



Yes, We Have Leverage

A Playbook for Immediate and Long-Term Financial Pressures to Address Violent Kleptocracies in East and Central Africa

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“We have no leverage.” “All of this leader’s money is parked elsewhere in Africa, in Dubai, or Europe.”
“Sanctions do not work.”

These are just a few of the views one often hears from observers of crises in Africa and, more worryingly, senior U.S. and foreign diplomats assigned to try to resolve them. Through the Enough Project’s engagement with these officials, my colleagues and I regularly encounter such opinions. It is increasingly clear to us that there is a broad lack of familiarity with the array of tools that policymakers have at their disposal to address seemingly intractable conflicts or murderous warlords. These tools have not been a consistent part of the policy discussion concerning how to resolve crises, or when they have, the institutional barriers to action have been too high. So it is no wonder those tools are often used improperly, ineffectively, or not at all.

As investigations by The Sentry and related policy analysis by Enough demonstrate, the opposite is true: the international community, and in particular the United States, possesses many options to exert leverage that could impact the calculations, behavior, or material position of elites who drive large-scale violence and their accomplices. The fact is that almost none of this leverage has been deployed, especially in some of the direst cases, like South Sudan.

This paper summarizes more than 15 different options that can be used to change this dynamic: strategies for the international community, especially the U.S. government, to exert leverage through use of financial pressure tools and related diplomacy. These options are premised on four key findings from The Sentry’s investigations:

- Key officials in East and Central Africa responsible for conflict and atrocities reap significant financial benefits from their business dealings in multiple economic sectors and through work with facilitators and enablers within the region and across the globe;¹

- These officials work through interconnected business networks involving dozens of companies on which they, their family members, and business proxies serve as shareholders and owners;²
- These companies and their business sectors operate largely in the U.S. dollar, which provides the U.S. government with jurisdiction over many of the transactions;³
- The structure of these networks and their conduct of business in U.S. dollars resemble the structures of the networks that the U.S. government and international community have dealt with in responding to other threats, from Iran to Myanmar to narcotics trafficking.⁴

In light of these findings, and the urgency of the crises throughout East and Central Africa, the following options should urgently be explored. Each tool must of course be adapted for the specific circumstances. These tools must also be used not simply for their own sakes or to punish bad actors in a vacuum, but with a clear connection to over-arching foreign policy strategies focused on achieving peace. Although it is always preferable for the United States to act in concert with other countries or international organizations, these are also tools that can—and should—be used unilaterally, if only to propel others to join.

I. Modernized Sanctions

The existing approach to economic sanctions in most sub-Saharan African contexts has been to use asset freezes and travel bans focused on a small list of individuals, with little regard to their financial vulnerabilities or assets. This is almost guaranteed to be ineffective. Where sanctions are used effectively and aggressively, they rely on modernized approaches such as:

1. Focus on network sanctions, not just individual asset freezes. For asset freeze sanctions to be effective in contexts like Sudan, South Sudan, or Democratic Republic of Congo, once individual targets are named, then “derivative” sanctions authorities must be used to designate networks, including those providing material/financial assistance to targets as associates and facilitators, or companies they own or control, whether in-country or internationally.⁵ Future asset freeze designations should focus only on targets where these derivative authorities can be used to attack networks. Treasury’s designation on June 1, 2017, of Congolese Gen. Francois Olenga and one of the companies he owns is a tentative but positive step in this direction.⁶ Ownership/control percentages required for designation should be set at 25 percent, in line with beneficial ownership principles, rather than the current 50 percent level.⁷
2. Deploy sectoral sanctions. In most sub-Saharan African sanctions programs, the criteria for designation focus on those responsible for specific types of bad acts and are often derived from U.N. Security Council resolutions. In other programs, such as Russia/Ukraine and North Korea where the U.S. has developed more unilateral approaches, sanctions have turned to targeting those companies active in the key sectors that enable a regime’s activities.⁸ These sanctions can be used to target those engaging in completely legal business activities; the sanctions are imposed because activities take place in economic sectors that have been captured by a regime or armed group. Potential targets for sectoral sanctions include the oil sector in South Sudan or aspects of the mining sector in Congo or the Central African Republic.

