boat exceeds \$200,000 should be subject to increased scrutiny, as these types of assets are often on the shopping lists of foreign kleptocrats. For example, Teodorin Obiang, the son of the Equatorial Guinean President Teodoro Obiang, was able to purchase nine luxury cars—including such models as Bugatti Veyron, Bentley, Ferrari, Porsche, Maserati—worth at least \$3.6 million, a Gulfstream jet worth upwards of \$38 million, and a \$30 million mansion in Malibu, California.¹³⁶ Anyone who holds the title for a high-end property, aircraft, or luxury car should be subject to increased due diligence to determine whether they are a politically exposed person (PEP).

Sharpening the tools of financial pressure

U.S. tools of financial pressure have tremendous potential to counter kleptocracy. However, the U.S. government could take the following steps to sharpen and refine these tools and refine them so that they can be deployed more effectively to counter kleptocracy in East and Central Africa.

First, the executive branch should establish a coordination mechanism for the use of these tools. The Center for the Study of Sanctions and Illicit Finance has recommended setting up an "Office of Policy Planning" within the Treasury Department for the coordination of the deployment of these tools.¹³⁷ This would be a positive step. In order to facilitate interagency coordination and

further help curb kleptocracy overseas, the White House should produce and publish a “Global Anti-Corruption Strategy” that outlines the key components of a strategy to fight graft overseas and identifies the specific tools and initiatives that the U.S. government plans to use to fight corruption overseas. It should then appoint a coordinator for countering corruption—an anti-corruption czar—to oversee the initial implementation of this strategy.

Second, U.S. legislators and government agencies with the power to combat graft must allocate resources and staff accordingly. These institutions understandably dedicate a large portion of their resources and staff to addressing international crises that are deemed immediately important to U.S. national security. Efforts to investigate corruption or to enforce sanctions in other parts of the world inevitably take a back seat. The problem with this dynamic is that, not long ago, many of the crises that are occupying the attention of policymakers and staff at key government agencies today were prototypical kleptocracies. To policymakers, the circumstances in these countries may have been unfortunate but, ultimately, were not worthy of significant investments of time, effort, or energy by the U.S. government. These countries were corrupt, but stable—that is, until they imploded. The Arab Spring uprisings in North Africa and the Middle East are a prime example. Sarah Chayes, author of *Thieves of State: Why Corruption Threatens Global Security*, has argued that these movements “amounted to a mass uprising against kleptocratic practices.”¹³⁸ In Mali, analysts have found that corruption “hollowed out the state,” paving the way for a rapid uptick in drug trafficking through the country, a coup d’état in the capital, and an Islamist insurgency in the country’s northern region.¹³⁹ Investing the resources needed now to recognize and address the threats posed by violent kleptocracy will pay future dividends. Should Congress appropriate more resources to these programs, it should ensure that the necessary oversight is in place to demand that agencies like the departments of Treasury and State are following through and using the resources to take action.

Third, the U.S. intelligence community should be required to collect intelligence about senior foreign officials engaging in corruption. Given the growing preference for the use of sanctions as a policy tool for responding to international crises and considering the central importance of wealth accumulation by elites as a driver of many crises, the U.S. intelligence community must prioritize the collection and analysis of this kind of information. These analyses could be included in national intelligence estimates.¹⁴⁰ The U.S. government has justified on U.S. national security grounds some of its interventions in violent conflicts that were sparked, funded, or enabled by ill-gotten gains, kleptocratic practices by public office-holders, and severe economic inequality between elites and the large majority of the population. The U.S. government’s intelligence community should therefore be directed and equipped to devote more resources to information-gathering in East and Central Africa. This information-gathering effort can in turn trigger preventive interventions and mitigate the threats to local populations and U.S. national security before these situations escalate to the points currently observed in Sudan, South Sudan, the DRC, and CAR. Violent kleptocracies in these areas have featured an underappreciated pathological approach to the management of natural resources that have been mobilized to provide the means and motive to commit large-scale atrocity crimes against civilians. These violent situations

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have then prompted U.S. intervention on the basis of being threats to U.S. national security. These costly U.S. and international peace interventions are underwritten in the end in large part by U.S. taxpayers and endure for decades. An analytical lens and focus within the intelligence community on monitoring corruption for its connection to violence and atrocity crimes, is therefore critically important.

