

This brief accompanies John Prendergast's speech to the United Nations (UN) Security Council on September 10, 2018 and further explains the different tools of financial leverage – both at a national level and multilaterally – that can be used to prevent conflict and mass atrocities in Africa. Concepts and processes covered in this document include the concept of “network sanctions,” the process for enacting asset freezes and travel bans at the UN, the Panels of Experts, an overview of existing relevant UN sanctions programs, the consequences of UN asset freezes and travel bans, an explanation of money laundering and description of anti-money laundering tools, the Financial Action Task Force (FATF) and FATF-Style Regional Bodies (FSRBs), the International Criminal Court (ICC), and a basic overview of how prosecutions for atrocities and human rights abuses work and relevant authorities.

Financial tools of pressure such as network sanctions and the implementation of robust standards for anti-money laundering frameworks at the national and multilateral level have vital roles to play in combating the ability of kleptocratic regimes to profit from the ongoing abuses in their countries. Corruption and the illicit exploitation of natural resources is a fundamental driver of mass atrocities in countries such as South Sudan, Sudan, the Democratic Republic of Congo (DRC), Somalia, and the Central African Republic (CAR). It is thus incumbent on policymakers, financial institutions, and international organizations to work towards exposing and disrupting the exploitation of natural resources and movement of ill-gotten gains by the elites at the expense of innocent civilians in order to transform the systems of governance in these countries.

What are “network sanctions?”

The term “network sanctions” refers to the strategy of freezing the assets of not just the primary target for sanctions designation but also the individuals or entities who act on their behalf or provide support for their activities. In addition, “network sanctions” target the companies or property that are “owned and/or controlled by” the primary target. Network sanctions that are based on these criteria are also commonly referred to as “derivative designations” because the basis for designation of the individuals or entities in these support networks is derived from their relationship to the primary target.

An example of the strategy of employing “network sanctions” to disrupt the financial activity of malign or illicit actors include the counter-narcotics and Iran problem sets.

Under the Foreign Narcotics Kingpin Designation Act, the U.S. Treasury Department regularly sanctions the networks of drug cartels, including the accountants and lawyers who handled the finances, filed the paperwork, and listed themselves on the names of front companies or bank accounts in order to conceal the ultimate beneficiaries and illicit origins of the funds. Similarly, in June 2013, the U.S. Treasury Department blacklisted Iran's Execution of Imam Khomeini's Order (EIKO), a state-owned entity that includes 37 ostensibly private businesses located around the world, many of which were used as front companies meant to evade sanctions. They generated and controlled massive, off-the-books investments that they hid from both the Iranian people and international regulators. Simultaneously sanctioning a sizable tranche of individuals and entities around the world who formed the support structure for EIKO rather than just listing the named organization itself represented a much more impactful and disruptive form of “network sanctions” that made it difficult for the target to react and recover.

How do sanctions such as asset freezes and travel bans become enacted at the UN?

When the UN Security Council recognizes a problem of international concern, it can pass a resolution to prohibit certain activities related to the problem, and require member states to implement sanctions for those who commit prohibited activities. These measures are adopted under Chapter VII of the UN Charter, and can include freezing the assets of individuals or banning their travel, prohibiting the import and export of commodities or arms and related material, and interrupting means of trade or communication, among other things. A resolution authorizing the creation of a sanctions regime – whose activities are overseen by a subcommittee – passes if it receives an affirmative vote of nine Security Council members, and no permanent members veto it. If a permanent member of the Council does not fully agree with the resolution but doesn't want to cast a veto, it may abstain from the vote, and may make a statement at the time of adoption explaining its concerns.