3. Explore secondary-type sanctions. Secondary sanctions directly pressure foreign financial institutions that do business with actors engaging in business activities that the United States identifies as the most concerning. In the Iran context, secondary sanctions focused on foreign banks facilitating payments related to Iran's nuclear weapons program.⁹ This model could be applied, for example, to foreign banks facilitating Sudan's weapons industry.
4. Use sanctions tools other than asset freezes. For any of the above sanctions measures, it is critical that measures other than asset freezes and travel bans be used. These have become the default approaches, and targets have proved they can develop countermeasures more rapidly than authorities and banks can keep up. Other tools include the following, which have been used in other sanctions contexts:
 - i. Limiting the target's ability to access financing/credit/debt of longer than 30 or 60 days related to a specific sector of concern, such as oil or mining;¹⁰
 - ii. Restricting the target's ability to participate in U.S. government contracts, procurement, or other programs;¹¹
 - iii. Prohibiting the target's network from benefiting from funding via Overseas Private Investment Corp. (OPIC) or Export-Import Bank (EXIM) of the United States, etc.;
 - iv. Prohibiting the target from receiving exports or re-exports of U.S. origin goods, technology, or services;
 - v. Requiring public reporting from any U.S. persons doing business with the specific target or sector, specifically to ensure appropriate due diligence is being exercised;¹²
 - vi. Prohibiting the use of correspondent banking services for the target, or particular types of financial transactions.

II. Direct Anti-Money Laundering (AML) measures

When corrupt leaders or their business associates take bribes or otherwise divert public funds into their private accounts, then place those funds in the formal banking system, and use them to conduct transactions such as real estate purchases, that is money laundering. Specifically, it is laundering the proceeds of corruption.¹³ The Sentry's research shows this occurring across South Sudan, Sudan, and Congo, usually routing through neighboring countries, largely in U.S. dollars. Measures that can be taken to address this focus on the conduct, rather than the target, such as:

1. FinCEN and other FIU Advisory/Investigative steps. The U.S. Financial Crimes Enforcement Network (FinCEN), which acts as the U.S. financial intelligence unit (FIU), can take a number of steps both to gather information about potential money laundering emanating from South Sudan, as well as to provide warnings, in the form of Advisories, to financial institutions about the patterns this money laundering activity takes.¹⁴ The investigative steps taken by FinCEN are normally done privately with banks and other governments, such as through a request made pursuant to Section 314(a) of the Patriot Act,¹⁵ while an Advisory is typically public and designed to prompt more reporting from banks about suspicious activities they may not have otherwise detected. Foreign FIUs, particularly in Europe, each have different legal mechanisms but most have the ability to request materials from banks and issue public statements.

2. Special Measures pursuant to Section 311 of the Patriot Act. Should FinCEN develop sufficient evidence, it can issue a finding that declares a “primary money laundering concern.”¹⁶ To date, this has only ever been used against countries and specific institutions, but the authority is capable of being deployed against specific classes of transactions, particular accounts, etc.¹⁷ Once a primary money laundering concern is declared, FinCEN then can require the use of one or more of five special measures, but only Special Measure 5 (requiring the termination of all correspondent banking relationships) has ever been used.¹⁸ The other special measures could be used to simply require more due diligence or broader recordkeeping.
3. Establish a 314(b) process for sharing among banks. This section of the Patriot Act allows banks to share information with one another that would otherwise be restricted. Given the likelihood that information about money laundering related to East and Central Africa involves transactions transiting many banks, this would enable banks to develop information through cooperation.¹⁹

III. Multilateral AML Measures: FATF/FATF-Style Regional Body Attention and Pressure, particularly on facilitating countries.