Fourth, U.S. government institutions must also continue to cultivate international partnerships to investigate and prosecute the perpetrators of corruption. Infrastructure has already been created to allow U.S. investigative agencies to cooperate and collaborate with peer institutions in other countries. For example, as the U.S. financial intelligence unit, FinCen plays an important role in coordinating investigations with partners and allies and in sharing information. The DOJ has similar authorities to share and request information with partners and allies with whom the United States has mutual legal assistance treaties (MLATs).¹⁴¹ These agencies must strike a delicate balance between collecting information and protecting sensitive information; peer institutions in other countries may have not share the United States' interest in countering corruption and could tip off the targets of investigations in order to curry favor with an influential foreign official. To greater support efforts to counter kleptocracy in East and Central Africa, U.S. authorities must expand relationships and outreach with counterparts in key financial hubs in the region as well as in jurisdictions where corrupt elites are parking their assets, such as Kenya.

Finally, the United States should use a variety of international forums to push reform-minded governments around the world to enhance anti-corruption controls and bolster their own capacity to deploy tools of financial pressure. A major priority should be to push other OECD member states to honor their commitments as part of the Anti-Bribery Convention and proactively enforce their anti-bribery laws. The U.S. government can also use international bodies like the Financial Action Task Force (FATF)—an international body that maintains a “blacklist” of jurisdictions that do not meet certain anti-money laundering standards—to push for greater controls against corruption.¹⁴² Countries exhibiting high levels of public sector corruption should be subject to increased scrutiny by FATF regarding the strength of their anti-money laundering controls. Furthermore, in addition to recruiting partners to participate in sanctions programs spearheaded by the United States, the U.S. government should push its partners to establish equivalents of OFAC to administer sanctions (such as the Office of Financial Sanctions Implementation (OFSI) that was established by the United Kingdom.)¹⁴³

Conclusion

Violent kleptocracies in South Sudan, Sudan, the Democratic Republic of the Congo (DRC), the Central African Republic, Somalia, and the broader region of East and Central Africa have imposed terrible, lasting costs on millions of people.

Disrupting, countering, and reorienting these systems of criminal predation and environments of impunity requires the empowerment of local public servants and global action on multiple fronts with concerted U.S. leadership with many partners. Civil society and media groups need much more support. Those who are most responsible for constructing and enabling systems that bankrupt public goods and use large-scale violence and mass atrocities to enrich and empower private actors at the expense of the people must face prohibitive costs and painful consequences for their choices.

The fight against corruption must become much more of a pillar and central focus of U.S. engagement with these countries as leaders and members of society work together to shift the incentive structures underpinning political, economic, and military decision-making by ruthless elites. Those who obstruct reform efforts, and private sector actors that facilitate and enable the operations of kleptocrats must also pay a heavy price for their actions.

The United States is uniquely well-positioned to help lead this effort. By leveraging the primacy and global reach of the U.S. financial system and deploying the modern tools of financial pressure available to the U.S. government—particularly a range of different types of sanctions measures, anti-money laundering measures, and anti-bribery provisions—the United States can alter the calculations and incentives of kleptocrats in Africa’s deadliest war zones. The United States can lead and support others in leading efforts to freeze, restrict, seize, and ultimately return the assets that are the proceeds of violence and corruption. The existing tools of financial pressure and sanctions regimes can be sharpened, modernized, and calibrated to each unique situation with consideration for the role these measures will play in the context of a broader, well-coordinated, comprehensive strategy. The U.S. government agencies that administer these potent and impactful tools of financial pressure need access to sufficient staff, resources, and intelligence about corruption and the foreign officials engaging in corruption that is attuned to the connections between these harmful economic dynamics and mass atrocities against civilians.

If the U.S. elevates this focus, it can help increase the sustainability, reach, and impact of its effort by building global partnerships with those who can investigate and prosecute the perpetrators of corruption. The United States also can and must support efforts by local actors to strengthen governance mechanisms that promote broad participation with transparency and accountability in governments that are subject to public oversight and led by public servants who truly serve the public interest.

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