In the case of an asset freeze or travel ban, when a member state wants an individual or entity to have these sanctions applied under a resolution, it proposes a narrative called a "Statement of Case." The Statement of Case explains the acts that were committed by the individual or entity that violated the Security Council resolution in question. The member state may introduce the Statement of Case to the Security Council in a resolution, or to a Sanctions Committee for closed consideration. In Committee, the Statement of a Case is circulated to other members, and if no members object the designation of the individual or entity goes into effect. The name of the individual or entity is then "listed" under the regime. After a person or entity is listed, member states are obligated to implement the sanctions measures, and usually adopt domestic law or regulations to do so. The underlying resolutions that authorize sanctions typically need to be renewed annually by the Security Council, and may change.

What are the Panels of Experts?

Each sanctions committee is usually authorized to create a Panel of Experts, to assist the Sanctions Committee in the implementation of the measures outlined in the sanctions resolution. The experts travel, investigate and gather information on the implementation of the measures. They identify instances of non-compliance, and may make recommendations to the Security Council, Sanctions Committee to take steps to improve the implementation of the measures, or add new measures.

How many UN sanctions programs are there and what do they cover?

There are 14 UN territorial sanctions regimes, including in Sudan, South Sudan, CAR, Somalia, and the DRC. Many of the sanctions regimes for these East and Central African countries have commonalities in the listing criteria, such as targeting those engaged in undermining peace and security, the recruitment of child soldiers, attacks against civilians, gender-based violence and rape, and trade in natural resources when it benefits armed groups. The UN's sanctions program for the DRC currently has 35 individuals and nine entities listed and includes an arms embargo, travel bans, and assets freezes. CAR's sanctions regime also includes these three measures, designating 12 individuals and 2 entities. South Sudan's current sanctions regime against 8 individuals has designation criteria such as rape and recruitment of child soldiers, but also includes criteria such as "actions or policies that threaten transitional agreements" and "obstructing reconciliation or peace talks or processes." Sudan's current sanctions regime contains targeted sanctions (travel bans and asset freezes) on four individuals, who were responsible for atrocities committed in Darfur in 2005.

What are the consequences of travel bans?

Travel bans require all UN member states take the appropriate measures to prohibit the entry into or transit through their territories of the individuals designated by the travel ban. The ban does not, however, require a state to refuse its own nationals entry into its territory. As with assets freezes, limited exceptions to the travel bans may be requested. Exceptions to the ban could include an instance where the travel is justified on the basis of humanitarian need or religious obligations, or to take part in a judicial proceeding.

What is money laundering?

Money laundering refers to a financial transaction scheme that aims to conceal the identity, source, and destination of illicitly-obtained money. The Sentry's research shows that this laundering of the proceeds of corruption occurs across South Sudan, Sudan and the DRC, usually routing through neighboring countries.

What is the Financial Action Task Force (FATF) and how does it work?

FATF plays an important role in combatting this illicit financial activity. The FATF is a multilateral technical body responsible for establishing global standards to combat money laundering and the financing of terrorism. The objectives of the FATF are to “set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing, and other related threats to the integrity of the international financial system.”

FATF member countries conduct regular “mutual evaluations” to monitor each other's compliance with those standards. The FATF uses the mutual evaluation process to assess FATF members' implementation and effectiveness of their anti-money laundering (AML) frameworks. Countries with weak AML frameworks can be subject to countermeasures such as being placed on a public list of countries that then can be used by international financial institutions for enhanced due diligence screening. These countries can be deemed “high risk and non-cooperative jurisdictions” by the FATF, or even more seriously, can be placed on the FATF blacklist and labeled as “Non-Cooperative Countries or Territories.”

As member countries implement FATF standards, criminals and terrorists evolve their methods of money laundering. To help member countries identify and understand these emerging methods, FATF produces typology reports which study the methods, techniques, and trends of money laundering and terrorist financing. Topics include human trafficking, terrorist recruitment, wildlife trafficking, and cryptocurrency.

What are FATF-Style Regional Bodies (FSRBs)?