The Financial Action Task Force (FATF) is the multilateral body responsible for developing global standards for combating money laundering and threat finance as well as evaluating member state compliance with those standards.²⁰ There are several regional organizations, known as FATF-Style Regional Bodies (FSRBs), that concentrate on these issues in localized contexts. The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)²¹ is the most relevant such body for East and Central Africa, though several FSRBs are relevant to the work. Options related to AML issues on this level include:

1. Raise Concerns within FATF. The laundering of corruption’s proceeds from East and Central Africa into the international financial system has not specifically been on FATF’s agenda as a particular threat, and it is not a traditional issue to be raised in the body. But given the dire nature of the situations in South Sudan and Congo and the role of money laundering in perpetuating these crises, the United States and other delegations could raise the issue in their bilateral meetings with key governments and seek to ensure the issue is added to the FATF agenda over time, through the work done by FATF on corruption.²²
2. Raise concerns about South Sudan and AML within ESAAMLG. In addition to FATF, the U.S. delegation to ESAAMLG could also raise concerns about South Sudan in future meetings, including inviting experts to present to members on the patterns of money laundering detected to date.
3. Highlight corruption as a concern for Mutual Evaluations, such as for Kenya and Uganda. The “mutual evaluation” process is the means through which the AML systems developed and implemented by FATF members are assessed.²³ Countries with weak AML systems are placed on specific FATF lists, subject to Advisories by FinCEN and other FIUs, and face additional due diligence by financial institutions.²⁴ The U.S. and other governments should ensure that assessment teams for facilitating countries such as Kenya, which could see its next mutual evaluation in 2018, focus on money laundering from South Sudan during these processes. Uganda’s mutual evaluation from 2016 revealed a number of deficiencies; Uganda could be

encouraged to act against illicit South Sudanese assets as a means of demonstrating progress in tightening its system.

IV. Outreach/Diplomacy/Direct Pressure

The measures discussed above are direct actions, whether pursuant to a specific legal authority or the general activities of a specific agency or body. The U.S. Departments of the Treasury and State, as well as other governments, should also use public diplomacy pressures that have been deployed effectively in other contexts to raise awareness and help deter economic engagement with individuals, entities, sectors, and even countries of concern. These pressures include:

1. Demarches by State and Treasury officials that remind facilitating governments of the way in which they are risking their substantial investments in their banking and commercial sectors. For example, Kenya's focus on its banking sector is at risk the more it permits illicit South Sudanese activity to continue. Should global banks start to become concerned or even withdraw, and the U.S. dollar becomes less accessible, these investments could fail;
2. Public statements and press releases by U.S. officials that raise concerns about these issues, focusing attention on the need for banks and regional actors to address them.²⁵ Because this has not been a U.S. government focus in the past, banks will notice the new attention;
3. Convening of banks to review specific concerns and remind them of the risks to their institutions from these threats. The meeting should be followed with a press release aimed at attracting the attention of other banks;
4. Convening of commodities traders and natural resources firms, along with a press release, to highlight the risks posed by these sectors in the region, the possible penalties they face for connections to illicit activity, and the importance of identifying responsible channels for investment;
5. Establishment of an interagency Task Force on the Licit and Illicit Economy of East and Central Africa that identifies individuals, entities, and sectors of concern, and also develops research on mechanisms for responsible investment;²⁶
6. Technical assistance through Treasury to help regional governments improve their AML detection and enforcement efforts.

Note on De-Risking

The principal downside to any of these actions is the potential for broader "de-risking" by global banks, which may decide that the compliance costs, and possible penalties for even unintentional mistakes, associated with providing any banking services at all connected to the region may become too great when compared to the potential profits.²⁷ Banks that make this calculation and close down business services for this reason are said to be "de-risking."²⁸

There is no specific step that can prevent de-risking. Any of the actions taken above should come with a clear message from the U.S. government that the concerns are limited to specific networks and patterns of conduct, encouraging banks to ensure that people in the region have access to capital and banking for legitimate purposes.²⁹

Conclusion

When the measures above and those like them are deployed in a thoughtful and coordinated strategy designed to support clear foreign policy objectives, the United States and broader international community can finally demonstrate to violent kleptocrats and warlords bent on violence and corruption that leverage exists to stop them. And that the leverage will be used until it can successfully redirect incentive structures toward peace, human rights, and good governance.

Endnotes

¹ The Sentry, “War Crimes Shouldn’t Pay,” (September 2016), available at https://cdn.thesentry.org/wp-content/uploads/2016/09/Sentry_WCSP_Finalx.pdf.

² Jeffrey Gettleman, “As President Joseph Kabila Digs In, Tensions Rise in Congo,” New York Times, December 17, 2017, available at https://www.nytimes.com/2016/12/17/world/africa/congo-joseph-kabila-corruption.html?_r=0.

³ The Sentry, “War Crimes Shouldn’t Pay,” p. 51.

⁴ J.R. Mailey and Jacinth Planer, “Bankrupting Kleptocracy: Financial tools to counter atrocities in Africa’s deadliest war zones,” (October 2016), available at <http://enoughproject.org/reports/bankrupting-kleptocracy-financial-tools-counter-atrocities-africas-deadliest-war-zones>.

⁵ For just one recent example of this approach taken in another context, see U.S. Department of the Treasury, “Treasury Sanctions Iranian Defense Officials and a China-Based Network for Supporting Iran’s Ballistic Missile Program,” May 17, 2017, available at <https://www.treasury.gov/press-center/press-releases/Pages/sm0088.aspx>.

⁶ U.S. Department of the Treasury, “North Korea Designations and Updates; Non-proliferation Designations and Updates; Democratic Republic of the Congo Designations; Counter Terrorism Removals,” June 1, 2017, available at <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20170601.aspx>.

⁷ Chip Poncy, “Countering Russia: Further Assessing Options for Sanctions,” Written Testimony to the U.S. Senate Committee on Banking, Housing & Urban Affairs, April 27, 2017, p.3, available at https://www.banking.senate.gov/public/_cache/files/bda006ca-0324-4a0f-bc46-7810ab59cbd6/3B008EA894E663D1D501BB1C7AF2A1AE.poncy-testimony-4-27-17.pdf. Poncy is a former Treasury official making a similar recommendation with respect to Russia. Technically, the 50 percent threshold is for when a company is considered “blocked property” of a designated individual or entity, and thus per se sanctioned. But the 50 percent threshold is also often used when deciding whether to formally designate a company.

⁸ U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC), “Ukraine/Russia-Related Sanctions Program,” p. 5, (Updated June 2016), available at <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine.pdf>.

⁹ U.S. Department of the Treasury, “CISADA: The New U.S. Sanctions on Iran,” (August 2010) available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/CISADA_english.pdf.

¹⁰ U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC), “Directive 1 (As Amended) Under Executive Order 13662,” September 12, 2014, available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/eo13662_directive1.pdf.

¹¹ *Iran Sanctions Act of 1996, as Amended*, Public Law 172, 104th Cong. (August 5, 1996), (sections 6(a)(5) and 6(b)), available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/isa_1996.pdf.

¹² U.S. Department of State, “Reporting Requirements on Responsible Investment in Burma,” OMB NO. 1405-0209, available at <https://www.humanrights.gov/wp-content/uploads/2013/05/responsible-investment-reporting-requirements-final.pdf> (last accessed June 2017).

¹³ Financial Action Task Force (FATF), “Laundering the Proceeds of Corruption,” (July 2011) p. 16, available at <http://www.fatf-gafi.org/media/fatf/documents/reports/Laundering%20the%20Proceeds%20of%20Corruption.pdf>.

¹⁴ U.S. Department of the Treasury, Financial Crimes Enforcement Network, “Advisories/Bulletins/Fact Sheets,” available at <https://www.fincen.gov/resources/advisoriesbulletinsfact-sheets> (last accessed June 2017).

¹⁵ U.S. Department of the Treasury, Financial Crimes Enforcement Network, “FinCEN’s 314(a) Fact Sheet,” June 6, 2017, available at <https://www.fincen.gov/sites/default/files/shared/314afactsheet.pdf>.