FSRBs are regional organizations that, like FATF, work to combat money laundering and the financing of terrorism. These nine regional bodies – found all over the world – are independent from FATF. However, they work closely with the FATF to assess the compliance of member countries against FATF standards. FSRBs are also instrumental in developing typology reports on issues that affect their respective regions. The Eastern and Southern African Anti-Money Laundering Group (ESAAMLG), for example, published typology reports on wildlife poaching and human trafficking, which are major threats to the region. The DRC and CAR are members of the Task Force on Money Laundering in Central Africa (GABAC). Sudan is a member of the Middle East and North Africa Financial Action Task Force (MENAFATF).

What is the International Criminal Court (ICC)?

The ICC is the first and only court established to prosecute atrocity crimes wherever they occur in the world. The court has the power to prosecute only very serious crimes: war crimes, crimes against humanity, and genocide. The court is made up of 123 member countries, and operates much like any other criminal court, with prosecutors, judges, investigators, and administrators from all over the world. Its leading function is to investigate the most serious crimes and prosecute the highest-level perpetrators of those crimes, as long as the country where the crimes took place is unwilling or unable to prosecute them. The ICC has had investigations or cases in over 30 different countries, including Colombia, Palestine, the DRC, and Georgia. On several occasions, the ICC's indictments have included heads of state and other high-ranking political officials who were protected from prosecution in their own countries as a result of their powerful positions in government. The ICC has a special provision for the participation of victims in trials, and a trust fund that has distributed millions of dollars in reparations to victims of atrocity crimes.

How do prosecutions for atrocities and human rights abuses work and what are their authorities?

Criminal prosecutions hold individuals, and in some cases corporations, accountable for atrocity crimes. They can be carried out at national, regional, and international courts, depending on the seriousness of the crimes, where crimes took place, the nationality of the accused perpetrators, and other factors. Though they can be lengthy and expensive, prosecutions provide critical benefits that sanctions and anti-money laundering cannot: they allow witnesses and victims to testify and face their alleged perpetrators, and they require thorough investigations, unearthing large amounts of evidence that helps bring truth to light. Prosecutions also carry serious coercive power: in the case of conviction they can result in jail time and asset seizures, removing high-level perpetrators from battlefields or seats of political power in abusive regimes.

The ICC and ad-hoc tribunals like the International Criminal Tribunal for Rwanda are most well known for having the power to prosecute atrocity crimes. However, many national courts around the world have special units within their justice systems dedicated to prosecuting war crimes and crimes against humanity. Recognizing that certain crimes are so grave that victims should have a way for justice outside their own countries, many governments have created avenues for prosecuting atrocity crimes, even if they occur outside their own territories. Atrocity crimes prosecutions are also critical given the transnational nature of criminal networks. Some countries in Europe and North America have prosecuted their own citizens for remote involvement in atrocity crimes committed abroad, recognizing that atrocity crimes are often facilitated by transnational networks that operate far away from where crimes take place.

International and domestic courts have tools within their existing authority to help disrupt the financial incentives and networks underpinning atrocity crimes in East and Central Africa's deadly conflicts. However, to date those powers have been sorely underutilized, leaving the financial backers and beneficiaries of atrocities immune to penalty, and the riches of high-level perpetrators untouched. The ICC and many foreign domestic courts have the power to seize ill-gotten gains, ensuring that perpetrators don't keep the spoils of their crimes if they are convicted. They have the authority to prosecute the war crime of pillage – that is, theft in war – but modern pillage cases have merely addressed small-scale theft of personal property, rather than the systematic theft of lucrative resources like timber and gold that often motivate and fund deadly armed conflicts. These courts also have the power to prosecute commercial actors, including the companies or individual business leaders doing deals with military commanders or heads of state – deals in industries like oil, surveillance, and weapons – without which atrocities many not be feasible or attractive to more direct perpetrators. In order to truly deliver justice for atrocity crimes, courts prosecuting them must use these tools already at their disposal to address the financial actors, machinery, and motivations underlying them.