¹⁶ U.S. Department of the Treasury, “Fact Sheet: Overview of Section 311 of the USA PATRIOT Act,” available at <https://www.treasury.gov/press-center/press-releases/Pages/tg1056.aspx> (last accessed June 2017).

¹⁷ U.S. Department of the Treasury, “311 Special Measures: Special Measures for Jurisdictions, Financial Institutions, or International Transactions of Primary Money Laundering Concern,” available at <https://www.fincen.gov/resources/statutes-and-regulations/311-special-measures> (last accessed June 2017).

¹⁸ For information on Special Measure 5, see, “Prohibitions of Conditions on Opening or Maintaining Certain Correspondent or Payable Through Accounts,” found in Federal Financial Institutions Examination Council Bank

Secrecy Act/Anti-Money Laundering InfoBase, “Bank Secrecy Act Anti-Money Laundering Examination Manual,” available at https://www.ffiec.gov/bsa_aml_infobase/pages_manual/OLM_031.htm (last accessed June 2017).

¹⁹ U.S. Department of the Treasury, Financial Crimes Enforcement Network, “Section 314(b) Fact Sheet,” available at <https://www.fincen.gov/sites/default/files/shared/314bfactsheet.pdf> (last accessed June 2017).

²⁰ Financial Action Task Force, “Who We Are,” available at <http://www.fatf-gafi.org/about/> (last accessed June 2017).

²¹ Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), available at <http://www.esaamlg.org> or <http://www.fatf-gafi.org/pages/easternandsouthernafrikaanti-moneylaunderinggroupesaamlg.html> (last accessed June 2017).

²² For an example of collaboration with G20 on corruption, see, Financial Action Task Force, “Joint G20 ACWG-FATF Experts Meeting on Corruption,” October 16, 2016, available at <http://www.fatf-gafi.org/publications/corruption/documents/g20-acwg-fatf-october-2016.html> (collaboration with G20 on corruption). For a general view of FATF work on corruption, see, David Lewis, FATF Executive Secretary, “Ending Impunity: Creating a level playing field by enforcing the conventions we have,” speech given on May 11, 2016, available at <http://www.fatf-gafi.org/publications/fatfgeneral/documents/tackling-corruption-together.html>.

²³ Financial Action Task Force, “Topic: Mutual Evaluations,” available at [http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc(fatf_releasedate)) (last accessed June 2017).

²⁴ Financial Action Task Force, “Topic: High-risk and non-cooperative jurisdictions,” available at [http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/?hf=10&b=0&s=desc(fatf_releasedate)) (last accessed June 2017).

²⁵ “[Former Under Secretary of the Treasury Stuart] Levey’s idea was to press banks not to do business with Iran until it complied with international standards.” Found in Robin Wright, “Stuart Levey’s War,” *The New York Times Magazine*, October 31, 2008, available at <http://www.nytimes.com/2008/11/02/magazine/02IRAN-t.html>.

²⁶ Chip Poncy, “Countering Russia: Further Assessing Options for Sanctions,” p. 2. Poncy’s testimony proposes a similar concept, specifically a Russian Counter-Illlicit Financing Task Force.

²⁷ Society for Worldwide Interbank Financial Telecommunications (SWIFT), “Addressing the Unintended Consequences of De-risking — Focus on Africa,” (August 24, 2016), pp. 4-5, available at https://www.swift.com/insights/press-releases/de-risking-in-africa-on-the-rise_according-to-latest-swift-data.

²⁸ The World Bank, “De-risking in the Financial Sector,” October 7, 2016, available at <http://www.worldbank.org/en/topic/financialmarketintegrity/brief/de-risking-in-the-financial-sector>.

²⁹ Tracey Durner and Liat Shetret, “Understanding Bank De-Risking and Its Effects on Financial Inclusion,” (Washington, DC: Global Center on Cooperative Security, November, 2015), p. 31, available at https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/rr-bank-de-risking-181115-en_0.pdf.